



transportation
investment
corporation

Steveston Interchange Project

Request for Proposals

Volume 1 – Instructions to Proponents

September 22, 2021



Ministry of
Transportation
and Infrastructure



SUMMARY OF KEY INFORMATION

RFP Title	RFP – Steveston Interchange Project Please use this title in all correspondence.
Contact Person	The Contact Person for this RFP may be reached by email at: StevestonContact@gov.bc.ca
Technical Submittal Deadline	11:00 AM local Vancouver time on December 22, 2021
Financial Submittal Deadline	11:00 AM local Vancouver time on February 17, 2022
Submission Location	Steveston Interchange Project Suite 1100, 401 West Georgia St Vancouver, BC V6B 5A1 ATTENTION: CONTACT PERSON

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1 INTRODUCTION

1.1 PROJECT OVERVIEW

The Steveston Interchange Project is comprised of improvements to the existing Highway 99/Steveston Highway interchange to enhance safety and efficiency. These upgrades will improve local travel in this area of Richmond and enhance access to/from Highway 99. The Project also complements the future new George Massey Crossing and represents part of the related corridor improvements associated with this future major project. The Steveston Interchange Project will:

- improve travel time and reliability through Richmond, with congestion-reduction time savings that will help reduce greenhouse gas emissions;
- improve safety for all modes of traffic;
- improve access to/from Highway 99 and the adjacent area;
- accommodate all modes of forecast traffic growth resulting from planned population and employment growth; and
- support community and economic development with better access to/from the future new George Massey Crossing.



Figure 1 – Project Preliminary Reference Design

1.2 SHORTLISTED RESPONDENTS

Through a request for qualifications (“RFQ”) issued on June 22, 2021, the following three Respondents were identified as eligible to receive this request for proposals (“RFP”) and to be invited to participate further in the Competitive Selection Process as Proponents:

- Aecon | NorLand General Partnership
- Cascade Coast Infrastructure Group
- Flatiron Constructors Canada Limited

Only these three Proponents, subject to changes in the Proponent Team membership as permitted by this RFP, may submit Proposals or otherwise participate in this RFP.

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 three volumes:

- Volume 1 – Instructions to Proponents;
- Volume 2 – Draft Design-Build Agreement; and
- Volume 3 – 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 DBA will be developed through processes, further detailed in this RFP, that include:

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

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

2.1 DESIGN-BUILD AGREEMENT PARTIES

The parties to the DBA will be the Province, 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 developed a Reference Concept for the Project that is the basis for property acquisition, environmental requirements, site preparation and cost estimates. To promote innovation, Proponents are encouraged to develop Proposals that may differ or vary from the Reference Concept, and that still 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 Design and Construction Scope

Summary of Design and Construction Scope
<ul style="list-style-type: none">• Replace the existing Steveston Highway bridge structure crossing Highway 99 with a new bridge structure(s)• Modify the existing Highway 99/Steveston Highway interchange ramps to connect to the new Steveston Highway bridge structure(s)• Improve existing transit facilities in the direct vicinity of the Highway 99/Steveston Highway interchange• Improve connections to adjacent municipal roads• Construct new pedestrian and cyclist facilities• Perform traffic management• Perform utility protection/relocations, including relocation of the reversible lane control system• Maintain designated infrastructure to specified standards during construction (including pavement, structures, drainage, etc.)• Meet quality, health and safety, communications, environmental, and archaeological requirements

2.2.1 Community Benefits

The Design-Builder will be required to implement and report on the community benefits objectives in the delivery of the Project, in accordance with the DBA, including but not limited to:

- (a) preparing plans for the achievement of apprenticeship and training and equity employment targets, and reporting on accomplishments;
- (b) achieving apprenticeship and training targets;
- (c) achieving employment targets for equity groups traditionally underrepresented in the skilled workforce; and

The Design-Builder will be required to provide information and documentation pertaining to the Design-Builder's compliance with the community benefits objectives as set out in the DBA. Incentive payments are provided to encourage the Design-Builder to exceed the apprenticeship and training and equity employment targets as set out in Schedule 13 of the DBA.

Each Proponent and its Proponent Team Members (other than its Key Individuals) will also be required to execute and provide in its Technical Submittal, a Letter of Adherence in the form as attached to the Special Project Needs Agreement for the George Massey Crossing - Corridor Improvements located in

the Data Room, and the Design-Builder and Subcontractors will be required to carry out all Project Work comprising “Capital Works” (as defined in the SPNA) in accordance with the SPNA.

2.2.2 Identified Indigenous Groups

The Province is in discussions with Identified Indigenous Groups regarding applicable opportunities. The Design-Builder’s requirements with respect to Identified Indigenous Groups will be set out in Schedule 12 to the DBA. It is anticipated that the Design-Builder will be required to meet specified targets for such opportunities, which may include contracting opportunities. The Province will provide Schedule 12 to Proponents by Addendum.

2.2.3 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.

2.2.4 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.

2.2.5 Operations and Maintenance

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

2.2.6 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.

2.2.7 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 3.3 of Volume 1 of this RFP.

The provisions of Section 3.3 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 to Volume 1 of this RFP.

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 to Volume 1 of this RFP 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 3.10 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; and
- (e) supporting the Province's community relations activities, public and stakeholder consultation and media relations.

2.4 ENVIRONMENTAL

The Project will be constructed under the existing Environmental Assessment Certificate (EAC #T17-01). Applications for an Environmental Assessment Certificate Amendment and Extension were submitted to the Environmental Assessment Office for review. An amended and extended EAC is anticipated to be issued in Fall 2021.

The Design-Builder will be required to perform the Project Work in compliance with all applicable environmental obligations including the EAC, the applicable Table of Conditions requirements of the EAC, and applicable Environmental Permits, as described in the DBA, including Schedule 6. These obligations include, but are not limited to:

- (a) protecting valued ecological components and socio-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 the EAC, including the Table of Conditions;
- (f) mitigating environmental impacts during construction; and
- (g) ensuring all monitoring and reporting requirements for environmental aspects are undertaken and documented.

A Construction Environmental Management Plan template developed by the Province will be available to, and amended by the Design-Builder, to meet the requirements of the DBA.

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.

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

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.

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 \$25 million performance bond and a \$25 million labour and materials payment bond written by a surety or sureties authorized to conduct business in British Columbia.

2.8 WORK BY OTHERS

The Design-Builder shall cooperate and coordinate with other parties involved in the Project, or working in proximity to 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 affected portions of traffic control systems, including the existing George Massey Tunnel reversible lane control system, through meetings with the Ministry's highway maintenance contractor, Mainroad Lower Mainland Contracting Limited Partnership;
- (b) coordination and compliance with the emergency activities of, and coordination with the maintenance activities of the Ministry's highway maintenance contractor; and
- (c) coordination with the City of Richmond's proposed improvements along Steveston Highway west of Highway 99.

