

KICKING HORSE CANYON PROJECT – PHASE 4
REQUEST FOR PROPOSALS

Volume 1 – Instructions to Proponents

December 13, 2019

(as amended by Addendum 7 dated August 21, 2020)



SUMMARY OF KEY INFORMATION

This summary has been prepared as an overview only and is not intended to replace, supersede or supplement the terms set out in this RFP. It is the responsibility of each Proponent to ensure that they have received and fully understood the complete RFP including all Addenda.

RFP Title	RFP – Kicking Horse Canyon Project – Phase 4 Please use this title in all correspondence.
Contact Person	The Contact Person for this RFP may be reached at: Email: Contact.KHCP4@gov.bc.ca
Proponent Proposed Land Request Deadline 1	11:00 AM local Vancouver time on March 16, 2020
Interim Financial Review Submittal Deadline	11:00 AM local Vancouver time on April 6, 2020
Proponent Proposed Land Request Deadline 2	11:00 AM local Vancouver time on May 15, 2020
Interim Workforce Requirements Submittal Deadline	11:00 AM local Vancouver time on June 23, 2020
Technical Submittal Deadline	11:00 AM local Vancouver time on June 30, 2020
Financial Submittal Deadline	11:00 AM local Vancouver time on September 1, 2020
Submission Location	Kicking Horse Canyon Project – Phase 4 Suite 1100 - 401 West Georgia Street Vancouver, BC V6B 5A1 ATTENTION: CONTACT PERSON
Submission Location for Proponent Proposed Land Request Deadline 1 and Deadline 2	By email to the Contact Person: Contact.KHCP4@gov.bc.ca Or By USB flash drive, delivered to the Contact Person at the Submission Location.
Submission Location for Interim Financial Review Submittals	By email to the Contact Person: Contact.KHCP4@gov.bc.ca Or By USB flash drive, delivered to the Contact Person at the Submission Location.
Submission Location for Interim Workforce Requirements Submittals	By email to the Contact Person: Contact.KHCP4@gov.bc.ca Or By USB flash drive, delivered to the Contact Person at the Submission Location.

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1. INTRODUCTION

1.1. Project Scope Overview

The Province's transportation plan prioritizes investment in B.C.'s transportation network and highlights the Province's commitment to continued improvements to Highway 1 between Kamloops and the Alberta border.

The Kicking Horse Canyon section of Highway 1 comprises the approximately 26 kilometres long westerly portion of the route that traverses the Rocky Mountains between Golden, British Columbia and Lake Louise, Alberta. This section is designated as a priority transportation corridor for the interprovincial movement of people, goods and services. Its proximity to renowned National Parks supports tourism and serves several outdoor recreational activities including skiing, canoeing, rafting and biking. A core objective of the Project is to materially reduce the number and duration of avalanche closure and accident-related highway closures.

Average annual daily traffic on Highway 1 is 6,400 with trucks making up 37% of that volume. During the summer traffic volumes rise to a peak over 13,000 vehicles per day with 26% trucks.

Prior to 2000 the Kicking Horse Canyon Section of Highway 1 was primarily an undivided two-lane highway, constructed in the 1950s that operated below the desired level of service. In 2000, the Kicking Horse Canyon Highway Project was started to improve capacity, reliability, and safety of the highway and upgrade it to a modern four-lane 100 km/h design speed outside the Town of Golden, and a four-lane, 80 km/h design speed within the Town of Golden. Over 21 kilometres of the project has been completed. All design and construction meets the Province's design/engineering and construction guidelines as well as those guidelines recognized by the Transportation Association of Canada (TAC).

The upgrading of the 26 kilometres was split into four phases as shown in Figure 1. Phases 1 and 2 comprise the middle 8 kilometres. Phase 3 comprises the 9-kilometre easterly end, and approximately 4 kilometres at the west end. Phase 4, which includes approximately 4.8 kilometres of improvements in the most challenging canyon segment, will complete the 26-kilometre upgrade.

The Project works to be delivered under the Design-Build Agreement are jointly funded by the Government of Canada and the Province.

Figure 1 – Kicking Horse Canyon Project



The current status of the four phases is as follows:

Phase 1 Yoho Bridge: Complete Fall 2006

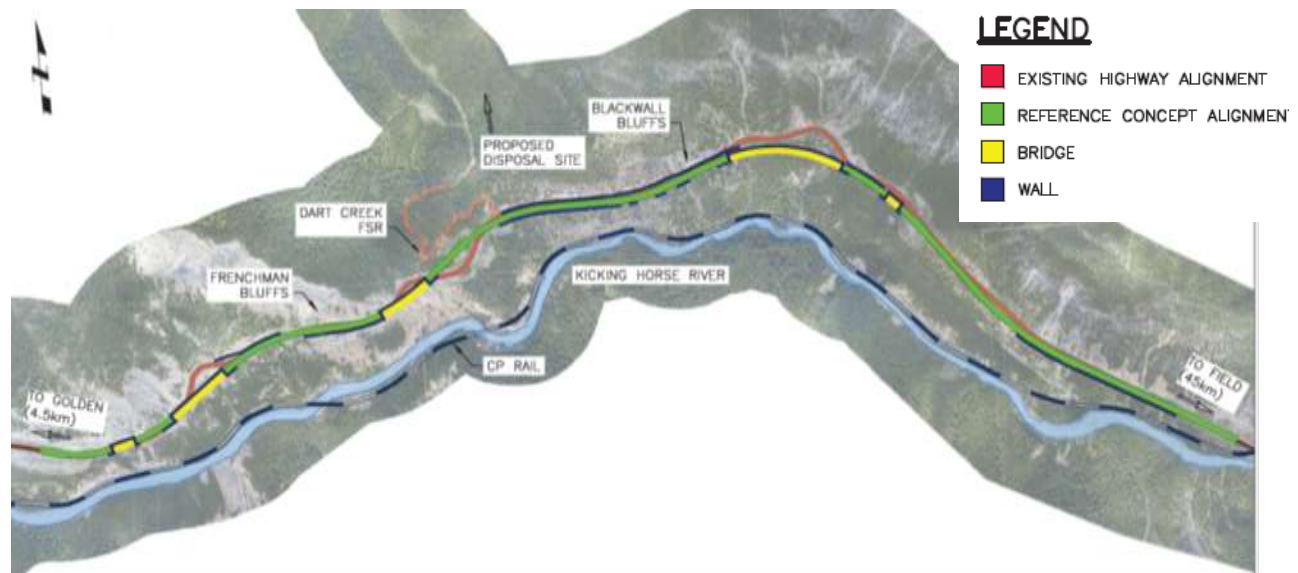
Phase 2 Park Bridge: Open to traffic 2007

Phase 3 East - Brake Check to Yoho National Park: Open to traffic 2011

Phase 3 West – Golden Hill to West Portal: Completed 2013

Phase 4 (the subject of this RFP): West Portal to Yoho Bridge; the reference concept has been completed, including environmental and geotechnical studies.

Figure 2 – Project Scope Map



Identified key challenges include, but are not limited to:

- (a) Year-round construction in rural and semi-urban settings on active highways with complex staging and traffic management requirements due to limited detour opportunities and extreme winter weather conditions; and
- (b) Excavation and movement of large quantities of unstable material within steep, confined areas including working directly over, or in close proximity to, the highway, CP's operating rail lines, transmission lines, wildlife habitat, and a major river.

1.2. Short-listed Respondents

Through the RFQ, the following three Respondents were identified as eligible to receive this RFP and to be invited to participate further in the Competitive Selection Process as Proponents:

- (a) Flatiron-Vinci Joint Venture;
- (b) Kiewit Infrastructure BC ULC; and
- (c) Kicking Horse Canyon Constructors.

1.3. Request for Proposals Overview

The Province is issuing this RFP as part of the Competitive Selection Process for the Project. It is anticipated that through the Competitive Selection Process one of the Proponents will be identified as

eligible to be selected as the Preferred Proponent and be offered the opportunity to enter into a Design-Build Agreement (“DBA”) for the delivery of the Project.

1.3.1. RFP Structure

This RFP contains the following four volumes:

- Volume 1 – Instructions to Proponents;
- Volume 2 – Draft Design-Build Agreement;
- Volume 3 – Draft BCIB-Contractor Agreement; and
- Volume 4 – RFP - Forms.

2. OVERVIEW OF DESIGN-BUILD AGREEMENT AND PROJECT WORK

The DBA will set out the rights and obligations of the parties in respect of the Project and will contain, among other things: the technical specifications for the design and construction of the Project; the scope of the services to be provided by the Design-Builder; and other commercial terms.

The BCIB-Contractor Agreement (BCA) will set out, among other things, the requirements for the supply of relevant labour to the Design-Builder Contractors and Subcontractors will enter into separate BCIB-Subcontractor Agreements setting out, among other things, the requirements for the supply of relevant labour.

It is anticipated that the Draft DBA and Draft BCA will be developed through processes, further detailed in this RFP and in the Proponent Agreement, that include:

- (a) issuance of a Draft DBA as Volume 2 of this RFP;
- (b) issuance of a Draft BCA as Volume 3 of this RFP;
- (c) consideration of comments from Proponents on the Draft DBA and Draft BCA, submitted in writing and as part of Workshops and Topic Meetings;
- (d) incorporation by Addenda into the initial and any revised form of Draft DBA and Draft BCA of amendments, which amendments may address any such Proponent comments; and
- (e) issuance by Addendum of a Definitive DBA as Volume 2 of this RFP, and a Definitive BCA as Volume 3 of this RFP.

Any description or overview of either the Draft DBA, the Definitive DBA, the Draft BCA and/or the Definitive BCA in this Volume 1 is provided for convenience only and does not supersede, supplement or alter the Draft DBA, the Definitive DBA, the Draft BCA and/or the Definitive BCA, as applicable. If there are any inconsistencies between the terms of either the Draft DBA, the Definitive DBA, the Draft BCA and/or the Definitive BCA and the description of those terms set out in this Volume 1 of this RFP, the terms of the Draft DBA, the Definitive DBA, the Draft BCA and/or the Definitive BCA, as applicable, will prevail.

2.1. Design-Build Agreement Parties

The parties to the DBA will be the Province, the British Columbia Transportation Financing Authority (“BCTFA”) and the Design-Builder.

2.2. Design and Construction

The Design-Builder will be required to carry out all aspects of Design and Construction in accordance with the DBA.

The Province has developed a Reference Concept for the Project that was the basis for property acquisition, cost estimates, and the environmental review. To promote innovation, Proponents are encouraged to develop Proposals that may differ or vary from the Reference Concept and that comply with the requirements of the DBA.

A summary of the Design and Construction scope is provided in Table 1 below. This summary should not be considered exhaustive in terms of design and construction responsibilities or complete in terms of the scope, all of which are fully set out in the DBA.

Table 1 - Summary of Anticipated Design and Construction Scope

SUMMARY DESIGN AND CONSTRUCTION SCOPE
<ul style="list-style-type: none"> • Realignment and upgrading of 4 kilometres of two-lane and 0.8 kilometres of three-lane undivided highway to a four-lane 100 km/h divided highway; • Rock and soil excavation, including materials management; • Design and construction of bridges, retaining walls, catchment ditches and other structures; • Mitigation of rock fall and avalanche hazards to the highway and no increase in frequency or magnitude of rock fall or avalanche hazards to the CP right of way; • Traffic management; • Utility and rail protection and utility relocations; • Design and construction of wildlife exclusion fencing and wildlife passage structures; • Operating and maintaining the designated infrastructure to specified standards during construction, including pavement, structures and drainage maintenance within and outside of the CP right of way; • Communication to the public, CP and other stakeholders with respect to construction, traffic management activities, and emergency response to CP rail operations; and • Meeting quality, health and safety, and environmental requirements.

2.2.1. Community Benefits

A Community Benefits Agreement (“CBA”) was executed between British Columbia Infrastructure Benefits Inc. (“BCIB”) and the Allied Infrastructure and Related Construction Council in July 2018. The CBA will contain an Appendix identifying how the agreement is relevant to the Project; which will be included on the Data Room.

The Design-Builder and applicable Contractors and Subcontractors will be required to independently enter into agreements with BCIB (the “BCIC-Contractor Agreement” (BCA) and the “BCIB-Subcontractor

Agreement”, respectively) for supply of relevant labour for the Project. The form of the Draft BCA is provided in Volume 3 of this RFP. The form of the draft BCIB-Subcontractor Agreement is attached as a schedule to the Draft BCA.

2.2.2. Worker Accommodation

It is anticipated that the Design-Builder will be required to accommodate out of town workers in accordance with the CBA. Accommodation options may include rental housing, hotel rooms or a camp. Worker accommodation will be a topic at the all Proponents information meeting scheduled for January 9, 2020.

2.2.3. Identified Indigenous Groups

The Province is in discussions with Identified Indigenous Groups including Ktunaxa Nation Council, the Shuswap Indian Band and the Pespesellkwe Parties regarding contracting and employment opportunities. The Design-Builder’s requirements with respect to Identified Indigenous Groups are set out in Schedule 22 [Indigenous Requirements] to the Project Agreement. It is anticipated that the Design-Builder will be required to meet specified targets in relation to benefit agreements negotiated with Identified Indigenous Groups.

2.2.4. Utilities

The Province has contacted and received information from Utility Suppliers, including location data. This data is available to the Proponents in the Data Room, subject to the terms of use applicable to the Data Room.

BC Hydro and TELUS have infrastructure on a pole line that parallels Highway 1 within the Project Lands. The Province has Protocol agreements with both BC Hydro and TELUS. The Province anticipates BC Hydro and TELUS attendance at Topic Meeting(s) to support Proponents’ understanding of their requirements in carrying out design and construction activities.

The DBA provides requirements for the Utility Work and defines where the Design-Builder is entitled to take the benefit of, or exercise rights under the Utility Agreements.

2.2.5. Traffic Management

The Design-Builder will be required to comply with Traffic Management provisions set out in the DBA. In accordance with the DBA, the Design-Builder will be required to make payments to the Province if the traffic management requirements set out in the DBA are not met.

2.2.6. Operations and Maintenance

The Design-Builder will be responsible for operations and maintenance of the Project Site, excluding routine winter maintenance, until Substantial Completion.

2.2.7. Archaeology

The Design-Builder will be required to undertake the Project Work in a manner that avoids non-permitted disturbances to archaeological and heritage objects. The Design-Builder will be required to comply with all permitting obligations in accordance with the DBA.

2.2.8. Acceptable Equivalent

The Design and Construction Requirements are intended to generally be performance-based, but include, in some instances, specific requirements related to design and construction that the Province considers are important to meet the Province's objectives. However, the Province wishes to provide some flexibility for Proponents to propose equivalent alternatives that when considered by the Province, in its discretion, continue to meet the Province's objectives (each an "Acceptable Equivalent").

A Proponent may submit an RFI marked "Commercial in Confidence – Acceptable Equivalent" that identifies the applicable section(s) in the Design and Construction Requirements that contain the requirement(s) and the Proponent's proposed equivalent that it considers will be equal to or better than the specified requirement(s) and that will still meet the Province's objectives, along with supporting materials.

The Province may, in its discretion:

- (a) respond to indicate that the proposed equivalent is acceptable;
- (b) respond to indicate that the proposed equivalent is acceptable subject to the Proponent's compliance with any conditions identified by the Province;
- (c) respond to indicate that the Province does not consider the proposed equivalent to be acceptable;
- (d) request clarification, further information or additional material;
- (e) not respond to the RFI; or
- (f) provide any other response in accordance with Section 4.4 of Volume 1 of this RFP.

The provisions of Section 4.4 of Volume 1 of this RFP relating to "Commercial in Confidence" RFIs will apply, including with respect to withdrawal of an RFI, RFIs by more than one Proponent on the same or similar topics, or the Province's determination if there is a matter which should be brought to the attention of all Proponents.

If the Province responds to a "Commercial in Confidence" RFI, or responds to any RFI that is not "Commercial in Confidence", regarding a proposed equivalent to indicate that the proposed equivalent is acceptable, a Proponent may make its Technical Submittal on the basis of the response, and the use of the acceptable equivalent will not in and of itself be a failure to meet the requirements set out in Appendix B.

Unless the Province responds to indicate that a proposed equivalent is acceptable, a Proponent is at risk that the use of a proposed equivalent will not substantially meet the requirements set out in Appendix B and that the Province may not invite the Proponent to provide a Financial Submittal.

The Province will be under no obligation to provide the indication of acceptability of the proposed equivalent to the Proponent or to any other Proponent.

Despite any indication by the Province of the acceptability of an equivalent, the Design-Builder remains responsible for fulfilling all of its obligations and responsibilities under the DBA.

Following selection of the Preferred Proponent, the DBA will, in accordance with Section 3.11.1 of Volume 1 of this RFP, be amended to include all acceptable equivalent(s) used by that Preferred Proponent, or negotiated by the Province and the Preferred Proponent, whether or not proposed by any other Proponent.

2.3. Communications and Engagement

The Design-Builder will be responsible for developing and implementing traffic communications plans, and providing a comprehensive traffic communications program for the duration of the Project, which will provide the public, stakeholders, businesses, commuters and traffic media with regular and timely traffic information.