3 OVERVIEW OF RFP PROCESS

The purpose of this RFP phase of the Competitive Selection Process is to invite the Proponents to prepare and 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 shortlisted Respondent pursuant to the RFQ;
- (b) the Proponent and each of the Proponent Team Members executing and delivering:
 - (i) the Proponent Agreement in accordance with the RFQ;
 - (ii) the releases and waivers attached as Form 9 of Volume 3 of this RFP, as and when required in accordance with this RFP;

and thereafter:

- (c) 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;
- (d) the Proponent observing and complying with and ensuring that its Proponent Team Members observe and comply with the terms of the Proponent Agreement; and
- (e) 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:

- (f) ineligible to continue further in the Competitive Selection Process; and/or
- (g) 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 \$57.6 million in nominal dollars. The Contract Price Proposal must not exceed the Affordability Requirement.

3.2 CONTRACT PRICE PROPOSAL

The Contract Price Proposal is to be calculated by the Proponent using Form 3 of Volume 3 of this RFP.

3.3 COMMUNICATIONS AND REQUESTS FOR INFORMATION

3.3.1 Communications

Proponents should only communicate with the Contact Person by email.

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

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

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

3.3.2 No Communication with Media or the Public

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

3.3.3 Requests for Information

All requests for information regarding any aspect of this RFP should be directed to the Contact Person by email using a Request for Information (RFI) Form.

The following applies to any RFI:

- (a) responses to an RFI will be in writing;
- (b) all RFI's, and all responses to RFI's from the Contact Person, will be recorded by the Province;
- (c) the Province is not required to provide a response to any RFI;
- (d) a Proponent may request that a response to an RFI be kept confidential by clearly marking the RFI "Commercial in Confidence" if the Proponent considers that the RFI is commercially confidential to the Proponent;
- (e) if the Province decides that an RFI marked "Commercial in Confidence", or the Province's response to such an RFI, must be distributed to all Proponents, then the Province will permit the Proponent to withdraw the RFI rather than receive a response. If the Proponent does not withdraw the RFI, then the Province may provide its response to all Proponents;
- (f) notwithstanding Sections 3.3.3 (d) and (e) of Volume 1 of this RFP:
 - (iii) if one or more other Proponents submits an RFI on the same or similar topic to an RFI previously submitted by another Proponent as "Commercial in Confidence", the Province may provide a response to such RFI to all Proponents; and
 - (iv) if the Province determines there is any matter which should be brought to the attention of all Proponents, whether or not such matter was the subject of an RFI, including an RFI marked "Commercial in Confidence", the Province may, in its discretion, distribute the RFI, response or information with respect to such matter to all Proponents.

3.4 CONSULTATION PROCESS

The Province will facilitate a consultation process with the Proponents which may include exchanges of information, discussions, and clarifications of issues through Workshops and Topic Meetings, and the submission and consideration of comments on and proposed amendments to the Draft DBA. Workshops and Topic Meetings may occur after the Technical Submittal Deadline.

3.4.1 Workshops and Topic Meetings

The Province expects the consultation process to include:

- (a) one or more workshops ("Workshops") to enable communication between the Province and the Proponents with respect to commercial and legal matters, and which will be concerned with providing a process that helps ensure Proponents have a complete and accurate understanding

of the Project, the opportunity to provide the Province with comments and feedback on material issues, including the Affordability Requirement or provisions in the Draft DBA, and to discuss any suggestions they may have, all in accordance with and as further detailed in this RFP including in Section 3.4.2 of Volume 1 of this RFP;

- (b) one or more topic meetings (“Topic Meetings”) to facilitate discussion between the Province and the Proponents in respect of specific topics which may be (but are not limited to) technical issues; all in accordance with and as further detailed in this RFP including Section 3.4.2 of Volume 1 of this RFP; and
- (c) any other meetings, consultations or facilitative or facilitated processes in conjunction with or as part of the Competitive Selection Process.

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

Each Proponent Team Member will:

- (d) ensure that the Proponent participates in all Workshops where required in accordance with Section 3.4.2(a) of Volume 1 of this RFP;
- (e) observe, abide by, and comply with the terms of this RFP in respect of the Workshops and Topic Meetings;
- (f) execute and deliver a waiver and agreement in respect of the Workshops and Topic Meetings substantially in the form set out in Form 8 to Volume 3 of this RFP in advance of the first Topic Meeting;
- (g) ensure that each individual in attendance on behalf of such Proponent Team Member at the Workshops or Topic Meetings:
 - (i) observes, abides by, and complies with the terms of this RFP in respect of Workshops and Topic Meetings; and
 - (ii) reviews, executes, and delivers to the Province before attendance of the first Workshop or Topic Meeting, a waiver and agreement substantially in the form set out in Form 8 to Volume 3 of this RFP.

One Topic Meeting and one Workshop are planned, as indicated below and further referenced in Table 2 in Section 3.11 of Volume 1 of this RFP:

- (h) a Topic Meeting in the form of an all-Proponent information meeting; and

- (i) one mandatory Workshop that is anticipated to include separate meetings between the Province and each Proponent to discuss the Proponent's comments and feedback on material issues including the Affordability Requirement and provisions in the RFP and Draft DBA

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

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

3.4.2 Procedures for Workshops and Topic Meetings

(a) Workshops

- (i) Unless the Province notifies the Proponents that a Workshop is optional, the Proponent will attend each Workshop and may, subject to any restrictions established by the Province on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Workshop on behalf of such Proponent.
- (ii) Each Proponent will attend all Workshops that are designated by the Province as optional, unless a Proponent provides written notice to the Province at least 5 business days before the scheduled Workshop date that such Proponent has declined the invitation to attend, provided that the Province may proceed with the applicable Workshop with the other or others of the Proponents that have not declined attendance at any such additional optional Workshop.

(b) Workshop Agendas and Summaries

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

(c) Topic Meetings

- (i) Attendance at Topic Meetings is not mandatory, and the Proponent or any of the other Proponents may decline to take part in any one or more Topic Meetings, provided that the Province may proceed with a Topic Meeting or Topic Meetings with the other or others of the proponents that have not declined attendance at any particular Topic Meeting.
- (ii) The Proponent may, subject to any restrictions established by the Province on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Topic Meeting on behalf of the Proponent.

3.4.3 Non-Binding Nature of Topic Meetings and Workshops

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

- (a) information obtained or shared;
- (b) the conduct of the Proponent, the Proponent Team Members, other proponents or their respective proponent team members, the Province, BCTFA, TI Corp, Infrastructure BC, or their respective representatives, including officers, directors, employees, consultants, agents, and advisors; or
- (c) discussions that occur;

at or during any Workshop or Topic Meeting.

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

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

3.4.4 Finalization of the Design-Build Agreement

The Province will issue the Draft DBA as Volume 2 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.

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 will consider comments, issues and requested amendments to the Draft DBA 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, including by incorporating any such Proponent requested and any other changes.

The Province will issue the Definitive DBA by Addendum as Volume 2 of this RFP.

3.5 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.

3.6 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.

3.6.1 Technical Submittal

Proponents are to provide a Technical Submittal to the Submission Location before the Technical Submittal Deadline. The Technical Submittal is to include no pricing information.

3.6.2 Financial Submittal

If invited to do so pursuant to Section 3.7.3 of Volume 1 of this RFP, Proponents are to provide a Financial Submittal to the Submission Location before the Financial Submittal Deadline. The Financial Submittal is to include pricing information.

3.6.3 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

3.6.4 Intellectual Property Rights

- (a) At the time each Proponent submits its Proposal, and at any other time reasonably requested by the Province, such Proponent will deliver to the Contact Person:
 - (i) the Work Product; and
 - (ii) a List of Non-Work Product IP specifically identifying, describing and indicating the owner or owners of all Background IP and Third Party IP, categorized as such, provided that, if such specific identification and description of any Third Party IP would cause any of such Proponent's Proponent Team Member to violate any confidentiality obligations, such Proponent will disclose only:
 - A. a general identification and description of such Third Party IP;
 - B. the identity of the owner or owners of such Third Party IP and the Proponent Team Member's relationship to such owner or owners; and
 - C. the reason that the Third Party IP is not fully disclosed.
- (b) Except as otherwise agreed in writing with the Province, by being included as a Proponent Team Member of a Proponent submitting a Proposal, each Proponent Team Member hereby represents, warrants and agrees that it owns or has the rights to the Intellectual Property Rights associated with the Work Product, the Background IP and the Third Party IP provided by or on behalf of such Proponent Team Member as necessary to make the assignments and grant the licenses to the Province as set out in this RFP and has obtained waivers of moral rights from all persons as necessary to provide the waivers in favour of the Province as set out in this RFP. Subject to the Proponent Team Members' limited right to grant a license in lieu of an assignment

with respect to Work Product as set out in Section 3.6(f) of Volume 1 of this RFP, if for any reason any such Proponent Team Member is unable to provide any assignments, licenses or waivers as required to be provided under this RFP, such Proponent Team Member will replace the portion of the Work Product, Background IP or Third Party IP for which the assignment, license or waiver, as the case may be, cannot be provided, with an alternative product or technology that meets the Province's requirements at no additional cost to the Province.

- (c) By being included as a Proponent Team Member of a Proponent submitting a Proposal, each Proponent Team Member of such Proponent acknowledges and confirms that, at no cost to the Province:
- (i) it does irrevocably and unconditionally convey, sell, transfer and assign, to the Province, in respect of the Work Product provided by or on behalf of such Proponent Team Member, including all Intellectual Property Rights in, including the copyright works forming a part of, such Work Product:
 - (A) the entire right, title and interest in and to all Intellectual Property and Intellectual Property Rights in such Work Product and all other rights and interests of a proprietary nature, whether registered or unregistered, in and associated with such Work Product throughout the world, including, without limitation, all copyright and patent rights therein;
 - (B) the entire right, title and interest throughout the world in and to the embodiments of all Intellectual Property and Intellectual Property Rights forming any part of such Work Product; and
 - (C) the right to bring actions and other proceedings against third parties for the past, present or future infringement or misuse of the Intellectual Property and Intellectual Property Rights in such Work Product, in each case free and clear of all liens and encumbrances; and
 - (ii) it does or will provide to the Province, from all Persons who generated the Work Product provided by or on behalf of such Proponent Team Member, waivers in favour of the Province of all moral rights that such persons may have in such Work Product.
- (d) The Province acknowledges that, except as otherwise provided in this RFP, any use of the Work Product by or on behalf of the Province will be at the risk of the Province and not the Proponents or their Proponent Team Members, provided that if a Proponent is selected as the Preferred Proponent, the foregoing limitation does not extend to any Claims arising after the execution and delivery of the DBA by such Proponent.
- (e) Effective upon the date of execution of the Design-Build Agreement by the Design-Builder on behalf of the Proponent selected as the Preferred Proponent, the Province shall grant automatically, without the requirement for further documentation, to each Proponent Team

Member of each Proponent other than the Preferred Proponent a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully-paid, sub-licensable, transferable and assignable license to use and disclose the Work Product provided by or on behalf of such Proponent Team Member for any purpose whatsoever, and all such Proponent Team Members acknowledge that:

- (i) such Work Product is provided “as is” without warranty of any kind whether express or implied including, without limitation, implied warranties of accuracy, completeness, merchantability, or fitness for a particular purpose;
- (ii) neither the Province nor any other of the Releasees has or will accept any liability whatsoever for any Claims in respect of such Work Product;
- (iii) any use or disclosure of such Work Product will be at the risk of the Proponent Team Member and not the Province; and
- (iv) nothing in this license will relieve such Proponent Team Member from any obligation of confidentiality or non-use, however arising, in any way relating to such Work Product;

provided that any license that may be granted to the Proponent Team Members of the Proponent selected as the Preferred Proponent with respect to the Work Product will be only as set out in the DBA entered into by the Design-Builder on behalf of such Proponent.