The Design-Builder's obligations regarding communications and engagement are set out in the DBA. Key communications and engagement responsibilities include but are not limited to:

- (a) notification of construction activities;
- (b) traffic and incident management communications;
- (c) stakeholder engagement;
- (d) enquiry-response management;
- (e) communication with CP; and
- (f) supporting the Province's community relations activities, public and stakeholder consultation and media relations.

2.4. Environmental

The Project does not trigger an environmental assessment or review pursuant to either the British Columbia *Environmental Assessment Act* (S.B.C. 2002, c.43) or the *Impact Assessment Act* S.C. 2019, c.28, s.1 (formerly *Canadian Environmental Assessment Act 2012* S.C. 2012, c.19, s.52) as the Project does not meet the requirements defined in the *Reviewable Projects Regulation* or *Regulations Designating Physical Activities*, respectively.

The Province has undertaken an Environmental Summary Report (ESR) that captures the entire Project.

The Design-Builder will be required to perform the Project Work in compliance with all applicable environmental obligations, including the ESR, as described in the DBA, including with respect to CP's right of way. These obligations include, but are not limited to:

- (a) protecting Environmentally Sensitive Areas and other identified economic features within the Project Site during construction activities associated with the Design-Builder and sub-contractors;
- (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 (BMPs);
- (e) ensuring compliance with any third party agreements;
- (f) mitigating potential environmental and archaeological impacts during construction; and
- (g) ensuring all monitoring and reporting requirements for environmental, archaeological and cultural aspects are undertaken and documented.

2.5. Lands

The Province will, subject to the requirements of this RFP and the DBA, acquire all lands and land interests identified as Project Lands. The Design-Builder will be provided access to the lands required for the Project for the purpose of performing its obligations under the DBA. The ownership of the lands will not be transferred to the Design-Builder.

The Land Identification Drawings identify Project Lands, including those held by way of Temporary Land Rights. The Design-Builder may use Project Lands held by way of Temporary Land Rights for the purposes of construction staging or other construction management activities. No permanent infrastructure may be constructed on these lands.

Proponents may identify changes to the Project Lands that may require the addition of Project Lands, including those held by way of Temporary Land Rights, according to the Proponent's design. Proponents should refer to the Appendix D [Lands Process] of this Volume 1 for details regarding the lands for the Project and the process for proposing Proponent Proposed Lands.

2.6. Quality Management

The Design-Builder will be required to develop and implement a Quality Management System in accordance with the DBA and the ISO 9001:2015 Standard. The Design-Builder will undertake internal and external quality audits of the Quality Management System throughout the Term as required under the DBA.

The Design-Builder will be required to meet certain requirements for testing and inspection at origin, and re-inspection in Canada, of structural components that have been manufactured or fabricated outside of Canada or the United States as set out in Part 3 of Schedule 7 to the DBA.

2.7. Payments and Performance Mechanism

The Design-Builder will receive Progress Payments, and be required to comply with a performance mechanism, in accordance with the terms of the DBA.

2.7.1. Payments and Warranties

The Design-Builder will receive monthly Progress Payments based upon achieved progress. Each Progress Payment will be subject to a 5% Progress Payment Holdback. Upon reaching Substantial Completion, the Province will release the Progress Payment Holdback amount minus a Deficiency Holdback and a Warranty Holdback, both described in the DBA.

In addition to the remedying of Project Work Defects during the General Project Work Defect Warranty Period, the Design-Builder will be required to remedy Latent Project Work Defects that are identified within five years after the General Project Work Defect Warranty Period.

2.7.2. Key Aspects of the Performance Mechanism

The DBA includes a performance mechanism which may, subject to and in accordance with its terms, trigger payment obligations of the Design-Builder to the Province and/or the accumulation of NCE Points and/or Default Points as set out in the DBA.

2.7.3. Liquidated Damages

The Design-Builder will be required to pay Liquidated Damages if the Design-Builder fails to achieve Substantial Completion by the Substantial Completion Target Date in accordance with the DBA.

2.7.4. Performance Security

The Design-Builder will be required to obtain a \$125 million performance bond and a \$125 million labour and materials payment bond written by a surety or sureties authorized to conduct business in British Columbia.

2.8. CP Rail

The Project interfaces with a railway, managed and operated by CP, which has infrastructure adjacent to the Project Lands. The railway is a critical link in CP's transcontinental railway system and the Design-Builder will be responsible for coordinating Project activities with CP.

CP operates approximately 23 trains per day on the Mountain Subdivision between Field and Revelstoke, BC and the number of trains is expected to increase. The Mountain Subdivision is a key to Canada's Asia-Pacific Gateway and CP railway network as a major corridor to the Port of Vancouver to transport bulk products, intermodal containers and domestic general merchandise traffic. CP does not have any feasible alternative routes, and the railway must remain operational and clear of any interruptions and delays during the construction of the Project.

The Project could result in damage to CP property that in turn could render the track impassable or unsafe. All potentially hazardous construction activities will be planned and undertaken such that they do not result in damage to CP's property or result in impacts to rail operations. All train control measures and procedures must be aligned with Canadian Rail Operating Rules and CP Railway standards.

CP is required to complete a risk assessment related to its safety management system because the Project represents a change to CP's rail operations (i.e. drilling, blasting, excavation, etc.). The frequency and magnitude of rock falls, debris flow, avalanche and earth slides could increase as a result of the Project. A comprehensive risk assessment and mitigation plan is therefore required to determine and mitigate risks to CP's operations. Proponents will be asked to address risk assessment and mitigation in their technical proposal in accordance with the requirements set out in Appendix A of the RFP.

The Province anticipates CP's attendance at Topic Meetings to ensure Proponents' understanding of CP's requirements in carrying out design and construction activities. The Province is negotiating an agreement with CP and anticipates making the agreement available to Proponents.

2.9. Other Third Parties

The Design-Builder shall comply with third-party interface requirements to cooperate and coordinate with other parties involved in the Project so as not to interfere with each other's work and to ensure the efficient coordination of each other's work and the resolution and/or mitigation of any concerns, including but not limited to:

- (a) coordination and management of traffic control systems through interface committee meetings with the Concessionaire, Trans-Park Highway General Partnership (the "Concessionaire"), for the entire Kicking Horse Canyon section of Highway 1;
- (b) coordination with Trans-Park Operations and Maintenance responsibilities and services without interference;

- (c) compliance with the emergency and maintenance activities of the Concessionaire and/or its contractors; and
- (d) cooperation and coordination with other parties contracting work in proximity to the Project so as to not interfere with each other's work.

3. OVERVIEW OF RFP PROCESS

The purpose of this RFP phase of the Competitive Selection Process is to invite the Proponents to submit Proposals for the Project. It is anticipated that, subject to the provisions of this RFP, an eligible Proponent will be selected as Preferred Proponent and be offered the opportunity to enter into a DBA for the delivery of the Project.

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 Short-Listed Respondent pursuant to the RFQ;

and thereafter:

- (b) the Proponent observing and ensuring that its Proponent Team Members observe the provisions of this RFP, including observing and satisfying and ensuring that its Proponent Team Members observe and satisfy the terms and conditions that may be required, or otherwise established by the Province, in respect of any waiver or permission to be issued by the Province under this RFP;
- (c) the Proponent observing and complying with and ensuring that its Proponent Team Members observe and comply with the terms of the Proponent Agreement; and
- (d) 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 Proponent Team Member to observe, satisfy, or comply with such provisions, terms and conditions may result in the Proponent being:

- (e) ineligible to continue further in the Competitive Selection Process; or
- (f) ineligible to receive any further invitations or information in connection with the Competitive Selection Process.

3.1. Affordability Requirement

As part of their Proposals, Proponents are required to calculate a Contract Price Proposal in accordance with Section 3.2 of Volume 1 of this RFP. The Contract Price Proposal included in a Proponent's Proposal will be evaluated to determine whether it is less than or equal to the Affordability Requirement, which is \$462,000,000 in nominal dollars. The Contract Price Proposal and the Adjusted Contract Price Proposal, as applicable, each must not exceed the Affordability Requirement.

3.2. Contract Price Proposal

The Contract Price Proposal is to be calculated by the Proponent using Form A1 of Appendix A of this RFP.

3.3. Identified Indigenous Groups Business to Business Networking Event

The Province intends to coordinate a session with Proponent Teams and the Identified Indigenous Groups and their associated businesses to provide an opportunity for:

- (a) those businesses who might be interested in working with, or providing products and services to the Preferred Proponent, to meet the Proponent Teams; and
- (b) Proponent Teams to enhance their knowledge, understanding and awareness of local goods and services and to build relationships with the Identified Indigenous Groups and their associated businesses.

3.4. Business to Business Networking Event

The Province also intends to coordinate a session with Proponent Teams and local contractors, suppliers and businesses to provide an opportunity for:

- (a) local contractors, suppliers and businesses which might be interested in working with, or providing products and services to the Preferred Proponent, to meet the Proponent Teams; and
- (b) Proponent Teams to enhance their knowledge, understanding and awareness of local goods and services and to build relationships with local contractors, suppliers and businesses.

3.5. Consultation Process

The Province will facilitate a consultation process with the Proponents which will 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 Draft DBA and Draft BCA. Topic Meetings may occur after the Technical Submittal Deadline. The terms, procedures, rules and protocols for the Workshops and Topics Meetings are set out in the Proponent Agreement, including in Schedule 2 to the Proponent Agreement [Workshops and Topic Meetings]. The Province may in its discretion, from time to time, amend, supplement, or replace Schedule 2 [Workshops and Topic Meetings] by delivery to the Proponent of written policies and procedures clarifying, supplementing, or otherwise modifying the terms of Schedule 2 [Workshops and Topic Meetings].

3.5.1. Workshops and Topic Meetings

In accordance with the Proponent Agreement, the Province may schedule and conduct Workshops and Topic Meetings during this RFP stage to enable communication between the Province and the Proponents as to issues relating to this RFP, the Project, the Draft DBA, and the Draft BCA. Workshops will focus on the Draft DBA, Draft BCA, and RFP whereas Topic Meetings will focus on specific technical aspects of the Project. Attendance by Proponents at Topic Meetings and Workshops will be required, unless otherwise designated by the Province.

One Topic Meeting and two Workshops are planned, as indicated below and further referenced in Table 2 in Section 3.13 of Volume 1 of this RFP:

- (a) A Topic Meeting in the form of an all-Proponent information meeting; and
- (b) Two Workshops that are anticipated to include:
 - (i) Workshop A – separate meetings between the Province and each Proponent to discuss the Proponent’s comments on the RFP, Draft DBA, and Draft BCA; and
 - (ii) Workshop B – separate meetings between the Province and each Proponent to discuss the Proponent’s comments on the RFP, revised Draft DBA, revised Draft BCA and the Interim Financial Review Submittal.

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

The Province may, including at the request of any Proponent(s), schedule additional Workshops or Topic Meetings, if the Province considers it desirable or necessary, in its discretion.

3.5.2. Finalization of Design-Build Agreement and BCIB Contractor Agreement

The Province will issue the initial and subsequent revised forms of the Draft DBA and Draft BCA as Volume 2 and Volume 3, respectively of this RFP. In addition to considering comments and issues discussed in the Workshops and Topic Meetings, the Province may from time to time invite Proponents to review and submit further comments in respect of the Draft DBA and Draft BCA.

Any information or documentation provided to, or which comes to the attention of the Province 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 in the discretion of the Province.

Proponents may submit additional comments, requested amendments and issues following these discussions.

The Province currently anticipates that the sequencing of submission and review of comments, issues and requested amendments and scheduling of Workshops will follow in the order outlined in Table 2 in Section 3.13 of Volume 1 of this RFP. The Province may in its discretion extend, accelerate and/or modify the sequencing at any time and from time to time. Additional separate Workshops and Topic Meetings may, in the discretion of the Province, be scheduled and carried out.

Any issues, comments and requested amendments to the Draft DBA and Draft BCA should be submitted in table format, identifying the Draft DBA and Draft BCA 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.

The Province will consider comments, issues and requested amendments received from the Proponents. Without limiting any other provision of this RFP, including Section 5.1 of Volume 1 of this RFP, the Province 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 Technical Submittal Deadline, by Addenda amend, restructure, or supplement the initial and any revised form of Draft DBA and Draft BCA, including by incorporating any such Proponent requested and any other changes.

The Province will issue the Definitive DBA and Definitive BCA by Addendum as Volume 2 and Volume 3, respectively, of this RFP.

3.6. Authorizations, Orders and Approvals

Without limiting any other term of this RFP, the execution of the DBA is subject to the issuance of all necessary Province 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 Proponent and the Province, as applicable, prior to the Effective Date.

3.7. Interim Submittals

3.7.1. Interim Financial Review Submittal

The Province may conduct the interim financial review as follows:

- (a) the purpose of the interim financial review is to facilitate an early review by the Province with Proponents of:
 - (i) Proponents' understanding of the Project requirements; and
 - (ii) Proponents' cost assumptions with respect to the Project requirements;
- (b) prior to the Interim Financial Review Submittal Deadline, each Proponent will submit an Interim Financial Review Submittal to the Province, including:

- (i) a completed capital cost summary table in the form of, and in accordance with the Cost Items, provided in Appendix C of Volume 1 of this RFP;
 - (ii) feedback on the categorization and description of the Cost Items and the progress measurement rules set out in Appendix B [Progress Measurement Principles] to Schedule 10 to the Draft DBA; and
 - (iii) preliminary plan drawings of the Proponents anticipated designs including a plan, profile and typical cross sections of the roadway and bridge and wall structures (each drawing sized to fit on 11"x17" paper).
- (c) the Province is expecting the Interim Financial Review Submittal to include cost and input assumptions in sufficient detail to allow the Province to understand the Proponent's cost base (with at least all major cost headings included);
- (d) the Province will retain each of the Interim Financial Review Submittals as strictly confidential, and will invite each Proponent, as part of Workshop B, to discuss any aspect of its Interim Financial Review Submittal, including any recommendations for amendment of the Project requirements if a Proponent determines that the Project as described will exceed the Affordability Requirement; and
- (e) a Proponent's Interim Financial Review Submittal will not be considered part of its Proposal and the Province will not consider or evaluate it as to adequacy, quality, content or otherwise as part of the evaluation process described in Appendix B of Volume 1 of this RFP.

The Province understands that the values indicated in a Proponent's Interim Financial Review Submittal are not a commitment and that any and all aspects could change in the final Proposal.

3.7.2. Interim Workforce Requirements Submittal

Each Proponent will submit an Interim Workforce Requirements Submittal to the Submission Location for Interim Workforce Requirements Submittals on or before the Interim Workforce Requirements Submittal Deadline.

The purpose of the Interim Workforce Requirements Submittal is to facilitate an early review by the Province and BCIB with Proponents of their anticipated labour requirements for the Project under the BCA and BCIB-Subcontractor Agreements.

Prior to the Interim Workforce Requirements Submittal Deadline, each Proponent will submit an Interim Workforce Requirements Submittal, including the Proponent's best estimate of the anticipated labour force, with approximate numbers by Job Classifications of Employees (as those terms are defined in the Draft BCA), that will be required by the Design-Builder and its anticipated Applicable Subcontractors (as defined in the Draft BCA) on a month by month basis for the first year, and annually thereafter to Substantial Completion.

The Province will retain each of the Interim Workforce Requirements Submittals as strictly confidential.

A Proponent's Interim Workforce Requirements Submittal will not be considered part of its Proposal and the Province will not consider or evaluate it as to adequacy, quality, content or otherwise as part of the evaluation process described in Appendix B of Volume 1 of this RFP.

3.8. Proposal Submittal Requirements

Proposal submittal requirements are set out in detail in Appendix A of Volume 1 of this RFP, and include formatting, packaging and content requirements relating to the Proposals.

Proposals are to be delivered in the following submittals, as further described in Appendix A of Volume 1 of this RFP.

3.8.1. Technical Submittal

Proponents are to provide a Technical Submittal to the Submission Location, as described in Appendix A of Volume 1 of this RFP, before the Technical Submittal Deadline. The Technical Submittal is to include no pricing information.

3.8.2. Financial Submittal

Proponents are to provide a Financial Submittal to the Submission Location, as described in Appendix A of Volume 1 to this RFP, before the Financial Submittal Deadline. The Financial Submittal is to include pricing information.

3.8.3. Submittal Deadlines and Submission Location for Proposals

Proposals are to be received at the Submission Location, addressed to the Contact Person. Faxed, telephone or electronically submitted Proposals, will not be accepted.

The calendar and clock designated as the official calendar and clock by the Province at the Submission Location, whether accurate or not, will be determinative with respect to whether a Technical Submittal, including any part of a Technical Submittal, has been received before the Technical Submittal Deadline and whether a Financial Submittal, including any part of a Financial Submittal, has been received before the Financial Submittal Deadline. The Province may at any time and from time to time, by Addendum sent to the Proponents (whether or not actually received by the Proponents), amend, including by extension, the Technical Submittal Deadline and/or the Financial Submittal Deadline.

3.9. Evaluation Process

3.9.1. Technical Submittal Package Review

This is a review for substantial completeness of the Technical Submittal in accordance with this RFP.