- (f) If any assignment of Intellectual Property Rights in any of the Work Product cannot, as a matter of law, be granted by the applicable Proponent Team Member to or in favour of the Province as provided in Section 3.6.4. (e) of Volume 1 of this RFP, by being included as a Proponent Team Member of a Proponent submitting a Proposal, such Proponent Team Member unconditionally grants to the Province, at no cost to the Province and effective upon delivery of the Proposal, a Complete License to any such Work Product, which license may at any time be rejected in whole or in part by the Province and, in which case, the provisions of this Section 3.6.4 with respect to the Proponent Team Member’s replacement of such Work Product shall apply.
- (g) Effective as of the date that each Proponent submits a Proposal, each Proponent Team Member of such Proponent, at no cost to the Province, unconditionally grants to the Province a Complete License to the Background IP provided by or on behalf of such Proponent Team Member for the Permitted Use.
- (h) Despite the foregoing, the Province will have no right to reverse engineer, decompile or otherwise arrive at the source code of any software included in the applicable Background IP, nor will it have the right to extract and sell, lease, license, sub-license or otherwise transfer, convey or alienate any software included in the Background IP (whether for commercial consideration or not) to any Person as a stand-alone product, except as may be necessary or desirable to exploit the Work Product or otherwise in connection with the Permitted Use.
- (i) Unless the Province and the applicable Proponent Team Member expressly agree otherwise in writing, the following applies in respect of any Third Party IP:

- (i) effective as of the date that each Proponent submits a Proposal, each of the Proponent Team Members of such Proponent, at no cost to the Province, unconditionally grants to the Province, paragraphs (ii) and (iii) of this Section 3.6.4(i), a Complete License to the Third Party IP provided by or on behalf of such Proponent Team Member for the Permitted Use;
- (ii) the Complete License described in subsection paragraph (i) of this Section 3.6.4(i) does not extend to include:
 - (A) any Third Party IP which consists of non-specialized, commercial off-the-shelf software programs that the Province, in its sole discretion and based on its review of the List of Non-Work Product IP, has determined that it does not require a sub-license to be provided by the applicable Proponent Team Member in order to operate, exploit or make use of the Work Product; and
 - (B) any Third Party IP which the Province has been informed of and has agreed in advance in writing is, due to its specialized and proprietary nature, the proper subject matter of a Limited License;
- (iii) regarding the Complete License described in paragraph (i) of this Section 3.6.4(i) and any Limited License described in paragraph (ii) of this Section 3.6.4(i), the Province will have the option from and after the selection of the Preferred Proponent, in respect of each Proponent Team Member of each Proponent not selected as the Preferred Proponent:
 - (A) to terminate the Complete License or the Limited License, as the case may be, with no liability to the Province, such Proponent Team Members, the owner of the Third Party IP or any other Person; or
 - (B) to continue the Complete License or the Limited License, as the case may be, provided that the Province will be obligated to pay all license fees associated with the use of the applicable Third Party IP from the date of the notification by the Province that the applicable Proponent that it has not been selected as the Preferred Proponent; and
- (iv) if the Complete License described in paragraph (i) of this Section 3.6.4(i) or any Limited License described in paragraph (ii) or this Section 3.6.4(i), as the case may be, cannot be validly granted without the consent of a Third Party, the applicable Proponent Team Member, at the Proponent Team Member's expense, will use its best efforts to obtain such consent and, without limiting any of its other obligations, will indemnify and hold harmless the Province and each of the other Releasees from and against any and all Claims in any way and at any time arising from such Proponent Team Member's failure to obtain such consent.

- (j) Without limiting Section 3.15 of Volume 1 of this RFP, each Proponent Team Member of each Proponent will indemnify and hold harmless the Province and each of the other Releasees from and against any and all Claims in any way and at any time arising out of or in connection with:
- (iii) the use, disclosure or provision to the Province of the Work Product, the Background IP and the Third Party IP or any of them by or on behalf of such Proponent Team Member; and
 - (iv) allegations or findings of infringement of Intellectual Property Rights, breach of confidence or unauthorized use by any of the Releasees of confidential information or Intellectual Property of other Persons, or failure to obtain copyright assignments or licenses or waivers of moral rights;

in respect of the Work Product, the Background IP and the Third Party IP or any of them provided by or on behalf of such Proponent Team Member.

- (k) By being included as a Proponent Team Member of a Proponent submitting a Proposal, each Proponent Team Member of such Proponent irrevocably designates and appoints the Province and its duly authorized officers and agents as such Proponent Team Member's agent and attorney-in-fact to act for and on behalf of such Proponent Team Member to execute, deliver and file any and all documents with the same legal force and effect as if executed by such Proponent Team Member, if the Province is unable for any reason to secure the execution by such Proponent Team Member of any document reasonably required to assign, transfer, license, waive or register any Intellectual Property Rights contemplated under this Section 3.6.4.

3.7 EVALUATION PROCESS

3.7.1 Technical Submittal Package Review

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

3.7.2 Technical Submittal Evaluation

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

3.7.3 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; and

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

3.7.4 Financial Submittal Package Review

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

3.7.5 Validity of Proposals

By submitting a Proposal, each Proponent agrees that:

- (a) its Proposal will remain fixed and irrevocable from the Financial Submittal Deadline until midnight at the end of the 90th day following the Financial Submittal Deadline (the “Proposal Validity Period”); and
- (b) after the expiry of the Proposal Validity Period, all prices and input costs in its Proposal may not be adjusted unless the Proponent provides notice to the Province of any proposed adjustment and demonstrates to the satisfaction of the Province that the Proponent has used its best efforts to continue to maintain the prices and input costs firm and valid, but that despite such best efforts, the specified adjustments to the prices and input costs are required solely as a direct result of one or more events that:
 - (i) are external to the Proponent and the Proponent Team Members;
 - (ii) could not have been prevented by, and are beyond the control of, the Proponent and any of its Proponent Team Members; and
 - (iii) constitute a material adverse change to the conditions underlying the prices and input costs that are subject to the adjustment, provided that on receipt of the Proponents written notice as referenced above, the Province may in its discretion discontinue the process with the Proponent as the Preferred Proponent, if such Proponent has been so selected.

A Proponent may indicate in its Proposal a Proposal Validity Period that exceeds 90 days, which shall be the Proposal Validity Period for such Proponent in accordance with this RFP.

3.7.6 Financial Submittal Evaluation

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

3.7.7 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;

- (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 on or before the date and time specified by the Province.

By being included as a Proponent Team Member of a Proponent submitting a Proposal, each of the Proponent Team Members of such Proponent agree that:

- (a) such Proponent's eligibility to be considered for selection as the Preferred Proponent is conditional upon such Proponent delivering, in response to an unrevoked invitation from the Province, the Preferred Proponent Security Deposit in the amount of \$200,000 in accordance with this RFP; and
- (b) if such Proponent does not deliver the Preferred Proponent Security Deposit to the Province in accordance with this RFP:
 - (i) such Proponent will neither be eligible to be selected as the Preferred Proponent nor be eligible to receive the Stipend or the Termination Fee; and
 - (ii) the Province may, in its sole discretion, do any one or more of the following:
 - (A) by written notice to such Proponent, cease all negotiations with such Proponent and refrain from designating such Proponent as Preferred Proponent for all purposes in connection with the Competitive Selection Process, including this RFP;
 - (B) select any other of the Proponents as the Preferred Proponent and continue with the Competitive Selection Process;
 - (C) commence negotiations with any other Proponent or any other person;
 - (D) pursue any of the Derivative Activities, including any of the options available to the Province under this RFP.