3.9.2. Technical Submittal Evaluation

The Technical Submittal evaluation will be in accordance with the evaluation criteria set out in Section A (and, if applicable, Section B) of Appendix B of Volume 1 of this RFP.

3.9.3. Invitations to Submit Technical Supplement

The Province may, in its discretion, issue an invitation to submit a Technical Supplement to the Submission Location on or before the date and before the time specified in the invitation for receipt of Technical Supplements, if:

- (a) any amendment, restructuring or supplement made after the Technical Submittal Deadline
 - (i) is made to any of the schedules of the version of Definitive DBA issued as at the Technical Submittal Deadline, or
 - (ii) is considered by the Province to impact on the elements of the Project Work provided for in, or on the requirements of, any such listed schedules, or
- (b) any document is posted to the Data Room after the Technical Submittal Deadline and contains information which is considered by the Province to impact on the elements of the Project Work provided for in or on the requirements of any such listed schedules, and
- (c) the Province considers any such amendment, restructuring or supplement, or any such impact, as applicable, to be so material, having regard to the applicable elements of the Project Work or the applicable requirements provided for in the schedule or schedules, as the case may be, as to necessitate review by the Proponents of their Technical Submittals.

The Province may in its discretion issue an invitation under this Section on its own initiative or on consideration of a Proponent's request delivered by RFI in accordance with Section 4.4 of Volume 1 of this RFP.

In considering whether to issue an invitation under this Section, the Province, may as part of the consideration process or otherwise, seek and consider comment, information and documentation from the Proponents. Proponents requesting that an invitation under this Section be issued will include in the RFI sufficient information and documentation to enable the Province to understand and assess the materiality of the amendment, restructuring or supplement or of the impact, as applicable, having regard to the applicable elements of the Project Work provided for in or to the requirements of the schedule or schedules, as applicable.

3.9.4. Technical Supplement Review and Evaluation

If a Technical Supplement is invited, a review of the Technical Supplement will be made for substantial completeness and an evaluation of the Technical Supplement will be made in accordance with this RFP.

3.9.5. Invitations to Submit Financial Submittal

The Province will, subject to the terms of this RFP, invite each Proponent that has delivered a Technical Submittal that substantially satisfies the requirements of this RFP and that otherwise is considered, in accordance with this RFP, to be eligible to receive such an invitation, to submit a Financial Submittal.

Proponents are to prepare their Financial Submittal on the basis of:

- (a) the Affordability Requirement;
- (b) the Definitive DBA, without amendment, and including any further information and documentation provided by the Province in accordance with this RFP; and
- (c) the Definitive BCA, without amendment, and including any further information and documentation.

3.9.6. Financial Submittal Package Review

This is a review for substantial completeness of the Financial Submittal in accordance with this RFP.

3.9.7. Financial Submittal Evaluation

The evaluation of the Financial Submittal will be in accordance with the evaluation criteria set out in Section C of Appendix B of Volume 1 of this RFP.

3.9.8. Invitation to Deliver Preferred Proponent Security Deposit

The Province will, subject to the terms of this RFP, invite the Proponent that has delivered a Proposal that:

- (a) substantially satisfies the requirements of this RFP and the Definitive DBA and the Definitive BCA;
- (b) receives the highest ranking in accordance with the evaluation criteria set out in Appendix B to Volume 1 of this RFP; and
- (c) otherwise is considered, in accordance with this RFP, to be eligible to be selected to receive such an invitation to deliver the Preferred Proponent Security Deposit.

The Proponent's eligibility to be considered for selection as the Preferred Proponent is, subject to the terms of this RFP, conditioned on the Proponent delivering the Preferred Proponent Security Deposit, in accordance with the invitation, on or before the date and time specified in such invitation.

3.9.9. Preferred Proponent

The Province will, subject to the terms of this RFP, select as the Preferred Proponent, the Proponent that has delivered the Preferred Proponent Security Deposit in accordance with the invitation issued pursuant to Section 3.9.8 of Volume 1 of this RFP.

The Province may, in its sole discretion, invite the Preferred Proponent to commence certain works, including certain design works, on substantially the terms set out in the Limited Notice to Proceed Agreement.

3.10. Debriefing

Following the Effective Date, representatives of the Province will, upon request, meet with Proponents and provide them with a debriefing. During such debriefing, the relative strengths and weaknesses of that Proponent's Proposal will be disclosed and discussed.

3.11. Close Process

3.11.1. DBA and BCA – Finalize Terms and Close

It is the intention of the Province that, subject to Section 3.11.2 of Volume 1 of this RFP, any issues with respect to the Draft DBA and Draft BCA must be finalized prior to the Financial Submittal Deadline so that the Definitive DBA and Definitive BCA, once issued, will not be further modified and is to be executed by the Preferred Proponent without further negotiation or amendment, except for changes, modifications and additions:

- (a) relating to the determination by the Province in its discretion regarding which parts, if any, of the Proposal are to be incorporated by reference or otherwise into the DBA or the BCA or otherwise pursuant to express provisions of the Definitive DBA or Definitive BCA, and changes and additions as a consequence of or in connection with such incorporations;
- (b) to those provisions or parts of the Definitive DBA and Definitive BCA which are indicated as being subject to completion or finalization or which the Province 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 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 Proponent's relationships with its Subcontractors and lenders;
- (c) required by the Province in its discretion to complete, based on the Proposal, any provision of the Definitive DBA or Definitive BCA, including changes, modifications and additions contemplated in or required under the terms of the Definitive DBA or Definitive BCA;

- (d) that the Province, in its discretion, considers are necessary to create or provide for a duly authorized and legally complete, enforceable and binding agreement;
- (e) that the Province, in its discretion, considers are necessary solely to enhance clarity in legal drafting; and
- (f) that reflect Acceptable Equivalents in accordance with Section 2.2.8 of Volume 1 of this RFP.

3.11.2. Negotiations

If the Preferred Proponent submitted a Proposal that does not meet the Affordability Requirement, the Province may, in its discretion, and without limiting any other term of this RFP, including Section 5.3 of Volume 1 of this RFP, by delivery of written notice, invite the Preferred Proponent to enter into negotiations with a view to obtaining a DBA which the Province considers in its discretion to be in the interests of or advantageous to the Province or otherwise acceptable to the Province.

The negotiations may, in the Province'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 Project, the Definitive DBA, the Definitive BCA, the Proposal, and the Project Work.

Neither the Province nor the 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 a DBA through this process.

The Province may at any time and from time to time and for any reason that the Province in its discretion considers to be in the interests of the Province, including if the Preferred Proponent declines to accept the Province's invitation to enter into negotiations, revoke the invitation and, if applicable, terminate negotiations with the Preferred Proponent and proceed to take any one or more steps that the Province 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 Definitive DBA and/or the Definitive BCA as contemplated in Section 3.11.1 of Volume 1 of this RFP in which case the terms of Section 3.11.1 of Volume 1 of this RFP will apply;
- (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 3.11.2;
- (c) discontinue the process with the Proponent and select another Proponent as Preferred Proponent to finalize and settle the Definitive DBA and or the Definitive BCA as contemplated in Section 3.11.1 of Volume 1 of this RFP in which case the terms of Section 3.11.1 of Volume 1 of this RFP will apply; or
- (d) any of the steps contemplated in Section 5.3 of Volume 1 of this RFP.

3.12. Fairness Reviewer

Jane Shackell, Q.C. has been appointed as the Fairness Reviewer by the Province with responsibility to review the development and implementation of the Competitive Selection Process from a fairness perspective, including by participating in any or all aspects of the Workshops and the Topic Meetings. This includes, but is not limited to, monitoring the evaluation, including the ranking, of the Proposals and the selection, if any, of the Preferred Proponent. The Fairness Reviewer will report only to the Province and will provide, on an ongoing basis, an objective opinion as to the fairness of the Competitive Selection Process. In particular, the Fairness Reviewer will provide a written report in respect of the Proposal evaluation process which will be made public at the time of selection of the Preferred Proponent. Proponents may contact the Fairness Reviewer directly with regards to questions pertaining to the fairness of the Competitive Selection Process.

3.13. Timetable

The anticipated timetable for the Competitive Selection Process is set out in Table 2.

Table 2 - Anticipated Timetable for the Competitive Selection Process

Activity	Date
RFP Issued	December 13, 2019
Topic Meeting – All-Proponents Information Meeting	January 9, 2020
Proponents submit agendas for Workshop A	January 15, 2020
Workshop A – One-on-one Draft DBA and Draft BCA meeting	Week of February 10, 2020
Identified Indigenous Groups Business to Business Networking Event	Week of February 24, 2020 Morning
Business to Business Networking Event	Week of February 24, 2020 Afternoon
Revised RFP (including revised Draft DBA and Draft BCA) issued	Week of March 9, 2020
Proponent Proposed Land Request Deadline 1	11:00 AM local Vancouver time on March 16, 2020
Proponents submit agendas for Workshop B	12:00 PM local Vancouver time on April 9, 2020
Interim Financial Review Submittal Deadline	April 6, 2020
Workshop B – One-on-one revised Draft DBA and revised Draft BCA meeting and Interim Financial Review Submittal review	April 27 to May 1, 2020
Definitive DBA and Definitive BCA issued	May 25, 2020
Proponent Proposed Land Request Deadline 2	11:00 AM local Vancouver time on May 15, 2020

Activity	Date
Interim Workforce Requirements Submittal Deadline	June 23, 2020
Technical Submittal Deadline	June 30, 2020
Invitation to Submit a Financial Submittal	August 19, 2020
Updated Interim Workforce Requirements Submittal Deadline	September 1, 2020
Financial Submittal Deadline	September 1, 2020
Announcement of Preferred Proponent and Limited Notice to Proceed (as required)	Mid-September 2020

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 Project. Reports and other material relating to these activities are included in and will continue to be added to the Data Room.

4.2. Investigations, Surveys and Studies by Proponents

Each Proponent is responsible for conducting its own independent due diligence and for satisfying itself as to all aspects of the Project, including assessments, investigations, examinations, surveys, and studies which they consider necessary, desirable, beneficial, or appropriate at their own cost.

Proponents are responsible for making their own arrangements in respect of access to lands that are not owned or administered by the Province.

Proponents will coordinate any field work or any access to any non-public part or parts of the Project Lands and adjacent areas, including to any part of lands owned, operated, or administered by a railway, through the Province by submission of a request to the Contact Person, to ensure that inconvenience to land owners, tenants, road users, and other contractors is kept to a minimum, and to ensure that environmental, safety and time constraints are taken into account. The request for access should be submitted as early as possible, and in any event at least 96 hours in advance of the time for any proposed access, and should include the requested access or field work date(s), time(s), location(s), and proposed field work or activities.

The Province will provide no insurance or workers compensation coverage for any matter whatsoever to any Proponents, 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. Access to the Project Lands and adjacent areas, or to any other facilities or premises, may be conditioned upon Proponents providing evidence acceptable to the Province that insurance and indemnities, acceptable to the Province, are in place and granted as the case may be; that the Proponent and 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 are registered with the Workers' Compensation Board of British Columbia in accordance with applicable Laws, or have employer's liability insurance in amounts and on terms and conditions acceptable to the Province; and that a Representative of the Province be present during the Proponent's works and activities at the access locations. Without limiting the foregoing, access to any part of the lands owned, operated, or administered by a railway may be conditional on satisfaction of any additional requirements of a railway, as the case may be.

Proponents are responsible for obtaining and holding any and all rights, permits, licences, consents, approvals and authorities required by any governmental agency or authority or other person to carry out any such field work, assessments, investigations, and surveys.

4.3. Data Room

The Province has established a Data Room for the Project and the Competitive Selection Process.

At any time and from time to time during the Competitive Selection Process, the Province 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.

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

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.

4.4. Communications and Enquiries

Except as expressly provided for in this RFP, Proponents will direct all communications in relation to this RFP or any part of the Competitive Selection Process, the Project, the Draft DBA, the Definitive DBA, the DBA, the Draft BCA, the Definitive BCA, the BCA or the preparation of any Proposal, including questions, inquiries, comments, RFI, requests for clarification, and requests for Topic Meetings or Workshops to the Contact Person in writing by email, hand or courier and clearly marked “RFP – Kicking Horse Canyon Project – Phase 4”. All communications and enquiries to and responses from the Contact Person will be recorded.

Information or documentation obtained from any source other than the Contact Person is not official, will not be binding on the Province, and may not be relied on or otherwise used in any way for any purpose whatsoever. The Province in its discretion may but will not be obligated in any way whatsoever to respond to any RFI or any other communication or enquiry.

Proponents will communicate with the Province or any of its representatives in relation to this RFP, any part of the Competitive Selection Process, the Project, the Draft DBA, the Definitive DBA, the DBA, the Draft BCA, the Definitive BCA, the BCA or the preparation of their Proposals, only:

- (a) in writing via the Contact Person using a Request for Information in accordance with the Requests for Information and Distribution of Information protocol set out in Schedule 3 to the Proponent Agreement;
- (b) in Workshops and Topic Meetings, and any additional meetings subject to the terms of this RFP and in accordance with the Workshops and Topic Meeting Schedule;
- (c) as may be otherwise expressly invited in writing by the Contact Person, and
- (d) as may be expressly permitted by this RFP, including in accordance with the response guidelines set out in Appendix A of Volume 1 of this RFP.

The Province may in its discretion distribute any communication, information or enquiry, including any RFI or Response to Proponents to all the Proponents. If the Province in its discretion considers an RFI or the corresponding Response to Proponents to be of a minor or administrative nature and to relate only to the Proponent or to any other of the Proponents who submitted the RFI, the Province may issue a Response to Proponents only to the Proponent or any other of the Proponents who submitted the RFI.

Despite any other term of this RFP and any RFI or other communication being identified as “Commercial in Confidence”, if the Province in its discretion, considers the matter to be a matter of substance or a matter that should be brought to the attention of the Proponents for purposes of fairness in or maintaining the integrity of the Competitive Selection Process, the Province may deliver an Addendum or a Response to Proponents relating to the matter to all the Proponents.

Without limiting the foregoing, if the Province considers, in its discretion including for purposes of fairness in or maintaining the integrity of the Competitive Selection Process, that the Province should not respond to an RFI that is marked “Commercial in Confidence” on a confidential basis, the Province will notify the Proponent and specify the time period within which the Proponent may withdraw its RFI in writing. If the Proponent does not withdraw the RFI within the time specified by the Province, then the Province in its discretion may provide to all Proponents the Province’s response to the RFI.

Proponents will not communicate, including by media releases or interviews, and will ensure that its 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 do not communicate, in respect of any part or parts of the Project or the Competitive Selection Process with the media or the public without the prior written consent of the Province.

Each Proponent will notify the Province 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 Project or the Competitive Selection Process.

5. GENERAL MATTERS

5.1. Amendment or Cancellation of Competitive Selection Process

This RFP may be amended only by Addenda issued by the Province.

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

5.2. No Contract

This RFP is neither an offer nor an agreement to purchase goods or services. No contract of any kind arises from or is formed under or entered into pursuant to this RFP, including as a result of the submission or evaluation of a Proposal, and no legal obligations or duties of any kind, express or implied and whether in contract, tort or otherwise, are constituted by or arise from or out of this RFP, including the submission or evaluation of a Proposal, and including any actual or implied duty of good faith or actual or implied duty of fairness. Neither this RFP nor the submission or evaluation of a Proposal is to be interpreted or construed as constituting or giving rise to any contract or any such legal obligations or duties.

5.3. No Obligation to Proceed or Make any Selection

The Province has no obligation or duty, in any way, whether in contract, tort or otherwise, including if:

- (a) the Province receives only one Proposal that substantially satisfies the requirements of this RFP, the Definitive DBA and the Definitive BCA; or
- (b) only one Proponent remains to be considered for selection as the Preferred Proponent; or
- (c) the Province selects a Preferred Proponent;

to complete this RFP stage or proceed with or to any part of the Competitive Selection Process, to enter into the DBA, or any agreement with respect to all or any part of the Project, with any Proponent, the Preferred Proponent if one is selected and offered the opportunity, or any Person.

The Province has no obligation or duty, in any way, whether in contract, tort or otherwise, to:

- (d) accept, review or evaluate any one or all Proposals; or

- (e) extend any invitations, to consider any Proponent for selection as a Preferred Proponent; or
- (f) select a Preferred Proponent, or to continue with a Preferred Proponent; or
- (g) accept the Proposal that receives the highest ranking in accordance with the evaluation criteria set out in this RFP, or any Proposal; or
- (h) accept, reject, or disqualify any or all Proposals, including any that do not satisfy all requirements set out in this RFP or for which necessary orders, authorizations, and approvals, including governmental authorizations, orders and approvals, have not been obtained.

Without limiting any other term of this RFP, the Province may in its discretion for any reason, (including if the Province does not select a Preferred Proponent), at any time or within six months of the Financial Submittal Deadline, if the Province elects not to continue with a Preferred Proponent, (if selected), or if the Province elects not to enter into the DBA, or at any time during this RFP stage, for any other reason that the Province in its discretion considers to be in the interests of or advantageous to the Province:

- (i) terminate the Competitive Selection Process, including this RFP; or
- (j) take any steps that the Province in its discretion considers to be in the interests of, or advantageous to the Province, including implement or issue any other procurement or other process including a negotiation process for, or to proceed in any other manner whatsoever, at any time and from time to time, with any part of parts of the Project or Project Work, including any part or parts of the design, construction, operation, maintenance or rehabilitation of any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project.

In so doing, the Province may at any time, and from time to time, contract directly with any Person, on such terms as the Province may in its discretion deem appropriate, including any one or more Proponent Team Members or any contractors, advisers or other Person engaged by or through or associated with any Proponent.

A negotiation process referenced in this Section 5.3 may:

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

5.4. Proposal Review and Evaluation

In administering and carrying out its functions under this RFP, or in any aspect of the Competitive Selection Process, including in reviewing, evaluating, and ranking Proposals, the Province may, in its discretion and in confidence utilize, be assisted by, consult with, obtain and rely upon input, advice and direction from technical, financial, managerial and legal advisors and consultants in any way that the Province considers in its discretion will be of assistance to the Province. Such advisors and consultants may be representatives and employees of the Province, of government agencies and/or of private sector firms.

Review and evaluation, including ranking, of Proposals may be conducted by evaluators comprised of employees and representatives of the Province, of government agencies and/or of private sector firms.

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

The Province 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 Province 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 Province in its discretion deems appropriate and in the interests of the Province 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 member of the Proponent Team;
- (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, tax payer 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;
- (e) reject in whole or in part any Technical Supplement, if any are invited;
- (f) 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, the Province may in its discretion, decline to review, evaluate or rank, or may reject outright any Proposal which in the opinion of the Province is materially incomplete or irregular, which contains omissions, exceptions or variations not acceptable to or material to the Province, which contains a false or misleading statement, claim or information, or 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 Province to take any one or more of the above-listed steps, the Province may enter into separate and confidential communications of any kind whatsoever, including by meetings or interviews, with any Person, including any Proponent. The Province 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 Technical Submittal after the Technical Submittal Deadline and in respect of the Financial Submittal after the Financial Submittal Deadline, without the prior approval of the Province or at the invitation or request of the Province.

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

The Province 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 Province's decision in its discretion as to whether or not a Proposal substantially satisfies the requirements of this RFP, the Definitive DBA and the Definitive BCA will be final and the Province need not consult with any Proponent in making its decision.

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 Province 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 Province 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;
- (e) disqualify the Proponent from the Competitive Selection Process; or
- (f) waive the failure or failures on such terms and conditions as the Province may in its discretion require to satisfy the Province's consideration of the interests of the Province, including the public interest, or of any other matter that in the Province'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, the Definitive DBA, or the Definitive BCA to be in conflict with any other part of this RFP, the Definitive DBA, or the Definitive BCA, then the Proponent will notify the Contact Person in writing in accordance with Section 4.4 of Volume 1 of this RFP, 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 Province, will provide the higher overall value or benefit to the Province, will govern and take precedence.

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

In the event of a conflict or inconsistency between the paper form as issued to Proponents of the Definitive DBA, or Definitive BCA, or this RFP and, either, the same document as issued to Proponents in digital, electronic or other computer readable form, or the same document as posted in the Data Room, the paper form of the applicable document as issued to Proponents will govern and take precedence.

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 Province, the Province Parties and Partnerships BC are subject to the FOIPPA.

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

The Province 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 Province 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 Province 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 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. 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 Project, this RFP, the Draft DBA, the Definitive DBA, the DBA, the Draft BCA, the Definitive BCA, the BCA, 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 Province, the Province Parties, Partnerships BC, including any minister or deputy minister of the Province, 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 Proponent, or any negotiations with the 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 Project, the DBA, the BCA 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 [Kicking Horse Canyon - Procurement - Key Documents](#) and/or at www.partnershipsbc.ca:

- (a) the Request for Qualifications,
- (b) the names of the Short-Listed Respondents, and
- (c) the Relationship Review Process Description.

Additional information that may be publicly disclosed, subject to government policy and FOIPPA, by posting it at [Kicking Horse Canyon Project - Phase 4](#) and/or at www.partnershipsbc.ca includes:

- (d) Volume 1 of this RFP, and
- (e) the name of a Preferred Proponent.

The Draft DBA and Draft BCA are confidential and is not intended to be made publicly available unless otherwise required by government policy or Law. The DBA, excluding those portions that may be severed pursuant to the FOIPPA, will be disclosed publicly following the Effective Date.

5.11. Changes to Proponent Team Members

Subject to the terms of this RFP, Changes to any Proponent Team Member either before or after delivery of any component of the Proposal may only be made with the permission of the Province. If for any reason a Proponent wishes to make or requires that a Change be made, the Proponent will deliver a written request to the Province for its consent to the proposed 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, the Proponent Team Members, considered as a whole and considered separately, meeting or exceeding, in the sole opinion of the Province, 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 Province may request in the Province'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 Province be included in the evaluation of the Proponent's Proposal.

The Province may, in its discretion, by written notice refuse or permit the proposed Change. Any permission of the Province may be on such terms and conditions as the Province may consider appropriate.

The Proponent will immediately notify the Province 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 the DBA 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 Province'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

Without limiting any other term of this RFP, the Province may in its discretion notify any Proponent that it is or has become ineligible to participate in or continue participating in the RFP phase or any other part of the Competitive Selection Process where the Province, at its discretion, considers the Proponent or any of its Proponent Team Members to have an actual or perceived conflict of interest or unfair advantage or to have a relationship that has the potential for creating an actual or perceived conflict of interest or unfair advantage.

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 Technical Submittal or the Financial Submittal, fully disclose all relationships that the Proponent or any of its Proponent Team Members has, or had, with the Province, the Province or any agency, authority, board, tribunal, commission or department of the Province, BCTFA, Partnerships BC, any Restricted Party or any other Person providing advice or services to the Province or the Province Parties with respect to the Project, 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 Province, the Province or any agency, authority, board, tribunal, commission or department of the Province, BCTFA, Partnerships BC, any Restricted Party or any other Person providing advice or services to the Province or the Province Parties with respect to the Project 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 Province may require in its discretion in connection with the Province's consideration of the disclosed relationship and proposed measures.

A description of the Project relationship review guidelines is posted on the Project website [Kicking Horse Canyon - Procurement - Key Documents](#) and at www.partnershipsbc.ca.

The Province may in its discretion waive any and all potential, actual or perceived conflicts or interest or unfair advantage, or the impacts of any existing relationships. Any waiver may be upon such terms and conditions as the Province in its discretion may require, to satisfy itself that the conflict or interest or unfair advantage, actual, potential or perceived, or impact, or consequence of the relationship, as the case may be, has been appropriately mitigated, minimized, or eliminated, including by requiring the Proponent, any Proponent Team Member, any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, and any other Persons associated with any of them and affected persons or entities to put into place such policies, procedures, measures and other safeguards as may be required by and are acceptable to the Province, in its discretion, to ensure that any and all Confidential Information the 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 may have continues to be kept confidential and not disclosed or used except as expressly permitted by the Province. Without limiting the generality of the foregoing, the Province may, in its discretion, require the Proponent or Proponent Team Member or contractor, subcontractor, director, officer, employee, consultant, advisor, representative or agent, or other Person associated with any of them to substitute a new person or entity for the person or entity giving rise to the potential or actual conflict of interest or unfair advantage, or who has the existing relationship.

5.13. Relationships

5.13.1. Restricted Parties

The Persons listed in this section and their affiliates have been identified as Restricted Parties:

- (a) 0745245 B.C. Ltd. (Darcy Grykuliak)
- (b) 669251 Alberta Ltd. (Frank Margitan)
- (c) Access Property Services Ltd.
- (d) Alexander Communications Inc.
- (e) Allman Safety Consulting Corp.
- (f) Ava Terra Services Inc.
- (g) BGC Engineering Inc.
- (h) Boughton Law Corporation
- (i) Brian Gould Consulting Inc. d.b.a Alpine Solutions Avalanche Services
- (j) Canadian Highways Institute Ltd.
- (k) Charter Project Delivery Inc.
- (l) Cumberland Capital Projects Ltd.
- (m) Dillon Consulting Ltd.
- (n) DL Shaw Consulting Inc.
- (o) E. Wolski Consulting Inc.
- (p) Ecotope Consulting Services
- (q) Estm8 Services Inc.
- (r) Farris LLP
- (s) Geo-Comp Services Ltd.
- (t) Harris & Company LLP

- (u) Hemmera Envirochem Inc.
- (v) Izett Engineering Ltd.
- (w) Jack Stuempel & Associates Ltd.
- (x) J. Buckle Consulting Ltd.
- (y) Keery Quality Management Ltd.
- (z) Klohn Crippen Berger Ltd.
- (aa) Lucas Solutions Ltd.
- (bb) Miller Thomson LLP
- (cc) Pacific Project Controls Ltd.
- (dd) The Province, BCTFA, BCIB, TI Corp, or Partnerships BC, including their former and current employees who fall within the definition of Restricted Party
- (ee) QA Engineering Ltd.
- (ff) R.F. Binnie & Associates Ltd.
- (gg) Roper Greyell LLP
- (hh) RWM Engineering Ltd.
- (ii) Stevens Engineering Ltd.
- (jj) Surface Search Inc.
- (kk) Wood Environment & Infrastructure Solutions, a Division of Wood Canada Limited
- (ll) WSP Canada Inc.
- (mm) WSP Canada Group Ltd.
- (nn) WSP USA Inc.

This is not an exhaustive list of Restricted Parties. Additional Persons may be identified by the Province as Restricted Parties, including by being added to the list during the Competitive Selection Process.

The Province at its discretion may notify any Proponent that it is or has become ineligible to participate in or continue participating in the RFP phase or any other part of the Competitive Selection Process, or impose such conditions on the Proponent's participation or continued participation in the Competitive Selection Process as the Province may consider to be in the public interest or otherwise appropriate 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 it; or
- (b) as an employee, advisor or consultant,

in connection with the Proponent's participation, including as an investor, in the Competitive Selection Process, including in connection with the preparation of the Proponent's Technical Submittal and Financial Submittal.

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.

5.13.2. 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 Province 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:

- (a) Emcon Services Inc.

5.13.3. Identified Indigenous Shared Use Persons

Identified Indigenous 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 Identified Indigenous Shared Use Person. Identified Indigenous Shared Use Persons include Persons that request to be classified by the Province as such and are determined by

the Province to conform to the definition of either a First Nations Business or a First Nations Joint Venture as set out in Section 7. The Province will provide Proponents with details for Identified Indigenous Shared Use Persons by Addendum.

The Province may from time to time amend the list of Identified Indigenous Shared Use Persons by adding or removing Persons.

5.13.4. Exclusivity

Proponent Team Members may participate as members of and are to be exclusive to only one Proponent Team.

5.13.5. Conflict of Interest Adjudicator

Doug Hopkins has been appointed as the Conflict of Interest Adjudicator to make decisions on conflicts of interest and unfair advantage and other relationships, including Connections (as defined in section 5.13.8 of Volume 1 of this RFP), involving participants and prospective participants in the Competitive Selection Process, including whether any Person is a Restricted Party. The decision of the Conflict of Interest Adjudicator on any issue, whether in response to a request for ruling or a request by the Province during any phase of the Competitive Selection Process, is final and binding on the Person requesting the ruling and on all other Persons, including all Proponents, their Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, any other Persons associated with any of them, and the Province.

5.13.6. Proponent Requests for 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, or any other Persons associated with it, is or may be a Restricted Party or becomes aware of circumstances that may constitute or give rise to an actual, potential or perceived conflict of interest or unfair advantage should request a ruling.

In order to request a ruling, the Person seeking the ruling should submit to the Contact Person by email, hand or courier delivery, not less than 10 Business Days prior to either the Technical Submittal Deadline or the Financial Submittal Deadline, 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 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.

Subject to the terms of this RFP, all requests for rulings will be treated in confidence. If any Person, including any 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. Province Requests for Rulings

The Province may on its own initiative, at any time and from time to time, including during any part of the evaluation of any Proposal, seek rulings from the Conflict of Interest Adjudicator, if Persons who may be Restricted Parties, or if actual, potential or perceived conflicts of interest or unfair advantage are brought to, or otherwise come to the attention of, or are identified by the Province. If the Province seeks a ruling, it will endeavour to provide the Conflict of Interest Adjudicator with relevant information in its possession, including relevant information in its possession about the participation of the Person in the Project or other circumstances relevant to the relationship that is the subject of the request for ruling. The Province will give notice to the Persons that is the subject of the request for a ruling so that such Persons may make its own submission to the Conflict of Interest Adjudicator.

5.13.8. Connections

A “Connection” for the purposes of this RFP includes:

- (a) any connection arising directly or indirectly through the ownership or holding of shares or other equity interests, including the ownership or holding by a Proponent, any of its Proponent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents, of shares or other equity interests in another Proponent, any of its Proponent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents and including the ownership or holding by any Person, whether direct or indirect, of shares or other equity interests in:
 - (i) more than one Proponent;
 - (ii) Proponent Team Members of more than one Proponent;
 - (iii) contractors, subcontractors, consultants, advisors, representatives and agents of more than one Proponent or more than one Proponent Team Member

provided that the ownership or holding of shares or other equity interests that does not confer or result in, and which could not reasonably be considered to confer or result in, the ability to

- influence the activities of the relevant Proponent(s), Proponent Team Member(s) or their respective contractors, subcontractors, consultants, advisors, representatives and agents in connection with the Competitive Selection Process will not be considered to fall within this paragraph (a);
- (b) any comparison, transfer or exchange of knowledge or information in relation to the Project or the Competitive Selection Process or potential for the comparison, transfer or exchange of such knowledge or information, whether direct or indirect including by way of common contractors, subcontractors, directors, officers, employees, consultants, advisors, agents or representatives or any other arrangement, between a Proponent or any of its Proponent Team Members and another Proponent or any of its Proponent Team Members; or
 - (c) any other connection or relationship between a Proponent or any of its Proponent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents and another Proponent, any of its Proponent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents that the Province at its discretion considers has or may have the effect of materially adversely affecting the competitiveness or integrity of the Competitive Selection Process.

Without limiting Section 5.8, the Province at its discretion at any time and from time to time may notify either or both of the relevant Proponents that they are ineligible to participate or continue participating in the Competitive Selection Process if a Connection is identified between them or any of their respective Proponent Team Members, or any of their respective contractors, subcontractors, consultants, advisors, representatives and agents, unless the Province is satisfied at its discretion that the parties between whom the Connection has been identified are not sharing or able to share information nor coordinating nor able to coordinate their activities in connection with the Competitive Selection Process in a manner that may have the effect of materially adversely affecting the competitiveness or integrity of the Competitive Selection Process. In the event that the Province is not so satisfied, the determination as to whether either or both of the relevant Proponents, or which of the relevant Proponents, are ineligible to participate or continue participating in the Competitive Selection Process may be made by the Province on any basis that the Province, at its discretion, considers appropriate and to be solely in the best interest of the Province or the Competitive Selection Process.

A Proponent or Proponent Team Member or a prospective Proponent or Proponent Team Member who has any concerns, whether before or after delivery of the Technical Submittal or the Financial Submittal, regarding whether a Connection exists is to make full disclosure of the possible Connection to the Province upon becoming aware of the relevant circumstances giving rise to the possible Connection. The Province may at its discretion provide an assessment or, at its option, the Province may seek a ruling on the matter from the Conflict of Interest Adjudicator.

In making its full disclosure, a Proponent or Proponent Team Member or a prospective Proponent or Proponent Team Member is to submit to the Contact Person by email, hand or courier delivery all relevant information and documentation, including:

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

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

5.14. 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 Province, 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 Province, whether by email, by courier, by hand, or by facsimile; or
- (b) the working order, functioning with or without errors or interruptions, or malfunctioning, or capacity of any facsimile transmission equipment or 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 Province on the dates and times indicated on the Province'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 Province 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 Province 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.

Without limiting the foregoing, any borehole logs, or test pit logs provided by or on behalf of the Province, reflect only the observations which were made at the specific locations described and at the specific times recorded, and may not be representative or indicative of anticipated or actual conditions encountered either at specific locations or immediately adjacent thereto or, with respect to groundwater and other anticipated or actual conditions, at any other times.

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 Province 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 DBA, the Definitive DBA, the DBA, the Draft BCA, the Definitive BCA, the BCA, Project Requirements or the Project, 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 Province 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 Province 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 Province to the Proponents.

By submitting a Proposal, each Proponent represents and warrants to the Province 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 unless otherwise stated within the RFP or DBA that the information may be relied upon.

Nothing in this RFP or otherwise relieves Proponents from undertaking their own investigations and examinations, including as they consider necessary, desirable, beneficial, or appropriate, and developing their own analysis, interpretations, opinions and conclusions, including in respect of any Factual Geotechnical Data, bore hole logs and test pit logs provided by or on behalf of the Province, with respect to the preparation and delivery of their Proposals, and with respect to this RFP, the Draft DBA, the Definitive DBA, the DBA, the Draft BCA, the Definitive BCA, the BCA, Project Requirements and the Project.