3.7.8 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 3.7.7 of Volume 1 of this RFP.

3.7.9 Return of Preferred Proponent Security Deposit

The Province will, subject to the terms of this RFP, return the Preferred Proponent Security Deposit to the Proponent selected as the Preferred Proponent that has delivered such Preferred Proponent Security Deposit in accordance with this RFP:

- (a) within 10 days after receipt by the Province of a written demand from such Proponent, if:
 - (i) the Province issues a Termination Notice terminating the Competitive Selection Process for reasons unrelated to such Proponent and the Proponent Team Members of such Proponent; or
 - (ii) the Province fails to execute and deliver an agreement substantially in the form of the DBA contemplated to be finalized and settled in accordance with the process described in this RFP on or before the Proposal Validity Period for such Proponent after receipt by such Proponent of notification of its selection as Preferred Proponent, provided that such failure is not a result of a failure by such Proponent to satisfy any conditions precedent set out in the DBA or a result of the Province and such Proponent having been negotiating a DBA as contemplated in this RFP; or
- (b) within 10 days following the later of the execution and delivery of the DBA by such Proponent and all other parties thereto.

3.7.10 Retention of Preferred Proponent Security Deposit

- (a) Despite any other term of this RFP, the Province may in its sole discretion and without notice draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit to its own or other use in its sole discretion, despite delivery by the Proponent selected as the Preferred Proponent that has delivered such Preferred Proponent Security Deposit in accordance with this RFP of a notice under Section 3.7.9(a) of Volume 1 of this RFP, if
 - (i) there is a material breach of this RFP or the Proponent Agreement by any of the Proponent Team Members of such Proponent; or
 - (ii) after receipt of written notice from such Province the Proponent fails to cause the Design-Builder to execute and deliver an agreement substantially in the form of the DBA contemplated to be finalized and settled in accordance with the process for settling the DBA described in this RFP,

within 30 days (or such longer period as the parties may agree in writing) of receipt of such written notice, unless such failure on the part of such Proponent to cause to be executed and

delivered an agreement substantially in the form of the DBA contemplated to be finalized and settled in accordance with the process for settling the DBA described in this RFP, is not solely as a result of a major disabling event (other than a disruption of financial markets) which could not have been reasonably prevented by and is beyond the reasonable control of the Proponent Team Members of such Proponent and which such Proponent can demonstrate to the satisfaction of the Province, acting reasonably, would substantially frustrate or render it impossible for the Design-Builder to perform the obligations of the Design-Builder under the DBA for a continuous period of 180 days.

- (b) If the Proponent selected as the Preferred Proponent that has delivered such Preferred Proponent Security Deposit in accordance with this RFP notifies the Province in writing in accordance with this RFP that such Proponent disputes the Province's right to call on and retain the Preferred Proponent Security Deposit, then:
- (i) the Province may, in its sole discretion, nonetheless call on the Preferred Proponent Security Deposit and retain and apply the proceeds of the Preferred Proponent Security Deposit in accordance with this Section 3.7.10;.
 - (ii) the retention and application of the proceeds of the Preferred Proponent Security Deposit will be without prejudice to the right of such Proponent to dispute the Province's right to call on and retain the Preferred Proponent Security Deposit; and
 - (iii) if the dispute is resolved fully and finally in favour of such Proponent, then the Province's liability will be limited to repayment of all or the portion of the amount of the Preferred Proponent Security Deposit called on and retained by the Province, together with interest charges at the rate prescribed under the *Financial Administration Act* (British Columbia) and the Interest on Overdue Accounts Payable Regulation (B.C. Reg 215/83) on that amount.
- (c) If the Proponent selected as the Preferred Proponent that has delivered such Preferred Proponent Security Deposit in accordance with this RFP fails to provide written notice to the Province of the renewal or extension of the Preferred Proponent Security Deposit at least 30 days prior to the expiry date of the Preferred Proponent Security Deposit, or if such Proponent fails to renew or extend the Preferred Proponent Security Deposit, the Province may, in its sole discretion and at any time without notice to such Proponent, call on the Preferred Proponent Security Deposit and hold the proceeds as the Preferred Proponent Security Deposit in the same manner and for the same purposes as the letter of credit and the terms of Sections 3.7.10 (b)(i) through (iii) of Volume 1 of this RFP do not apply to the Province's call and retention of the proceeds under this Section 3.7.10(c).

3.8 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.

3.9 CLOSE PROCESS

3.9.1 DBA – Finalize Terms and Close

It is the intention of the Province that, subject to Section 3.9.2 of Volume 1 of this RFP, any issues with respect to the Draft DBA must be finalized prior to the Financial Submittal Deadline so that the Definitive DBA, 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 otherwise pursuant to express provisions of the Definitive DBA, and changes and additions as a consequence of or in connection with such incorporations;
- (b) to those provisions or parts of the Definitive DBA 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, including changes, modifications and additions contemplated in or required under the terms of the Definitive DBA;
- (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 2.2.7 of Volume 1 of this RFP.

3.9.2 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 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 as contemplated in Section 3.9.1 of Volume 1 of this RFP in which case the terms of Section 3.9.1 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 3.9.2;
- (c) discontinue the process with the Proponent and select another Proponent as Preferred Proponent to finalize and settle the Definitive DBA as contemplated in Section 3.9.1 of Volume 1 of this RFP in which case the terms of Section 3.9.1 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.

3.10 FAIRNESS REVIEWER

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

The Fairness Reviewer will be:

- (a) provided with full access to all documents, meetings and information related to the evaluation processed under the RFP that the Fairness Reviewer, in its discretion, decides is required; and

(b) kept fully informed by the Province of all documents and activities associated with this RFP.