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, including but not limited to information provided by CP, interested parties, or other Persons will be at their sole risk and without recourse of any kind whatsoever against the Province or any of the Representatives.

5.17. No Liability

Notwithstanding any other provision of this RFP and except as expressly set out and only to the extent expressly set out in the Proponent Agreement, neither the Province 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 member of a Proponent Team 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 Identified Indigenous Shared Use Persons or arrangements involving an Identified Indigenous 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 Contract Person, that are not resolved through negotiation between the Province 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.

6. INTERPRETATION

References to this RFP or the DBA, or to the documents which make up the appendices or schedules to this RFP or the DBA, 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 Province 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, gender is used as a reference term only and applies with the same effect whether the parties are masculine, feminine, corporate or other form 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 Province”, “at the discretion of”, “in its discretion”, “in the discretion of the Province”, “in the Province’s discretion”, “in the sole opinion of the Province”, “the exercise by the Province of any right, power or remedy” or similar words or phrases when used in respect of the Province 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 Province.

References in this RFP to the Province entering into the DBA, to the Province not entering into the DBA, to the Province proceeding with any part or parts of the Project or the Project Work, to the Province contracting with any Person, including as contemplated in Section 5.3 of Volume 1 of this RFP, will be interpreted to include any one or more of the Province, alone, the Province together with BCTFA or BCTFA entering into the DBA, not entering into the DBA, proceeding with any part or parts of the Project or the Project Work, contracting with any Person, including as contemplated in Section 5.3 of Volume 1 of this RFP.

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 Definitive DBA.

“Acceptable Equivalent” has the meaning given to it in Section 2.2.8 of Volume 1 of this RFP.

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

“Affordability Requirement” has the meaning set out in Section 3.1 of Volume 1 of this RFP.

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

“BCIB-Contractor Agreement” or “BCA” means:

- (a) the Definitive BCA, as may be changed, modified or added to in accordance with Section 3.11 of Volume 1 of this RFP; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by BCIB and the Design-Builder for the delivery of the Project.

“BCIB-Subcontractor Agreement” means the form of agreement described in Section 2.2.1 of Volume 1 of this RFP and attached as a Schedule to the Draft BCIB-Contractor Agreement provided in Volume 3 of this RFP.

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

“Change” includes, in respect of a Proponent or Proponent Team or Proponent Team Member, a change in ownership (including by ways of shareholdings, ownership of interests, or units in a general or limited partnership or otherwise) or control or redesignation, modification, removal, replacement, reorganization, addition, assignment or substitution of or in respect of any of them, including such a change affecting, relating to or connected with any guarantor of a Proponent or Proponent Team Member and **“Changed”** and **“Changes”** have corresponding meanings.

“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.

“Competitive Selection Process” means:

- (a) the procurement process for the Project 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 Province or committees of the Province 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 Project; 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, Conforming Proposal or any other proposals, whether they, or any of them, substantially satisfy the requirements of this RFP or otherwise,

involving the Province, the Conflict of Interest Adjudicator, the Fairness Reviewer, any relationship review committee of the Province, 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.

“Confidentiality Agreement” means the Confidentiality Agreement executed and delivered by the Proponent in connection with the RFQ, as supplemented by the terms of the Proponent Agreement including Section 12 of the Proponent Agreement.

“Confidential Information” has the meaning given to it in the Confidentiality Agreement.

“Conflict of Interest Adjudicator” means the Person, appointed by the Province as the conflict of interest adjudicator, and described as such in Section 5.13.5 of Volume 1 of this RFP.

“**Connection**” has the meaning given to it in Section 5.13.8 of Volume 1 of this RFP.

“**Contact Person**” means the contact at the e-mail address Contact.KHCP4@gov.bc.ca as may be amended from time to time by the Province in accordance with this RFP.

“**Contract Price Proposal**” means the Contract Price proposed by the Proponent in Form A1 of their Financial Submittal.

“**Data Room**” means the electronic Data Room established by the Province for the Project and the RFP that is a secure website: [KHCP4 Data Room](#).

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

“**Definitive BCIB-Contractor Agreement**” or “**Definitive BCA**” means the final draft of the Draft BCIB-Contractor Agreement, as revised and amended from time to time by subsequent Addenda issued in accordance with this RFP.

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

“**Design-Build Agreement**” or “**DBA**” means:

- (a) the Definitive DBA, as may be changed, modified or added to in accordance with Section 3.11 of Volume 1 of this RFP; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by the Province and the Design-Builder for the delivery of the Project.

“**Design-Builder**” has the meaning given to it in the RFQ.

“**Design Firm(s)**” has the meaning given to it in the RFQ.

“**Derivative Activities**” means the steps, activities, processes, and works described in Section 5.17 of Volume 1 of this RFP and “**Derivative Activity**” means any one of such steps, activities, processes and works.

“**Documents Escrow Agreement**” means the form of escrow agreement set out in Form 5 of Volume 4 of this RFP.

“**Draft BCIB-Contractor Agreement**” or “**Draft BCA**” means the initial draft form of the Definitive BCA issued as Volume 3 to this RFP, as revised and amended from time to time by Addenda issued in accordance with this RFP.

“**Draft DBA**” means the initial draft form of the Definitive DBA issued as Volume 2 to this RFP, as revised and amended from time to time by Addenda issued in accordance with this RFP.

“**Fairness Reviewer**” means the Person, appointed by the Province as the fairness reviewer, and described as such in Section 3.12 of Volume 1 of this RFP.

“**Financial Submittal**” means the documentation and information described in Section 3.8.2 of Volume 1 of 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 or documentation submitted by the Proponent in response to any request of the Province.

“**Financial Submittal Deadline**” means the date and time specified as such in Section 3.13 of Volume 1 of this RFP.

“**First Nation Business**” means, in respect of an Identified Indigenous Group, a sole proprietorship, limited company, co-operative, partnership, or not-for-profit organization where at least 51% of such firm is owned and controlled by Members or the dependent spouses and children of Members and, if such firm has six or more full-time staff, at least 33% of the full-time employees are Members or the dependent spouses and children of Members.

“**First Nation Joint Venture**” means, in respect of an Identified Indigenous Group, a joint venture of two or more First Nation Businesses or a First Nation Business and a non-First Nation Business, provided that the First Nation Business has, or the First Nation Businesses have, at least 51% ownership and control of the joint venture and, if the joint venture has six or more full-time staff, at least 33% of the full-time employees are Members or the dependent spouses and children of Members.

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

“**Identified Indigenous Groups**” means the Ktunaxa Nation Council, the Shuswap Indian Band and the four Secwepemc Bands (Adams Lake Indian Band, Little Shuswap Lake Indian Band, Neskonlith Indian Band, and Splatsin).

“**Identified Indigenous Shared Use Person**” means a Person described in Section 5.13.3 of Volume 1 of this RFP and includes each of the Persons listed in Section 5.13.3 of Volume 1 of this RFP and any other Persons that may, from time to time, be specifically identified as Identified Indigenous Shared Use Persons by the Province.

“**Information**” means any and all information including facts, records, plans, designs, calculations, figures, models, documents, drawings, descriptions of soils, site, geotechnical, geological or subsurface conditions, dewatering, opinions or interpretations based on existing or assumed information, previous studies or optimization, layouts, the Reference Concept, projections, traffic information, volume counts, classification

counts, data, including origin, destination and vehicle jurisdiction data, speed and travel time information, statements or estimates of quantities of any works, assumptions or descriptions as to means or methods, availability and quality of materials, photographs, maps, specifications, reports, studies, correspondence, working papers, drafts, notes, requirements of stakeholders or interested parties, investigations, statements, representations, opinions, interpretations, analyses, and conclusions 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, including on the RFQ Data Room, by posting in the Data Room, or during or before any Workshop or Topic Meeting, whether before or after issuance of this RFP, by or on behalf of the Province or any of the Representatives and related in any way to the Project, the Competitive Selection Process, including this RFP, the Draft DBA, the Definitive DBA, the DBA, the Draft BCA, the Definitive BCA, the BCA, a Proposal, the Project Work, the Project Site, the Project Infrastructure, or any part of any of them, or the requirements of any Governmental Province, or any requirement of any of any of them.

“Interim Financial Review Submittal” means the documentation and information described in Section 3.7.1 of Volume 1 of this RFP, and submitted in response to and in accordance with this RFP.

“Interim Financial Review Submittal Deadline” means the date and time specified in the invitation referred to in Section 3.13 of Volume 1 of this RFP.

“Interim Workforce Requirements Submittal” means the submittal described in Section 3.7.2 of Volume 1 of this RFP.

“Interim Workforce Requirements Submittal Deadline” means the date and time identified as such in Section 3.13 of Volume 1 of this RFP, as it may be amended from time to time by the Province in accordance with this RFP.

“Irrevocability Agreement” means the form of irrevocability agreement set out in Form 6 of Volume 4 to this RFP.

“Key Individuals” means specific Persons, exclusive to one Proponent, including the Project Manager, the Design Manager and the Construction Manager, as such Persons may be Changed in accordance with and subject to the permission of the Province pursuant to this RFP.

“Ktunaxa Nation Council” includes the communities of ʔakisqnuq First Nation, Tobacco Plains Indian Band, ʔAqam and Yaqaq Nukiy.

“Limited Notice to Proceed Agreement” means the form of agreement set out in Form 7 of Volume 3 to this RFP.

“Partnerships BC” means Partnerships British Columbia Inc.

“**Person**” means an individual, corporation, partnership, joint venture, consortium, association, trust, pension fund or union and the heirs, beneficiaries, executors, personal or legal representatives or administrators of an individual and the receivers and administrators of a corporation.

“**Preferred Proponent**” means the Proponent described in Section 3.9.9 of Volume 1 of this RFP.

“**Preferred Proponent Security Deposit**” means the sum of \$10,000,000 by way of an irrevocable letter of credit in the form set out as Schedule 5 to the Proponent Agreement or otherwise in form and content acceptable to the Province in its sole discretion.

“**Project**” or “**Kicking Horse Canyon Project – Phase 4**” means the “Project” as defined in the Definitive DBA.

“**Proponent**” means a Short-Listed Respondent 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 Volume 1 of this RFP.

“**Proponent Agreement**” means each of the three agreements relating to the Competitive Selection Process between the Province, each of the Proponents and their respective Proponent Team Members.

“**Proponent Team**” means, in the case of each Proponent, that Proponent and the Proponent’s Key Individuals, Design-BUILDER and Design Firm(s), in each case as Changed from time to time in accordance with and subject to the provisions of Volume 1 of this RFP.

“**Proponent Team Member**” means a member of a Proponent Team, in each case as Changed from time to time in accordance with and subject to the provisions of Volume 1 of this RFP.

“**Proposal**” means the Technical Submittal, the Technical Supplement (if applicable) and the Financial Submittal submitted by a Proponent in accordance with this RFP.

“**Proponent Proposed Land**” means the Proponent Proposed Lands as described in Section 2.5 of Volume 1 of this RFP.

“**Proponent Proposed Land Request Deadline 1**” means the date and time specified as such in Section 3.13 of Volume 1 of this RFP.

“**Proponent Proposed Land Request Deadline 2**” means the date and time specified as such in Section 3.13 of Volume 1 of this RFP.

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

“**Province Party**” or “**Province Parties**” means the Province and BCTFA.

“**Qualification Response**” has the meaning given to it in the RFQ.

“**Qualified Indigenous sourced Resources**” means a sole proprietor, limited company, co-operative, partnership, or not-for-profit organization where at least 51% of the firm is owned and controlled by the First Nation Members, and if it has six (6) or more full-time staff, at least 33% of full-time employees are First Nation Members.

“**Quality Management System**” has the meaning given to it in the Definitive DBA and any reference in this RFP to “QMS” means the Quality Management System.

“**Relationship Review Process Description**” means the Relationship Review Process Description Kicking Horse Canyon Project – Phase 4 posted by the Province at [Kicking Horse Canyon Project - Procurement - Key Documents](#).

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

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

“**Respondent Team**” 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 4.4 of Volume 1 of this RFP.

“**Restricted Party**” means a Person who has participated or been involved in, or is currently participating or involved in:

- (a) the Competitive Selection Process;
- (b) the design, planning or implementation of the Project; and/or
- (c) any other relationship with the Province, Province Parties or Partnerships BC;

and as a result has an actual conflict of interest or may provide a material unfair advantage to any Proponent or their respective Proponent Team Members or may provide Confidential Information to any Proponent or their respective Proponent Team Members that is not, or would not reasonably be expected to be, available

to other Proponents or their respective Proponent Team Members, and includes, if the Person is a corporate entity or a partnership, the Person's former and current directors, officers, employees and partners, as applicable, and further includes each of the Persons listed in Section 5.13 of Volume 1 of this RFP and any other Persons that may, from time to time, be specifically identified by the Province as a Restricted Party.

"RFI" or "Request for Information" is the request for information described in Section 4.4 of Volume 1 of this RFP.

"RFP" or "Request for Proposals" means this Request for Proposals including all volumes, appendices, and Addenda.

"RFP Title" means **"RFP – Kicking Horse Canyon Project – Phase 4"** as specified on the Summary of Key Information as it may be amended from time to time by the Province in accordance with this RFP.

"RFQ" or "Request for Qualifications" means the Request for Qualifications issued by the Province on September 5, 2019, titled "RFQ Kicking Horse Canyon Project – Phase 4", including all "Addenda" thereto as defined in the RFQ.

"Schedule Milestone Step" means any one of Schedule Milestone Step 1, Schedule Milestone Step 2, Schedule Milestone Step 3, or Schedule Milestone Step 4.

"Schedule Milestone Step 1" has the meaning set out in Section C of Appendix B of Volume 1 of this RFP.

"Schedule Milestone Step 2" has the meaning set out in Section C of Appendix B of Volume 1 of this RFP.

"Schedule Milestone Step 3" has the meaning set out in Section C of Appendix B of Volume 1 of this RFP.

"Schedule Milestone Step 4" has the meaning set out in Section C of Appendix B of Volume 1 of this RFP.

"Shared Use Person" means a Person described in Section 5.13.2 of Volume 1 of this RFP and includes each of the Persons listed in Section 5.13.2 of Volume 1 of this RFP and any other Persons that may, from time to time, be specifically identified as Shared Use Persons by the Province.

"Short-Listed Respondents" means the Respondents listed in Section 1.2 of Volume 1 of this RFP.

"Submission Location" means Suite 1100 - 401 West Georgia, Vancouver, BC, V6B 5A1.

"Submission Location for Interim Financial Review Submittals" means by email to the Contact Person.

“**Submission Location for Interim Workforce Requirements Submittal**” means by email to the Contact Person.

“**Technical Submittal**” means the documentation and information as described in Section 3.8.1 and comprising Packages 1, 2 and 3 as described in Appendix A of Volume 1 of 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 Technical Submittal Deadline or the Financial Submittal Deadline in response to any request of the Province.

“**Technical Submittal Deadline**” means the date and time specified as such in Section 3.13 of Volume 1 of this RFP.

“**Technical Supplement**” means a supplement to a Proponent’s Technical Submittal that may be invited by the Province in accordance with Section 3.9.3 of Volume 1 of this RFP.

“**Topic Meetings**” means the meetings described in Article 9 and in the Workshops and Topic Meetings Schedule of the Proponent Agreement, and “Topic Meeting” means any one of such meetings.

“**Workshops**” means the workshops described in Article 9 and in the Workshops and Topic Meetings Schedule of the Proponent Agreement, and “Workshop” means any one of such workshops.

Appendix A

RFP Response Guidelines

1. Response Guidelines Overview

This Appendix A and attachments describe the specific documentation that a Proponent is required to submit to satisfy the submittal requirements, and to demonstrate that they are capable of performing the responsibilities and obligations of the Design-Builder under the DBA. The Proponent's Proposal documents are to comprehensively address the requirements set out in this Appendix A and the Definitive DBA. Without limiting any other term of this RFP, including Section 5.4 of Volume 1 of this RFP, Proponents may provide additional information or supplemental material to clarify any Proposal item.

Proposals are to be presented in two submittals: a Technical Submittal, which may be amended by Technical Supplement, subject to and in accordance with this RFP, and a Financial Submittal, each of which consist of the following packages, and each of which is outlined in Section 3 of this Appendix A, and Section 4 of this Appendix A, respectively.

TECHNICAL SUBMITTAL:

PACKAGE 1: TRANSMITTAL

1. Contact information
2. Form 1 of Volume 4 of this RFP - Technical Submittal Certificate and Declaration
3. Overview Table of Contents for the Technical Submittal

PACKAGE 2: DESIGN-BUILD AGREEMENT MANAGEMENT

Contents List

- 2.1 Proponent Information
- 2.2 Details of the Design-Builder
- 2.3 Details of the Design Team
- 2.4 Governance Structure

PACKAGE 3: IMPLEMENTATION SCHEDULES AND STRATEGIES

Contents List

- 3.1 Schedules
- 3.2 Design and Construction
- 3.3 Quality Management
- 3.4 Environmental Management Strategy
- 3.5 Communications and Engagement
- 3.6 Indigenous Participation

FINANCIAL SUBMITTAL:

PACKAGE 4: TRANSMITTAL

- 1. Form 2 or Form 3 (as applicable) of Volume 4 of this RFP - Financial Submittal Certificate and Declaration
- 2. Form 5 of Volume 4 of this RFP - Documents Escrow Agreement
- 3. Form 6 of Volume 4 of this RFP - Irrevocability Agreement
- 4. Form 7 of Volume 4 of this RFP – Limited Notice to Proceed Agreement
- 5. Overview Table of Contents for the Financial Submittal

PACKAGE 5: FINANCIAL

Contents List

- 5.1 Price Validity
- 5.2 Revised Project Schedules
- 5.3 Form A1 of Volume 1 of this RFP – Contract Price Proposal
- 5.4 Insurance and Bonding
- 5.5 Financial Capacity

- 5.6 Limited Notice to Proceed Agreement (refer to Section 5.6 a) and b) as applicable)
- 5.7 Updated Workforce Requirements

2. Submittal Requirements

Proposals are to follow the delivery, format, and content 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

- a. The packages comprising the Technical Submittal must be received at the Submission Location before the Technical Submittal Deadline.
- b. The packages comprising the Financial Submittal must be received at the Submission Location before the Financial Submittal Deadline.

2.3 Containers and Labeling

- a. Proposals are to be delivered in one or more containers clearly labeled with the “RFP Title”, “Contact Person”, and “Submission Location” all as shown on the RFP Summary of Key Information and with the Proponent’s name and mailing address.
- b. Each container is to be clearly labeled to identify the number of containers containing the Proposal, as “Number X of Y”, and to identify the package name and number contained therein.
- c. The Proponent is solely responsible for ensuring that all containers containing its Proposal are securely sealed and clearly labeled in accordance with this Appendix A.

2.4 Copies

All Submittals

- a. Text and tables should be on double sided 8.5” x 11” paper. Where practical, text should be 1.5 spaced and not smaller than 11-point typeface. Drawings, schedules, and technical content with a graphical format submitted with the Technical Submittal should be in format no larger than 11” x 17” paper.

Technical Submittal

- b. Submit one complete electronic copy on USB flash drive(s) of the Technical Submittal in the format described in Table A-1 below, in the following file and directory structure:
- Package 1
 - Package 2
 - Package 3, sections 3.1 – 3.2 of this Appendix A.
 - Package 3, sections 3.3 – 3.6 of this Appendix A.

Each USB flash drive is to be clearly labeled with the RFP Title, the name of the Proponent, and, if more than one USB flash drive is provided, the applicable Package name and number.

- c. Submit the following in 3-ring binders with each marked “Copy X of Y” as appropriate:
- six (6) identical copies of all drawings relating to Package 3, sections 3.1 – 3.2 of this Appendix A.
 - six (6) identical copies of all drawings relating to Package 3, sections 3.3 – 3.6 of this Appendix A.

Technical Supplement (if invitation issued)

- d. Submit one (1) complete copy of the Technical Supplement marked as “Master” in one or more 3-ring binders, together with five (5) complete and identical copies of the Technical Supplement in one or more 3-ring binders each marked “Copy X of 5”.
- e. The Technical Supplement is to include one electronic copy on USB flash drive(s) of the Technical Supplement in the format described in Table A-1 below, in a file and directory structure that mirrors the hard copy of the Technical Supplement. Each USB flash drive is to be clearly labeled with the RFP Title, the name of the Proponent, and, if more than one USB flash drive is provided, the applicable Package name and number.

Financial Submittal

- f. Submit one complete electronic copy on USB flash drive(s) of the Financial Submittal in the format described in Table A-1 below, in the following file and directory structure:
- Package 4
 - Package 5

Each USB flash drive is to be clearly labeled with the RFP Title, the name of the Proponent, and, if more than one USB flash drive is provided, the applicable Package name and number.

Table A-1 Electronic File Formats

File Type	Software Package
Text based document	Adobe PDF format (unprotected and searchable)
Spreadsheet based documents	Microsoft Excel (unprotected)
Graphic files	Adobe PDF format
Drawing files	AutoCAD and Adobe PDF Format

2.5 Proposal Forms

Information provided by the Province on any form required to be submitted as part of a Proposal 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 their Proposal.

3. Submission Requirements for Technical Submittal

Without limiting the terms of this RFP, this section summarizes the information and documentation that Proponents are to submit in their Proposals for the Technical Submittal.

The Technical Submittal will be evaluated in accordance with the evaluation process described in Section A of Appendix B of Volume 1 of this RFP.

The Technical Submittal is to be prepared on the basis of the version of the Definitive DBA most recently issued prior to the Technical Submittal Deadline and, for purposes of Section 3.7.3(a) of Volume 1 of this RFP, this version will be considered the version of the Definitive DBA issued as at the Technical Submittal Deadline.

Proponents are to arrange the content of their Technical Submittals in accordance with the sequencing of and using the section numbers and corresponding titles shown in the following tables.

The Technical Submittal is to provide information and documentation in accordance with the following tables.

Package 1: Transmittal Package

The transmittal package is to contain the following information and documents:

1. The contact person for all future communications between the Province and the Proponent, including name, employer, mailing address, telephone number and e-mail addresses;
2. One (1) duly executed Technical Submittal Certificate and Declaration in the form set out in Form 1 of Volume 4 of this RFP;
and
3. Overview table of contents for all parts of the Technical Submittal.

Package 2: Design-Build Agreement Management

Package 2 is to provide information and documentation about the Proponent including:

- details of the Design-Builder and Proponent Team;
- details of the Design Team; and
- governance structure

Package 2 of the Proponent’s Proposal is to address the requirements set out in the table below. Proponents are to use the section numbers and corresponding titles shown in this table in their Proposals.

Section No.	Title	Contents
2.1	Proponent Information	
2.1.1	Confirmation of RFQ Qualification Response	<p>Confirmation that, other than Changes consented to by the Province in accordance with Section 5.11 of Volume 1 of the RFP, there have been no changes to information provided in the Proponent's Qualification Response regarding the Design-Builder, the Design Firm and the Guarantors (if applicable) listed as part of the Respondent Team.</p> <p>If Changes were made to any of these Proponent Team Members with the consent of the Province, the Proponent will clearly identify each Change.</p>
2.1.2	Confirmation of Key Individuals	<p>Confirmation either:</p> <ul style="list-style-type: none"> (a) that the Project Manager, the Design Manager and the Construction Manager listed for the Respondent Team in the Proponent's RFQ Qualification Response meet the qualification requirements set out in the Definitive DBA, including Section 3 of Schedule 2 of the Definitive DBA; or (b) that one or more of these Key Individuals have been Changed, and such Change(s) has been consented to by the Province in accordance with Section 5.11 of Volume 1 of the RFP; accordingly, the qualification requirements in (a) are met. The Proponent will clearly identify each Change.
2.2	Details of the Design-Builder	
2.2.1	Legal Name and Details	<ul style="list-style-type: none"> (a) Description of the legal structure that the Proponent will adopt as the Design-Builder including the proposed full legal name of the Design-Builder and, if the Design-Builder will not be a separate legal entity, each legal entity which will comprise the Design-Builder, and the anticipated legal relationship between the Design-Builder, or as applicable each legal entity which comprises the Design-Builder. (b) For each such legal entity which has been formed as at the Technical Submittal Deadline, details of the incorporation number, or extraprovincial registration number for British Columbia for the Design-Builder or as applicable each legal entity that comprises the Design-Builder and further details, including certificate of incorporation, memorandum and articles of incorporation, and documentation demonstrating that that the Design-Builder or as applicable each legal entity which comprises the Design-Builder, is duly authorized to carry on business in British Columbia. (c) Provide the shareholder agreements or if the Design-Builder does not have a corporate structure, provide details of the ownership structure and copies of all agreements related to

Section No.	Title	Contents
		ownership.
2.3	Details of the Design Team	
2.3.1	Name	Full legal name(s)
2.3.2	Legal Details	For each member of the design team provide full incorporation details, including certificate of incorporation, memorandum and articles of incorporation, and evidence that it is able to do business in British Columbia. If a member of the design team is an unincorporated legal entity, please provide full details and proof of the existence of the individuals, corporations, other entities or the underlying legal entities that make up joint ventures and partnerships who have the direct responsibility for the Design.
2.3.3	Organization Structure Details	Organizational description indicating key members/firms of the design team, their roles and responsibilities and contractual and reporting relationships.
2.4	Governance Structure	
2.4.1	Organizational Structure and Relationships between the Proponent and Proponent Team Members	<p>Project organization chart, which at a minimum identifies all Key Individual positions (no names of individuals) listed in Section 3.3(a) of Schedule 2 of the Definitive DBA.</p> <p>Description of the relationships and reporting arrangements among the Proponent Team Members at critical stages of the Project:</p> <ul style="list-style-type: none"> (a) reporting relationships between the Proponent and the Design Team; (b) reporting relationships between the Proponent Team Members and Key Individuals. (c) nature of any contractual relationship(s) to be entered into between the Proponent and the Design Team; and (d) the nature of any sub-contracting arrangements and details of the risk allocation between the parties.

Package 3: Implementation Schedules and Strategies

Package 3 is to provide information and documentation that demonstrates the requirements for Technical Submittal evaluation described in Section A of Appendix B of Volume 1 of this RFP.

Package 3 of the Proponent’s Proposal is to address the requirements set out in the tables below. Proponents are to use the section numbers and corresponding titles shown in this table in their Proposals. Drawings shall be in accordance with the BC Ministry of Transportation and Infrastructure standards.

Section No.	Title	Contents
3.1	Schedules	
3.1.1	Project Schedule	<p>Project Schedule prepared in accordance with Schedule 3 of the Definitive DBA which includes, at a minimum, the following information:</p> <ul style="list-style-type: none"> a) interim and final Design milestones for major submittals; b) construction start and completion dates for each highway and structure element; c) Substantial Completion Date; and d) Total Completion Date. <p>The Proponent shall identify the specific Schedule Milestone Step that corresponds to its Project Schedule.</p>
3.1.2	Draft Summary Works Schedule	<p>Draft summary Works Schedule prepared in accordance with Schedule 3 of the Definitive DBA showing the Effective Date, Substantial Completion Date, and Total Completion Date. At a minimum, the following key work elements are to be identified:</p> <ul style="list-style-type: none"> a) Limited Notice to Proceed scope; b) critical path; c) construction mobilization, demobilization and site remediation; d) consideration of Environmental Timing Windows; e) construction of temporary or offsite facilities / worker accommodation; f) procurement of major prefabricated and other critical materials; g) securing approvals, permits, authorizations and licenses, including environmental, CP and utilities; h) design and submittal schedule; i) earthworks, rock excavation, surplus disposal; j) road and pavement construction; k) structures construction including retaining walls and rock fall / avalanche attenuation; l) utility relocations and/or protection;

Section No.	Title	Contents
		m) any other significant work functions; and n) A description of how the information in Section 3.1.2 addresses the requirements in Section 3.2.8 CP Impact Assessment.
3.2	Design and Construction	
3.2.1	Traffic Performance	Demonstration of how the Proponent’s design and construction methodology meets the traffic operation performance requirements of the DBA, including a) documentation of the achieved performance of each of the requirements set out in Schedule 4 Part 4, Schedule 7 and Schedule 10 of the DBA. b) approach and methods the Proponent will take in providing detours, closures and stoppages which minimize the impacts to roadway users and other local stakeholders (i.e. businesses, emergency services and school district); c) approach and methods to maintain accesses through and to adjacent properties at each stage of construction; d) approach of the construction team to integrating communications requirements in relation to detours, closures and stoppages; e) approach to integrating the construction schedule and staging with the Traffic Management Plan; f) approach to dealing with traffic accidents and other incidents (e.g. forest fires, etc.); g) approach to dealing with unplanned Closures; and h) a summary of how the information in Section 3.2.1 addresses the requirements in Section 3.2.8 CP Impact Assessment.
3.2.2	Roadway and Drainage Design	Demonstrate how the roadway design substantially satisfies the roadway design requirements of the DBA by providing: a) Design drawings including: i. a key plan and legend;

Section No.	Title	Contents
		<ul style="list-style-type: none"> ii. plan, profiles, typical sections and laning and geometric drawings at an appropriate scale to describe the proposed design for roads that shall include: <ul style="list-style-type: none"> ▪ existing and proposed property lines; ▪ proposed structures and retaining walls; ▪ major drainage elements for roads and structures such as pipes and culverts, and ditches; ▪ access and forest service roads; ▪ emergency opening; ▪ avalanche and rock fall ditches; ▪ roadside and median barrier treatment; and ▪ Wildlife Exclusion Fencing System. iii. cross sections for all alignments for the entire extent of the roadway design at 20 m intervals. <p>b) Roadway and Drainage Design description that shall address:</p> <ul style="list-style-type: none"> i. key attributes and issues; ii. how the proposed design will comply with design criteria for the highway and drainage design and meet the project objectives as defined in DBA; iii. how the proposed design will avoid or minimize potential impacts to no disturbance zones and environmentally sensitive areas; iv. how the proposed design will meet the protocol agreement with BC Hydro, including Telus; and <p>c) A summary of how the information in Section 3.2.2 addresses the requirements in Section 3.2.8 CP Impact Assessment, including with respect to stormwater and groundwater management.</p>

Section No.	Title	Contents
3.2.3	Structural Design	<p>The proposed Structural Design methodology, concepts and configurations shall comply with the Definitive DBA and shall include narrative and/or drawings to address the following:</p> <ul style="list-style-type: none"> a) General Arrangement drawing(s) for all Structures including Bridges, Major Retaining Walls and Avalanche Mitigation Structures. Drawings shall indicate key structural dimensions, skew angle, vertical clearance, horizontal clearance, lane arrangement, span arrangement, foundation type, structure articulation, bearing type, deck joint type, drainage, barrier test level, railing and fence type, and erosion protection; b) key features and the required load paths to safely transfer all applied vertical and horizontal loads to the ground; c) approach to avalanches, rock fall and debris flow and slide impacts, including design clearances and/or design for lateral and vertical loading; d) approach to replacing, modifying or incorporating existing Structures; e) proposed construction methodology and staging strategy for each Structure; f) access considerations for future maintenance, inspections and rehabilitation; g) approach and methods to achieve the prescribed Design Life; and h) structure drainage; and i) a summary of how the information in Section 3.2.3, including for cable-supported structures if applicable, addresses the requirements in Section 3.2.8 CP Impact Assessment. <p>If a cable-supported Structure is proposed by the Proponent, additional narrative shall be provided for each of the requirements specified in Article 4 [Design of Cable-Supported Structures] of Part 2 of Schedule 4 of the DBA. Design criteria specific to the proposed cable-supported Structure shall be provided by the Proponents.</p>
3.2.4	Geotechnical Design	
3.2.4.1	Structures	<p>Provide a narrative and drawings to illustrate the Proponent's approach to geotechnical issues, constraints and design for structures, including:</p> <ul style="list-style-type: none"> a) geotechnical issues, conditions, constraints, and risk related to the proposed design concept such as global stability, bearing capacity, settlement, seismic considerations,

Section No.	Title	Contents
		<p>ground disturbance, construction access, retaining walls, related embankment construction, and groundwater issues for each Structure, including a description of the proposed methodology to investigate, analyze and resolve any identified issues and concerns;</p> <p>b) the foundation concept for each Structure, including how the foundation design addresses the geotechnical characteristics of the site;</p> <p>c) potential interactions between each Structure and existing adjacent Structures and Infrastructure during and after construction; and</p> <p>d) related access and constructability issues, including a description of proposed methodology to resolve them; and</p> <p>e) a summary of how the information in Section 3.2.4.1 addresses the requirements in Section 3.2.8 CP Impact Assessment.</p>
3.2.4.2	Embankments	<p>Provide a narrative and drawings to illustrate the Proponent’s approach to geotechnical issues, constraints and design for embankments, including:</p> <p>a) geotechnical issues, conditions, constraints, and risk related to the proposed design concept such as internal and global slope stability, settlement, seismic considerations, and surface and groundwater management issues, including a description of the proposed methodology to investigate, analyze and resolve these issues and concerns;</p> <p>b) the geotechnical design concept for the embankments, including how the geotechnical design addresses the geotechnical characteristics of the site;</p> <p>c) potential interactions between embankments and existing adjacent Structures and Infrastructure during and after construction;</p> <p>d) related access and constructability issues, including a description of proposed methodology to resolve them; and</p> <p>e) a summary of how the information in Section 3.2.4.2 addresses the requirements in Section 3.2.8 CP Impact Assessment.</p>
3.2.4.3	Soil Cuts	<p>Provide a narrative and drawings to illustrate the Proponent’s approach to geotechnical issues, constraints and design for soil cuts, including:</p>

Section No.	Title	Contents
		<ul style="list-style-type: none"> a) geotechnical issues, conditions, constraints, and risk related to the proposed design concept for excavation in soil/overburden such as local and global slope stability, seismic considerations, erodibility, suitability for construction borrow and groundwater issues, including a description of the proposed methodology to investigate, analyze and resolve these issues and concerns; b) the geotechnical design concept for the soil excavations, including how the geotechnical design addresses the geotechnical characteristics of the site; c) potential interactions between soil cut excavations and existing adjacent Structures and Infrastructure during and after construction; d) related access and constructability issues, including a description of proposed methodology to resolve them; and e) a summary of how the information in Section 3.2.4.3 addresses the requirements in Section 3.2.8 CP Impact Assessment.
3.2.4.4	Rock Cuts	<p>Provide a narrative and drawings to illustrate the Proponent's approach to geotechnical issues, constraints and design for rock cuts, including:</p> <ul style="list-style-type: none"> a) geotechnical issues, conditions, constraints, and risk related to the proposed design concept for excavation in rock such as local and global slope stability, rock fall potential, seismic considerations, geochemical conditions, erodibility, suitability for construction borrow and groundwater issues, including a description of the proposed methodology to investigate, analyze and resolve these issues and concerns; b) the geotechnical design concept for the rock cuts, including how the geotechnical design address the geotechnical characteristics and geochemical conditions of the site; c) potential interactions between rock excavation and existing adjacent Structures and Infrastructure during and after construction; d) related access and constructability issues, including a description of proposed methodology to resolve them; and e) a summary of how the information in Section 3.2.4.4 addresses the requirements in Section 3.2.8 CP Impact Assessment.