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

3.11 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	September 22, 2021
Topic Meeting – All-Proponents Information Meeting	October 7, 2021
Proponents submit agendas for Workshop	October 25, 2021
Workshop – One-on-one Draft DBA meeting	November 1-5, 2021
Definitive DBA issued	November 22, 2021
Technical Submittal Deadline	December 22, 2021
Invitation to Submit a Financial Submittal	February 4, 2022
Financial Submittal Deadline	February 17, 2022
Announcement of Preferred Proponent	February 28, 2022

3.12 STIPEND

Each Proponent will, subject to the terms of this RFP and subject to the following conditions having been satisfied, be eligible to receive the Stipend in the manner set out in this RFP:

- (a) such Proponent has submitted a Conforming Proposal and has not withdrawn from the Competitive Selection Process;
- (b) subject to subsection 3.12(c), the Province has not selected such Proponent as the Preferred Proponent;
- (c) if such Proponent was selected as Preferred Proponent, the Province has revoked its invitation and terminated negotiations with such Proponent as contemplated in this RFP and not proceeded with such Proponent to finalize and settle the DBA;
- (d) the Province has not delivered notice of ineligibility to such Proponent in respect of the Competitive Selection Process in accordance with Section 3.15 of Volume 1 of this RFP;

- (e) all Proponent Team Members of such Proponent have executed and delivered, and caused to be executed and delivered, as the case may be to the Province, a Release, Waiver and Confirmatory Assignment in the form attached as Form 9 of Volume 3 to this RFP;
- (f) executed Waivers of Moral Rights in favour of the Province in the form attached as Form 10 of Volume 3 to this RFP have been executed and delivered to the Province by all persons who generated such Proponent's Work Product;
- (g) such Proponent has attended and participated in the Workshops in accordance with the terms of this RFP;
- (h) each of the Proponent Team Members of such Proponent has observed and satisfied and continues to observe and satisfy all of the terms of the Competitive Selection Process, including this RFP;
- (i) the Province has not delivered a Termination Notice; and
- (j) such Proponent has delivered the Stipend Invoice in accordance with the requirements set out below.

Each applicable Proponent will, subject to each of the conditions listed in subsections 3.13(a) to (i) having been satisfied, deliver an invoice (the "Stipend Invoice") to the Province confirming satisfaction of each of such conditions and requesting payment of the Stipend, by not later than 90 days after the earliest to occur of the following event and date:

- (k) delivery of written notice from the Province to such Proponent of execution and delivery of the DBA by all parties; and
- (l) the date that is 180 days after the Financial Submittal Deadline if the Province has not announced a Preferred Proponent.

The Province will, subject to the terms of this RFP and provided that each of the conditions listed in this Section 3.13 has been satisfied by such Proponent, pay the Stipend to each applicable Proponent not later than 30 days after receipt of the Stipend Invoice.

3.13 TERMINATION FEE

If the Province delivers a Termination Notice terminating the Competitive Selection Process for reasons unrelated to the integrity of the Competitive Selection Process, each Proponent will, subject to the terms of this RFP and subject to the following conditions having been satisfied, be eligible to receive the Termination Fee in the manner set out in this RFP:

- (a) such Proponent has delivered a Conforming Proposal if the Termination Notice is issued after the Financial Submittal Deadline;
- (b) such Proponent has not withdrawn from the Competitive Selection Process;

- (c) the Province has not delivered notice of ineligibility to such Proponent in respect of the Competitive Selection Process in accordance with Section 3.15 of Volume 1 of this RFP;
- (d) all Proponent Team Members of such Proponent have executed and delivered and caused to be executed and delivered, as the case may be to the Province a Release, Waiver and Confirmatory Assignment in the form attached as Form 9 of Volume 3 to this RFP;
- (e) executed Waivers of Moral Rights in favor of the Province in the form attached as Form 10 of Volume 3 to this RFP have been executed and delivered to the Province by all persons who generated such Proponent's Work Product;
- (f) such Proponent has attended and participated in the Workshops if held before issuance of the Termination Notice, in accordance with the terms of this RFP;
- (g) such Proponent has delivered to the Province a full accounting with accompanying supporting documentation in sufficient detail to demonstrate to the satisfaction of the Province the actual and reasonable expenditures incurred by the Proponent to prepare the Conforming Proposal or, in the case of a Termination Notice being issued before the Financial Submittal Deadline, the Proposal up to the date of the Termination Notice;
- (h) each of the Proponent Team Members of such Proponent has observed and satisfied and continues to observe and satisfy all of the terms of the Competitive Selection Process, including the RFQ and this RFP; and
- (i) such Proponent has delivered the Termination Fee Invoice in accordance with the requirements set out below.

Each Proponent will, subject to each of the conditions listed in subsections 3.13(a) to (h) having been satisfied, deliver an invoice (the "Termination Fee Invoice") to the Province setting out in reasonable detail the expenditures referenced in subsection 3.13(g), by not later than 90 days after delivery by the Province to such Proponent of the Termination Notice.

The Province will, subject to the terms of this RFP and provided that each of the conditions listed in this Section 3.13 has been satisfied, by such Proponent, pay the Termination Fee to each Proponent not later than 30 days after receipt of the Termination Fee Invoice.

3.14 RELEASES AND WAIVERS

- (a) Each Proponent and each of its respective Proponent Team Members:
 - (i) agrees that the Releasees and each of them will not under any circumstances be responsible or liable for or in respect of any Claims by any person (including such Proponent or any of its Proponent Team Members, including any person claiming through any of them, or any of their respective contractors, sub-contractors, directors, officers, employees, consultants, advisors or agents);

- (ii) releases, acquits and forever discharges the Releasees and each of them from any and all Claims; and
- (iii) agrees that it will not bring and by participating in the Competitive Selection Process, y waives any Claims against the Releasees and each of them in excess of an amount equivalent to the actual and reasonable out of pocket costs directly incurred and paid by such Proponent in preparing the Proposal to a maximum of:
 - (A) the amount of the Stipend, if the Competitive Selection Process has not been terminated by delivery of a Termination Notice; or
 - (B) the applicable amount set out as the Termination Fee that corresponds to such Termination Notice, if a Termination Notice is delivered by the Province;

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

(b) Each Proponent and each of its respective Proponent Team Members agree that:

- (i) in no event will such Proponent be eligible to receive, or the Province be obligated to pay both the Stipend and the Termination Fee, and that the payment of the Stipend or the applicable Termination Fee, as the case may be, operates to render the obligations of the Province under Section 3.12 and Section 3.13 of Volume 1 of this RFP exhausted, spent and extinguished; and;
- (ii) if such Proponent is eligible in accordance with the terms of this RFP to receive either the Stipend or the Termination Fee, as the case may be, then payment by the Province to such Proponent of the Stipend or the applicable Termination Fee, as the case may be, will not be cumulative and in addition to, but will be deemed to be in substitution for and as full and final settlement of any Claim of such Proponent or any of its Proponent Team Members, including any Claim referenced in Section 3.14(a) of Volume 1 of this RFP.

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

- (i) any of its present, former or prospective Proponent Team Member or Proponent Team Members against the Province or any other Releasee or Releasees, or;

- (ii) any Person as a result of any act or omission of such Proponent or any of its Proponent Team Members;

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

- (d) Each of the Proponent Team Members of each Proponent accepts and agrees to be bound by the waivers, disclaimers, limitations of liability and indemnities delivered, or which will be delivered, by each of the Proponent Team Members of such Proponent, as the case may be, in connection with the Competitive Selection Process or any one or more parts of the Competitive Selection Process, including the Workshops and Topic Meetings and other consultative or facilitative or facilitated processes in the Competitive Selection Process.

3.15 NOTICE OF INELIGIBILITY

Without limiting any other rights, powers and remedies of the Province, the Province may in its sole discretion on the happening of any one or more of the following events or at any time thereafter give written notice of such event or events to the applicable Proponent and such notice will constitute a notice of ineligibility for purposes of Section 3.12 and Section 3.13 of Volume 1 of this RFP:

- (a) an order is made, a resolution is passed, or a petition is filed for the liquidation or winding up of any Proponent Team Member of such Proponent;
- (b) any Proponent Team Member of such Proponent becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (c) a bankruptcy petition is filed or presented against, or a proposal under the Bankruptcy and Insolvency Act (Canada) or any similar law of any other jurisdiction is made by any Proponent Team Member of such Proponent;
- (d) a compromise or arrangement is proposed under the Companies' Creditors Arrangement Act (Canada) or any similar law of any other jurisdiction in respect of any Proponent Team Member of such Proponent;
- (e) a receiver or receiver manager or other Person with similar powers is appointed of any property of any Proponent Team Member of such Proponent; or
- (f) any Proponent Team Member of such Proponent becomes a Restricted Person.

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 landowners, 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.

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

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

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 and the Definitive DBA, 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

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

5.3 NO OBLIGATION TO PROCEED OR MAKE ANY SELECTION

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

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

- (c) not accept, review, or evaluate any one or all of the Proposals;
- (d) not select a Preferred Proponent;
- (e) not offer any of the Proponents the opportunity to enter into or award the DBA to any Proponent or at all;
- (f) implement or issue any other procurement or other process for, or proceed in any other manner whatsoever, including using the Province's own forces, contractors, or authorities, with the whole or any part or parts of the Project; and
- (g) proceed, including in conjunction with any one or more of the activities, processes or works described in subsections 5.3(i) and (j) below with all or any part of the design, construction, financing, operation or other activities in respect of the whole or any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project through any other procurement or other process of any kind whatsoever, including negotiation, or prosecution of works using the Province's own forces, contractors or authorities.

Without limiting any other term of this RFP, if the Province fails to select a Preferred Proponent within 180 days after the Financial Submittal Deadline or terminates the Competitive Selection Process or cancels any part of the Competitive Selection Process, including this RFP, at any time and subsequently proceeds with any one or more of the activities, processes or works described in subsections 5.3(a) to (g) above, the Province may in its sole discretion:

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

A negotiation process referenced in this Section 5.3 may:

- (h) 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

- (i) 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

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

The Province will evaluate Proposals in the manner set out in Appendix B.

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, taxpayer information and other checks and obtain references from Persons, including Persons other than those listed by Proponents in any part of their Proposals;
- (d) not proceed to review and evaluate or discontinue the evaluation of any Proposal and disqualify the Proponent from this RFP and the Competitive Selection Process;
- (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 or Appendix B, the Province may in its discretion (and without further consultation with the Proponents), decline to review, evaluate or rank, or may reject outright any Proposal

which in the opinion of the Province: (i) is materially incomplete or irregular, (ii) contains omissions, exceptions or variations not acceptable to or material to the Province, (iii) contains a false or misleading statement, claim or information, or (iv) 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, and the Definitive DBA will be final, and the Province need not consult with any Proponent in making its decision.

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

5.5 PARTICIPATION IN THE COMPETITIVE SELECTION PROCESS

If a Proponent fails to observe any term of this RFP or to comply with any term of the Proponent Agreement, or fails to ensure that its Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them observe the terms of this RFP or of the Proponent Agreement, or the 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, or the Definitive DBA to be in conflict with any other part of this RFP, or the Definitive DBA, then the Proponent will notify the Contact Person in writing in accordance with Section 3.3 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.

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, BCTFA, TI Corp, and Infrastructure BC are subject to the FOIPPA and other applicable legislation.

Subject to the terms of the FOIPPA, the Confidentiality Conditions in Schedule 1 of the Proponent Agreement and Section 5.10 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, 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, Infrastructure 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, including in a manner which may give the Proponent a competitive or other advantage over other Proponents; and
- (e) criticizing the Proposals of other Proponents.

5.10 DISCLOSURE

The following information has been or will be publicly disclosed at <https://engage.gov.bc.ca/masseytunnel/documents/> and/or at <https://www.infrastructurebc.com/> :

- (a) the Request for Qualifications,
- (b) the names of the shortlisted 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 <https://engage.gov.bc.ca/masseytunnel/documents/> and/or at <https://www.infrastructurebc.com/> includes:

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

The Draft DBA is 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

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

The Proponent will include in such written request the reason for the proposed change, a comprehensive description of the proposed change, the full legal name(s) of the person(s) affected by or involved with the proposed change, together with a clear and concise description of the legal nature and status of such person(s), sufficient to correctly and fully legally describe the persons affected by or involved with the proposed change, and sufficient information and documentation, including as to suitability, knowledge, skills, resources, experience, qualifications and abilities of the individuals or entities involved in the proposed change to demonstrate that the proposed change, if permitted, would result in the Proponent and the Proponent Team Members, considered as a whole and considered separately, meeting or exceeding, in the sole opinion of the 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 in its sole discretion. Any change to a Proponent Team Member that results in any additional person becoming an entity comprised in any Proponent Team Member, or where any additional person is an entity comprised in any additional persons specified by the Province in its discretion under this RFP as being included in the Proponent Team, in each case subsequent to the execution and delivery of the Proponent Agreement will be required to execute and deliver to the Province an agreement, in form and content satisfactory to the Province in its sole discretion, to be bound by the terms of the Proponent Agreement in the same manner and with the same effect as if such person had been an original signatory to the Proponent Agreement..

The Proponent will immediately notify the 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

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

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 may have, with the Province, or any agency, authority, board, tribunal, commission or department of the Province, BCTFA, TI Corp, Infrastructure BC, any Restricted Party or any other person providing advice or services to the Province 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, TI Corp, Infrastructure BC, any Restricted Party or any other person providing advice or services to the Province 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.