Section No.	Title	Contents
3.2.4.5	Rock Fall Protection	<p>Provide a narrative and drawings to illustrate the Proponent’s approach to geotechnical issues, constraints and design for rock fall protection, including:</p> <ul style="list-style-type: none"> a) rock fall conditions, constraints, and risk related to the proposed design concept for protection against rock fall originating from natural and constructed slopes, including a description of the proposed methodology to investigate, analyze and resolve these issues and concerns; b) the design concept for the rock fall protection, including how the design addresses the characteristics of the site both during and after construction; c) potential interactions of rock fall protection and existing adjacent Structures and Infrastructure during and after construction; d) related access and constructability issues, including a description of proposed methodology to resolve them; and e) a summary of how the information in Section 3.2.4.5 addresses the requirements in Section 3.2.8 CP Impact Assessment.
3.2.4.6	Debris Flows/Flood Mitigation	<p>Provide a narrative and drawings to illustrate the Proponent’s approach to geotechnical issues, constraints and design for debris flows/flood mitigation, including:</p> <ul style="list-style-type: none"> a) terrain conditions specific to debris flow/flood hazards, constraints, and risk related to the proposed design concept, including a description of the proposed methodology to investigate, analyze and resolve these issues and concerns; b) the design concept for debris flow/flood mitigation, including how the design addresses the characteristics of the site both during and after construction; c) potential interactions of debris flow/flood mitigation and existing adjacent Structures and Infrastructure including disturbance of soil on access roads, around bridges and retaining wall footings and the stabilization and prevention of erosion fills; d) stabilization and prevention of erosion of fills during and after construction; e) related access and constructability issues, including a description of proposed methodology to resolve them; and

Section No.	Title	Contents
		f) a summary of how the information in Section 3.2.4.6 addresses the requirements in Section 3.2.8 CP Impact Assessment.
3.2.4.7	Landslide Mitigation	<p>Provide a narrative and drawings to illustrate the Proponent’s approach to geotechnical issues, constraints and design for landslide mitigation, including:</p> <ul style="list-style-type: none"> a) terrain and geotechnical conditions specific to landslide hazards, constraints, and risk related to the proposed design concept, including a description of the proposed methodology to investigate, analyze and resolve these issues and concerns; b) the geotechnical design concept for landslide mitigation, including how the design addresses the characteristics of the site both during and after construction; c) potential interactions of landslide hazard areas, mitigation works and existing adjacent Structures and Infrastructure during and after construction; and d) related access and constructability issues, including a description of proposed methodology to resolve them; and e) a summary of how the information in Section 3.2.4.7 addresses the requirements in Section 3.2.8 CP Impact Assessment.
3.2.4.8	Construction Borrow and Aggregate Sourcing	<p>Provide a narrative and drawings to illustrate the Proponent’s approach to geotechnical issues, constraints and design for construction borrow and aggregate sourcing, including:</p> <ul style="list-style-type: none"> a) description of geotechnical conditions, constraints, opportunities and risk related to sourcing of construction borrow and aggregates for the design concept, including a description of the proposed methodology to investigate, analyze and resolve related issues and concerns; b) description of the proposed sourcing of construction borrow and aggregates for the design concept, including how the sourcing addresses the geotechnical characteristics of the site; and c) description of related access and constructability issues, including a description of proposed methodology to resolve them; and d) a summary of how the information in Section 3.2.4.8 addresses the requirements in Section 3.2.8 CP Impact Assessment.

Section No.	Title	Contents
3.2.4.9	Pavements	<p>Provide a narrative and drawing to illustrate the Proponent’s approach to geotechnical issues, constraints and design for pavements, including:</p> <ul style="list-style-type: none"> a) description of the design concept for the Project roadway pavements, including how the pavement design addresses the characteristics of the site; and b) description of related constructability and construction staging issues, including a description of proposed methodology to resolve them.
3.2.5	Snow Avalanche Safety Measures	<p>Provide a narrative and drawings to illustrate the Proponent’s approach to avalanche risk mitigation for the Project, including:</p> <ul style="list-style-type: none"> a) description of avalanche conditions, constraints, and risk related to the proposed design concept for protection against avalanches originating from historical Ministry controlled avalanche paths as well as constructed slopes; b) description of potential interactions of avalanches and existing adjacent Structures and Infrastructure during and after construction; and c) a summary of how the information in Section 3.2.5 addresses the requirements in Section 3.2.8 CP Impact Assessment.

Section No.	Title	Contents
3.2.6	Surplus Disposal Site Design	<p>The proposed Surplus Disposal Site Design methodology, concepts and configurations shall comply with the Definitive DBA and shall include narrative and drawings to address the following:</p> <ul style="list-style-type: none"> a) description of geotechnical and geochemical conditions, constraints, opportunities and risk related to disposal of surplus material for the design concept and a description of the proposed methodology to investigate, analyze and resolve these issues and concerns; b) description of the Surplus Disposal Site design concept, including how the design addresses the geotechnical, geochemical, drainage, environmental and archaeological constraints of the site; c) description of related access, constructability and construction staging issues, including a description of proposed methodology to resolve them; and d) a description of how archaeological sites that could be affected by the Surplus Disposal Site will be protected during construction.
3.2.7	Landscape and Site Restoration Design	<p>The proposed Landscape and Site Restoration Design methodology, concepts and configurations shall comply with the Definitive DBA and shall include narrative and drawings to address the following:</p> <ul style="list-style-type: none"> a) description of basic and enhanced landscaping and site restoration

Section No.	Title	Contents
3.2.8	Railway Impact Assessment	<p>The Proponent shall provide a preliminary Railway Impact Assessment Report, consistent with requirements set out in Schedule 4, Part 1, Article 3, Section 3.2 a) of the Definitive DBA, including:</p> <ul style="list-style-type: none"> a) Safety to CP operations for all construction activities, including how the Proponent will meet the requirements for Safety and Emergency Response Plans; b) Approach to maintaining existing access roads for CP; c) Level of service and operations for CP; d) Regulatory requirements; and e) The Proponent’s risk assessment and management process, including: <ul style="list-style-type: none"> (i) populating the Table of Railway Protection Requirements (provided in the Data Room); (ii) the Proponent’s proposed mitigations to ensure safe and uninterrupted operations of CP describing protective measures within and outside the CP right of way to address potential hazards caused or contributed to by the Project; (iii) specific reference to the narrative and drawings in the Proponent’s Technical Submittal demonstrating how the mitigations will be addressed.

Section No.	Title	Contents
3.2.9	Construction Approach	<p>Provide a narrative and drawings illustrating how the Proponent will achieve its proposed Works Schedule in a reasonable and realistic manner, including descriptions of proposed construction staging , having regard for the requirements of the Definitive DBA, including:</p> <ul style="list-style-type: none"> a) key issues and constraints affecting construction and strategies to manage those issues; b) coordination with communications and environmental management activities; c) method of rock excavation including safety of workers, CP operations and the travelling public; d) method of pile and anchor installation; e) major Temporary Works including temporary access roads; f) impacts on potential archaeological sites; and g) approach to operations and maintenance of Project Infrastructure during construction; and h) a summary of how the information in Section 3.2.9 addresses the requirements in Section 3.2.8 CP Impact Assessment.
3.2.10	Construction and User Safety	<p>Provide a narrative describing the Proponent’s approach to safety, including:</p> <ul style="list-style-type: none"> a) safety policy statements including the Proponent’s health and safety objectives; b) outline of its overall safety plan; c) process for accident and incident response and investigation, including provisions for emergency vehicle passage throughout the Project Site; and d) plans and processes for the protection of workers and public.

Section No.	Title	Contents
3.2.11	Limited Notice to Proceed	Description of the Proponent’s proposed Limited Notice to Proceed strategy, including: <ul style="list-style-type: none"> a) a completed draft Schedule A (excluding any information in the “Estimated Costs Column”) to Form 7 of Volume 4 of this RFP listing the activities, if any, identified on the Proponent’s draft summary Works Schedule that the Proponent deems necessary in order to achieve the Substantial Completion Date on the assumption that the Limited Notice to Proceed Agreement is executed on September 9, 2020 and that the Effective Date is October 21, 2020; and b) confirmation that the Proponent has accepted the terms of and is prepared to execute Form 7 of Volume 4 of this RFP if selected as Preferred Proponent and if required to do so prior to the Effective Date.
3.2.12	Project Lands	Provide the following: <p>identification of the Accepted Proposed Lands the Proponent requires in connection with its Proposal, and include the date by which the Proponent requires such Accepted Proposed Lands (which date will not be earlier than the “not before date” specified by the Province in its Response to Proponents for such Accepted Proposed Lands);</p> <ul style="list-style-type: none"> a) drawings which clearly identify the Accepted Proposed Lands described in (a) above; and b) confirmation that the Proponent has not changed its intended use of any of the Accepted Proposed Lands as such use was disclosed to the Province in accordance with Appendix D of Volume 1 of this RFP and any RFIs arising therefrom.
3.3	Quality Management	
3.3.1	Quality Management System Framework	Provide a representative sample Table of Contents for a Quality Management Plan which would meet with the requirements of ISO 9001:2015 as well as a narrative of a Quality Management System (QMS) framework which reasonably demonstrates that the QMS will satisfy the requirements of International Standards ISO 9001:2015 and ISO 9000:2015, and the requirements stated in the Definitive DBA. <p>The QMS framework is to, as a minimum, include the following:</p> <ul style="list-style-type: none"> a) the Proponent’s Quality Policy and Quality Objectives;

Section No.	Title	Contents
		<ul style="list-style-type: none"> b) processes for: <ul style="list-style-type: none"> (i) ensuring design quality; (ii) ensuring construction quality; (iii) the control of nonconforming product and services; (iv) continuous improvement; (v) quality auditing; (vi) the assessment and procurement of Subcontractors, and suppliers, and the application of QMS requirements into the activities of these external parties; and (vii) QMS performance evaluation. c) outline of how the key management activities (such as project controls, design, construction, operations, maintenance, communications, traffic management, safety and environmental) will interface with each other and with quality management; d) description of the process, including the timing, for how the Proponent intends to ensure its QMS complies with ISO 9001:2015 in accordance with the requirements of the Definitive DBA; and e) organizational chart showing the proposed structure of the quality management team.
3.4	Environmental Management Strategy	
3.4.1	Environmental Management Strategy	Provide a description of the Proponent’s strategy to meet the requirements of Schedule 6 of the Definitive DBA, including requirements specifically relating to CP, and all other environmental obligations of the Design-Builder. This description will demonstrate the Proponent’s understanding and capability to meet these requirements and will include a description of their strategic approach as well as an overview of the Environmental Management Plans and Environmental Procedures Plan.

Section No.	Title	Contents
3.4.2	Environmental Summary Report	Provide a description of any elements of the design(s) that are not addressed in Schedule 6 or that differ from Reference Concept effects that will have an environmental impact. For each of the impacts so identified, provide a commitment statement that the Proponent will assess the environmental impacts and will implement a mitigation strategy to be in compliance with the requirements of the Definitive DBA, including Schedule 6.
3.5	Communications and Engagement	
3.5.1	Communications and Engagement Approach	<p>Provide an overview of the Proponent’s approach that demonstrates the Proponent’s understanding of, and capability to meet, the requirements of Schedule 9 and Schedule 4 Part 4 of the Definitive DBA and all other Communications and Engagement obligations of the Proponent, including planning and execution of:</p> <ul style="list-style-type: none"> a) Construction and road Closures notification; b) Community and Stakeholder Engagement; c) Enquiry-Response management; d) supporting the Province with crisis communications and issues management; and e) supporting the Province with media and government relations; f) the requirements for Communication and Coordination with CP.
3.6	Indigenous Participation	
3.6.1	Indigenous Participation Strategy	Provide a description of the Proponent’s strategy for meeting the requirements of Schedule 22 to the Definitive DBA and those sections of Schedule 6 of the Definitive DBA requiring Indigenous engagement to the Definitive DBA. The description will demonstrate the Proponent’s understanding of Indigenous relations within British Columbia and capability in meeting the requirements of Schedule 22.

3A. Submittal Requirements for Technical Supplement (If Invitation is Issued)

Without limiting the terms of this RFP, this section summarizes the information and documentation that Proponents are to submit in the Technical Supplement.

If the Proponent receives an invitation to submit a Technical Supplement in accordance with Section 3.9.3 of Volume 1 of this RFP, the Proponent may amend its Technical Submittal in the manner that the Proponent considers necessary to reflect the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.9.3 of Volume 1 of this RFP.

The Proponent will set out in the Technical Supplement, either the confirmation in form and content described in the Technical Supplement Table set out in this Section 3A of this Appendix A, or the information and documentation applicable to each amendment, if any, to the Proponent's Technical Submittal, in accordance with such Technical Supplement Table.

If the Technical Supplement contains amendments to the Technical Submittal, the Technical Supplement should demonstrate that the Technical Submittal if modified in accordance with each amendment described in the Technical Supplement, separately, and with all such amendments, collectively, would substantially satisfy the requirements of this RFP, including the requirements set out in this Appendix A, and the Definitive DBA, in a manner equal to or better than did the Technical Submittal before incorporating the Technical Supplement amendments, and would demonstrate to the satisfaction of the Province that the Proponent continues to meet the evaluation process requirements described in Section A of Appendix B of this RFP.

Without limiting any other term of this RFP, the Proponent's eligibility to continue in the Competitive Selection Process, including to continue to have its Proposal reviewed, evaluated or ranked is conditioned on the Technical Supplement containing only amendments, if any, that are demonstrated as being necessary to reflect the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.9.3 of Volume 1 of this RFP, and as not having any further effects.

Without limiting any other term of this RFP, including Section 5.4 of Volume 1 of this RFP, the Province may in its discretion reject any amendments in the Technical Supplement that the Province determines in its discretion are not necessary to reflect the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.9.3 of Volume 1 of this RFP, have any effect beyond reflecting such amendments, restructuring, supplements or impacts or does not demonstrate to the satisfaction of the Province the matters described in this Section 3A of this Appendix A. The Province's decision in this regard will be final and the Province need not consult with the Proponent in making its decision.

The Province will notify each Proponent in writing as to whether its Technical Supplement is rejected in its entirety or in part and, if in part, which of the amendments set out in the Technical Supplement are rejected. If all amendments set out in the Technical Supplement are rejected then that Proponent's Technical Submittal will be deemed and considered for all purposes of this RFP stage and the Competitive Selection Process to be unamended in any way whatsoever by anything set out in the Technical Supplement. If none or one or more, but not all of the amendments set out in the Technical Supplement are rejected, then that

Proponent's Technical Submittal will be deemed and considered for all purposes of this RFP stage and the Competitive Selection Process to be amended only by and to the extent expressly set out in the Technical Supplement amendments that are not rejected.

Technical Supplement Package Table

The Technical Supplement is to contain either:

- clear, unconditional and unqualified confirmation on behalf of the Proponent and each Proponent Team Member that the Proponent and each Proponent Team Member has reviewed and considered the amendments, restructuring or supplements or the impacts, as applicable, described in Section 3.9.3 of Volume 1 of this RFP, and that each considers and has conclusively determined that no amendments to the Technical Submittal submitted by the Proponent are necessary; or
- a table identifying each amendment by reference to the package number, the section number and corresponding title, and a summary description of the amendment, including, as applicable, identification of the part or parts of the Technical Submittal to be deleted as part of the amendment; and
- information and documents in respect of each amendment to the Technical Submittal;
 - arranged in accordance with the sequencing and using the package number, the section number and corresponding title applicable to the section of the Technical Submittal to be amended; and
 - clearly and comprehensively setting out the amendment to the Technical Submittal.

4 Submittal Requirements for Financial Submittal

This section summarizes the information and documentation that Proponents are to submit in their Proposals for the Financial Submittal.

The Financial Submittal will provide evidence that the Proponent has in place all necessary financial arrangements for the Project.

The Financial Submittal will be used to evaluate Proposals and select the highest ranked Proposal.

Proponents are to prepare their Financial Submittal on the basis of the Definitive DBA, without amendment, and on the basis of their Technical Submittal including any further information and documentation (including clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation delivered to the Province in accordance with this RFP). If Technical Supplements are invited pursuant to Section 3.9.3 of Volume 1 of this RFP then Proponents are to also prepare their Financial Submittal on the basis of one of the following, as applicable to each Proponent:

- their confirmation that no amendments to the Technical Submittal are necessary, in accordance with Section 3A of this Appendix A;
- their Technical Submittal and any above-noted further information and documentation, as amended by those parts of the Technical Supplement that have not been rejected; or
- if all amendments set out in their Technical Supplement have been rejected, their Technical Submittal, and any above-noted further information and documentation, unamended.

Escrow Account

As described in the Documents Escrow Agreement, the Province has established an escrow account through an independent legal entity. Each Proponent is to execute and deliver three originals of the Documents Escrow Agreement as part of Package 4 of the Financial Submittal. For purposes of this RFP, entering into the Documents Escrow Agreement will not constitute using, consulting, including or seeking the advice of the Escrow Agent within the contemplation of Section 5.13 of Volume 1 of this RFP.

Proponents are to place all original files and materials in respect of pricing associated with their Proposal in the escrow account including, without limitation, documents containing information regarding the Proponent's assumptions made in determining the scope of work and price calculations used to prepare the Financial Submittal.

Without limiting the terms of the Documents Escrow Agreement, all electronic files and materials are to be provided in both original hard copy format and as electronic files (where available). The electronic files are to be provided as full active files (not read-only or password protected) in one of the file formats listed in Table A-1 of this Appendix.

Each Proponent’s escrow files and materials are to be packaged and labelled as:

Kicking Horse Canyon Project – Phase 4
“Proponent Name”
Response to Request for Proposals
ESCROW DOCUMENTS

The escrow files and materials are to be received at the following address not later than 48 hours after the Financial Submittal Deadline.

Miller Thomson LLP
400 – 725 Granville Street
Vancouver, BC
V7Y 1G5

The escrow files and materials will not be used during the evaluation process.

As described in the Documents Escrow Agreement, the Province may request specific information from the escrow account as may be necessary to confirm details or assess errors or omissions in the submitted Proposal documents as may be necessary in connection with execution of the DBA. The escrow files and materials will be returned to unsuccessful Proponents following execution of the DBA.

Package 4: Transmittal Package

The transmittal package is to contain the following information and documents.

1. One (1) duly executed copy of the applicable Financial Submittal Certificate and Declaration in the form set out in Form 2 or Form 3 of Volume 4 of this RFP;
2. One (1) duly executed copy of the Documents Escrow Agreement in the form set out in Form 5 of Volume 4 of this RFP;
3. One (1) duly executed copy of the Irrevocability Agreement in the form set out in Form 6 of Volume 4 of this RFP;
4. One (1) completed and duly executed copy of the Limited Notice to Proceed Agreement in the form set out in Form 7 of Volume 4 of this RFP; and
5. Overview table of contents for all parts of the Financial Submittal.

Package 5: Financial

Package 5 is to address the requirements set out in the table below. Proponents are to use the section numbers and corresponding titles shown in this table in their Proposals.

Section No.	Title	Contents
5.	Financial Submittal	
5.1	Price Validity	Confirm all prices listed in the Proposal will remain valid for the period of at least 90 days after the Financial Submittal Deadline.
5.2	Revised Project Schedules	<p>The date to be used for the Limited Notice to Proceed Agreement is September 18, 2020 and the date to be used for the Effective Date is November 6, 2020.</p> <p>The Proponent shall:</p> <ul style="list-style-type: none"> a) re-submit the Project Schedule and draft Summary Works Schedule provided in accordance with Section 3.1 of this Appendix A, showing any revisions with a baseline to the version provided in the Proponent’s Technical Submittal; b) either confirm that the specific Schedule Milestone Step that was identified in response to Section 3.1.1 of this Appendix A in the Proponent’s Technical Submittal is unchanged, or identify the specific Schedule Milestone Step that corresponds to the Proponent’s revised Project Schedule <p>The Province may require an updated draft summary Works Schedule from the Preferred Proponent prior to the Effective Date.</p> <p>In the event that the Limited Notice to Proceed Agreement is not executed on or before September 18, 2020, the Preferred Proponent may resubmit the Project Schedule and draft Summary Works Schedule provided in accordance with the foregoing, showing any revisions with a baseline to the previously submitted version.</p>
5.3	Form A1 – Contract Proposal Price	<p>Submit Form A1 of Volume 1 of this RFP which will include:</p> <ul style="list-style-type: none"> c) The breakdown of the price adding up to the Contract Proposal Price; and d) Estimated monthly Progress Payments over the construction schedule with work completed based on the Works Schedule. <p>The Proponent’s Form A1 should be consistent with the following:</p>

Section No.	Title	Contents
		<ul style="list-style-type: none"> i) Produced using the template supplied by the Province with no changes or entries other than as indicated; ii) Produced in Microsoft Excel version 2010 or newer; iii) Except where otherwise expressly indicated, include all taxes other than GST; iv) Be expressed in Canadian dollars; and v) Include no hidden or password-protected cells or sheets. <p>All sheets should be printed clearly and legibly on 8.5" x 11" paper including row and column references on each page.</p>
5.4	Insurance and Bonding	<ul style="list-style-type: none"> a) Demonstrate the insurability of the Design-Builder and the Subcontractors by providing written undertakings from insurers, in the forms of Form A2 and Form A3 of Volume 1 of this RFP, to provide the insurance coverage required by the Definitive DBA if the Proponent is awarded the DBA. b) Demonstrate the bondability of the Design-Builder by providing written confirmation, in the form of Form A4 of Volume 1 of this RFP, from a surety acceptable to the Province and authorized to transact the business of suretyship in British Columbia, that the bonding requirements of the Definitive DBA will be available for the Project if the Proponent is awarded the DBA. The Proponent may alternatively provide the surety's standard form Consent of Surety or Agreement to Bond in respect of a commitment to provide the required performance bond and labour and material payment bond.
5.5	Financial Capacity	<p>Demonstrate the financial capacity of the Design-Builder by providing a description of the company that will manage the cash flow and working capital including:</p> <ul style="list-style-type: none"> i) A description of the robustness of the Design Builder's proposed financial structure including details of the strategies to be adopted by the party ultimately responsible for bearing Project risks, which strategies may include, if such party is not the Design-Builder entity referenced in Section 2.2.1(a) of the Proponent's Technical Submittal, the provision of parental guarantees or other support;

Section No.	Title	Contents
		<ul style="list-style-type: none"> ii) Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency litigation in the last three fiscal years; and iii) Details of any credit rating(s).
5.6	Limited Notice to Proceed Agreement	<p>The date to be used for the Limited Notice to Proceed Agreement is September 18, 2020 and the date to be used for the Effective Date is November 6, 2020.</p> <p>Provide in the completed and duly executed Limited Notice to Proceed Agreement a revised completed Schedule A to Form 7 of Volume 4 of this RFP by finalizing the “Estimated Total Cost” column to reflect the activities, if any, identified and set out in the “Approved Activity” column of Schedule A, by the Proponent pursuant to Section 3.2.11(a) of Package 3 of this Appendix A, reflecting the dates identified above in this section.</p> <p>If applicable in each case, provide:</p> <ul style="list-style-type: none"> a) a request for the Province’s consent to access and use of land owned or controlled by the Province as required in order to carry out any Approved Activity under the Limited Notice to Proceed Agreement, in accordance with Section 7.1 (c) of Form 7 of Volume 4 of this RFP, which request will be considered by the Province in its discretion. (The Preferred Proponent will be required to arrange for access to land not owned or controlled by the Province prior to the Effective Date, including roads); b) a completed Employee Request in the form and format provided by BCIB and available in the Data Room for any Employees (as defined in the BCIB-Contractor Agreement) required for the performance of any Approved Activities at the Project Site under the Limited Notice to Proceed Agreement.
5.7	Updated Workforce Requirements	<p>An updated Interim Workforce Requirements Submittal, in MS Excel format, including the Proponent’s best estimate of the anticipated labour force, with approximate numbers by Job Classifications of Employees (as those terms are defined in the Definitive BCA), that will be required by the Design-Builder and its anticipated Applicable Subcontractors (as defined in the Definitive BCA) on a month by month basis for each of the construction years to Substantial Completion. Submittals should identify separately the following:</p> <ul style="list-style-type: none"> a) Estimates for work that has been excluded from the CBA through the Enabling Agreement.

Section No.	Title	Contents
		b) Estimates for shift rotations in and out of the accommodations.

Form A1 – Contract Proposal Price

Refer to the Excel spreadsheet in the Data Room entitled “Form A1 – Contract Price Proposal”.

Form A2 – Undertaking of Liability Insurance

TO: Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the “Province”)

UNDERTAKING OF LIABILITY INSURANCE

We, the undersigned, as authorized representatives on behalf of _____ [NAME OF INSURANCE COMPANY] do hereby undertake and agree to provide “Wrap-Up” Commercial General Liability insurance in the amount of ONE-HUNDRED MILLION DOLLARS (\$100,000,000) if a contract for the Kicking Horse Canyon Project – Phase 4 (the “Project”) is awarded to _____ [DESIGN-BUILDER]. This insurance will provide coverage, terms and conditions that comply with the insurance articles and requirements as described in Part 6 and Schedule 15 of the Design-Build Agreement forming Volume 2 of the Request for Proposals issued by the Province in respect of the Project.

Dated at: _____

This _____ day of _____, 20__ .

SIGNED: _____
Duly Authorized Representative of Insurance Company

Form A3 – Undertaking of Professional Liability Insurance

TO: Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the “Province”)

UNDERTAKING OF PROFESSIONAL LIABILITY INSURANCE

We, the undersigned, as authorized representatives on behalf of _____ [NAME OF INSURANCE COMPANY] do hereby undertake and agree to provide Professional Liability insurance in the amount of TWENTY-FIVE MILLION DOLLARS (\$25,000,000) if a contract for the Kicking Horse Canyon Project – Phase 4 (the “Project”) is awarded to _____ [DESIGN-BUILDER]. This insurance will provide coverage, terms and conditions that comply with the insurance articles and requirements as described in Part 6 and Schedule 15 of the Design-Build Agreement forming Volume 2 of the Request for Proposals issued by the Province in respect of the Project.

Dated at: _____

This _____ day of _____, 20__ .

SIGNED: _____
Duly Authorized Representative of Insurance Company

Form A4 – Consent of Surety

DATE:

NO:

WHEREAS _____ [NAME OF PRINCIPAL] as Principal has submitted a written Proposal to: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE, as Obligee dated _____ [FINANCIAL SUBMITTAL DEADLINE], concerning: the provision of design and construction services for the Kicking Horse Canyon Project – Phase 4 pursuant to the terms of the Design-Build Agreement forming part of the Request for Proposals issued by the Obligee, and the condition of this obligation being that if the Obligee awards a Design-Build Agreement to the Principal in connection with the Request for Proposals process, we, _____ [NAME OF SURETY], a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada, agree to issue as Surety for the Principal the following bonds with respect to the Principal’s obligations under the executed Design-Build Agreement:

1. A dual performance bond in the amount of \$125,000,000 and containing terms and conditions matching those of the specimen bonds in Schedule 14 of the Design-Build Agreement forming Volume 2 of the Request for Proposals.
2. A labour and material payment bond in the amount of \$125,000,000 and containing terms and conditions matching those of the specimen bonds in Schedule 14 of the Design-Build Agreement forming Volume 2 of the Request for Proposals.

This consent shall be null and void unless an application for the said bond(s) is made within ninety (90) days following the award of the Design-Build Agreement to the Principal.

(Name of Surety)

(Seal)

xxxxxx
Attorney - In - Fact

Appendix B Evaluation Criteria

Evaluation Process

A - Technical Submittal

Subject to the terms of this RFP, the Technical Submittal evaluation will consider whether the Technical Submittal substantially satisfies the requirements of this RFP, including the requirements set out in Appendix A of Volume 1 of this RFP, the Definitive DBA, and the Definitive BCA, and demonstrates to the satisfaction of the Province that the Proponent is capable of performing the obligations and responsibilities of the Design-Builder and delivering the Project in accordance with the DBA and the BCA and that the Proponent has a good understanding of the Project and of the Project Work.

B – Technical Supplement – Applicable Only if Province Issued an Invitation to Submit a Technical Supplement

If the Province issued an invitation to submit a Technical Supplement, and the Proponent submits a Technical Supplement containing amendments, then subject to the terms of this RFP, the Technical Supplement evaluation will consider whether:

1. the Technical Supplement contains only amendments that are demonstrated as
 - a. necessary to reflect the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.9.3 of Volume 1 of this RFP, and
 - b. not having an effect beyond reflecting such amendments, restructuring, supplements or impacts, as applicable; and
2. the Technical Submittal, if modified in accordance with each amendment, separately, and with all the amendments, collectively that have not been rejected, would
 - a. substantially satisfy the requirements of this RFP, including the requirements set out in Appendix A of Volume 1 of this RFP and the Definitive DBA, in a manner equal to or better than did the Technical Submittal before incorporating the Technical Supplement amendments that have not been rejected, and
 - b. demonstrate to the satisfaction of the Province that the Proponent continues to have a good understanding of the Project and of the Project Work and continues to be capable of performing the obligations and responsibilities of the Design-Builder and delivering the Project in accordance with the DBA.

If the Province issues an invitation to submit a Technical Supplement, and the Proponent submits a Technical Supplement containing no amendments then, subject to the terms of this RFP, the evaluation of the Technical Supplement will consider whether the Proponent has submitted written clear, unconditional and unqualified confirmation on behalf of each Proponent Team Member that the Proponent and each Proponent Team Member has reviewed and considered the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.9.3 of Volume 1 of this RFP, and that each considers and has conclusively determined that no amendments to the Technical Submittal submitted by the Proponent are necessary.

C – Financial Submittal

Proposals will be examined to determine whether the requirements of this RFP in respect of the Affordability Requirement have been satisfied, i.e. that a Proponent's Contract Price Proposal is less than or equal to the Affordability Requirement.

Subject to the terms of this RFP, the Financial Submittal evaluation will consider whether the Financial Submittal substantially satisfies the requirements of this RFP, including the requirements set out in Appendix A of Volume 1 of this RFP, the Definitive DBA and the Definitive BCA.

Ranking Process

Subject to the terms of this RFP, each Proposal, including the Technical Submittal, the Technical Supplement, if any, and the Financial Submittal, that substantially satisfies the requirements of this RFP, the Definitive DBA and the Definitive BCA will be ranked according to the following process.

1. For the purposes of the application of this Ranking Process only, the Province will calculate an Adjusted Contract Price Proposal (the "Adjusted Contract Price Proposal") through a summation of the following:
 - a. the Contract Price Proposal; and
 - b. an addition to the Contract Price Proposal of any Proposal that includes Accepted Proposed Lands for the applicable Proposed Lands Costs, in accordance with Appendix D [Lands Process] of Volume 1 of this RFP.
2. Each Proposal will be examined to determine if the Adjusted Contract Price Proposal is less than or equal to the Affordability Requirement.

Each Proposal meeting the foregoing requirements will be an "**Accepted Proposal**".

3. For the purposes of the ranking process under this RFP, each Accepted Proposal will be examined to determine whether it corresponds to:

- a) Schedule Milestone Step 1, wherein the Substantial Completion Date set out in the Proponent's Project Schedule, provided in accordance with Section 5.2 of Package 5 of Appendix A of the RFP, is on or before the Substantial Completion Target Date; or
 - b) Schedule Milestone Step 2, wherein the Substantial Completion Date set out in the Proponent's Project Schedule, provided in accordance with Section 5.2 of Package 5 of Appendix A of the RFP, is after the Substantial Completion Target Date and on or before May 31, 2024; or
 - c) Schedule Milestone Step 3, wherein the Substantial Completion Date set out in the Proponent's Project Schedule, provided in accordance with 5.2 of Package 5 of Appendix A of the RFP, is after May 31, 2024 and on or before August 31, 2024; or
 - d) Schedule Milestone Step 4, wherein the Substantial Completion Date set out in the Proponent's Project Schedule, provided in accordance with 5.2 of Package 5 of Appendix A of the RFP, is after August 31, 2024 and on or before November 30, 2024.
4. Applying the Schedule Milestone Steps set out in paragraph 3 above, the Accepted Proposal that meets the requirements referenced in paragraph 2 above, and has been determined to correspond with the earliest (lowest number) Schedule Milestone Step, will receive the highest ranking and be designated the highest-ranked Proposal.
 5. If two or more Accepted Proposals that meet the requirements referenced in paragraph 2 above correspond to the same and earliest (lowest number) Schedule Milestone Step, the Accepted Proposal which offers the lowest Adjusted Contract Price Proposal will receive the highest ranking and be designated the highest-ranked Proposal.
 6. If no Proposal offers an Adjusted Contract Price Proposal that is less than or equal to the Affordability Requirement, the Province may in its discretion select the Proposal that is the most advantageous to the Province with regard to Project Schedule and Contract Price Proposal and that Proposal will receive the highest ranking and be designated as the highest-ranked Proposal.