The Relationship Review Process Description is posted on the Project website at <https://engage.gov.bc.ca/masseytunnel/documents/> and at <https://www.infrastructurebc.com/>

5.13 RELATIONSHIPS

5.13.1 Restricted Parties

At the RFP stage, and without limiting the definition of Restricted Parties, the Province has identified the following persons as Restricted Parties:

- (a) AMTG Consulting Ltd.
- (b) Boughton Law Corporation

- (c) Charter Project Delivery Inc.
- (d) DM Fourchalk Property Consultants Inc.
- (e) Farris LLP
- (f) Golder Associates Ltd.
- (g) Hemmera Envirochem Inc.
- (h) Klohn Crippen Berger Ltd.
- (i) Lucent Quay Consulting Inc.
- (j) Miller Thomson LLP
- (k) MP2 Enterprises Inc.
- (l) PBX Engineering Ltd.
- (m) R.F. Binnie & Associates Ltd.
- (n) Stratice Consulting Inc.
- (o) Tony Steadman & Associates Ltd.
- (p) The Province, BCTFA, TI Corp, or Infrastructure BC.

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

5.13.2 Use or Inclusion of Restricted Parties

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

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

Each Proponent is responsible to ensure that, in connection with the Proponent's participation in the Competitive Selection Process, neither it nor any of its Proponent Team Members nor any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or

agents, or any other persons associated with any of them is or includes or uses, consults or seeks advice, directly or indirectly, from any Restricted Party or includes any Restricted Party in the Proponent Team.

5.13.3 Shared Use Persons

Shared Use Persons may enter into arrangements with any and all Proponents but may not enter into exclusive arrangements with any Proponent and a Proponent may not enter into exclusive arrangements with any Shared Use Person. Shared Use Persons include Persons who have unique or specialized information or skills such that the 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:

- Mainroad Transtronic Services LLP

This is not an exhaustive list of Shared Use Persons. Additional persons may be added to or deleted from the list during any stage of the Competitive Selection Process.

5.13.4 Conflict of Interest Adjudicator

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

5.13.5 Proponent Requests for Advance Rulings

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

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

- (a) the names and contact information of the Proponent and the person in respect of which the advance ruling is requested;
- (b) a detailed description of the relationship that may constitute or give rise to an actual, potential, or perceived conflict of interest or unfair advantage;
- (c) a description of the steps taken to date and future steps proposed to be taken to eliminate or mitigate the conflict of interest or unfair advantage; and
- (d) copies of any relevant documentation.

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

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

5.13.6 Province Requests for Advance Rulings

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

5.13.7 Decisions Final and Binding

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

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

5.13.8 Exclusivity

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

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

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

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

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

5.13.8.1 *Exclusivity – The Province May Request Advance Rulings*

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

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

5.13.8.2 *Exclusivity - Rulings Final and Binding*

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

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

5.14 DELIVERY AND RECEIPT

Proponents are solely responsible for ensuring that they have received the complete RFP. By submitting a Proposal, each Proponent represents that the Proponent has verified receipt of a complete RFP, has

understood the complete RFP, and delivers the Proposal on the basis of the complete RFP, including all Addenda.

Neither the 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, 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.

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, 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, 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 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 use of or reliance on the Restricted Parties list, any identification of or failure to identify, in a timely manner or at all, any person as a Restricted Party, any ruling or advice of or failure to provide a ruling or advice, in a timely manner or at all, of the Conflict of Interest Adjudicator.

5.18 DISPUTE RESOLUTION

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

All such disputes for which proper notice has been given to the Contact Person, that are not resolved through negotiation between the 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, words imputing any gender includes all genders, as the context requires and is used as a reference term only and unless the context otherwise indicates to the contrary, the singular includes the plural, and the plural includes the singular.

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

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

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

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

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

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

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

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

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

References in this RFP to “in the opinion of the 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 2.2.7 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.

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

- (a) a corporation and
 - (i) a person by whom the corporation is controlled,
 - (ii) each member of an affiliated group of persons by which the corporation is controlled, and
 - (iii) a spouse or common-law partner of a person described in subparagraph (1) or (2);
- (b) two corporations, if
 - (i) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled,
 - (ii) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or
 - (iii) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;
- (c) a corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group;
- (d) a partnership and a majority-interest partner of the partnership;
- (e) two partnerships, if
 - (i) the same person is a majority-interest partner of both partnerships,
 - (ii) a majority-interest partner of one partnership is affiliated with each member of a majority

interest group of partners of the other partnership, or

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

“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.

“Background IP” means Intellectual Property that is not owned by a Third Party and is specifically set out in the List of Non-Work Product IP and is embedded in or used in connection with the Work Product, or in the preparation or development of the Work Product or necessary or desirable to implement, operate or exploit the Work Product, but which does not otherwise form part of the Work Product.

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

“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.

“Complete License” means, in respect of any Intellectual Property or Intellectual Property Rights to which the Complete License applies (the **“Licensed Property”**), a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully-paid, sub-licensable, transferable and assignable licence or sub-licence (if applicable), by written instrument in form and content satisfactory to the Province in its sole discretion, for the Province and its employees, agents, contractors, consultants, advisors, sub-licensees, successors and assigns to do any one or more of the following:

- (a) reproduce, make Modifications to create derivative works from, distribute, publicly perform, publicly display, disclose, communicate by telecommunication, translate and otherwise use the Licensed Property in any medium or format, whether now known or hereafter devised;

(b) use, make, have made, sell, offer to sell, import and otherwise exploit any product or service based on, embodying, incorporating or derived from the Licensed Property; and

(c) exercise any and all other past, present or future rights in and to the Licensed Property.

“**Confidentiality Conditions**” means the confidentiality conditions attached as Schedule 1 to the Proponent Agreement.

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

“**Conflict of Interest Adjudicator**” or “**COI Adjudicator**” has the meaning set out in Section 5.13.4 of Volume 1 of this RFP.

“**Conforming Proposal**” means a Proposal designated by the Province under this RFP as having substantially satisfied or exceeded the requirements set out in this RFP.

“**Contact Person**” means the contact at the e-mail address StevestonContact@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 3 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.

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

“**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.

“**Derivative Activities**” means the steps, activities, processes, and works contemplated in Section 5.3 of Volume 1 of this RFP and “**Derivative Activity**” means any one of such steps, activities, processes and works.

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

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

“**Design-Builder**” means the entity that enters into the Design-Build Agreement with the Province and who has direct responsibility to design and build the Project, as identified in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

“**Design Firm(s)**” means the firm(s) engaged by the Design-Builder to design the Project, as described in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to 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**” has the meaning set out in Section 3.12 of Volume 1 of this RFP.

“**Financial Submittal**” means the documentation and information described in Section 3.6.2 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 3.12 of Volume 1 of this RFP.

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

“**Identified Indigenous Groups**” means Tsawwassen First Nation, Semiahmoo First Nation, Musqueam Indian Band, Cowichan Tribes, Tsleil-Waututh Nation, Halalt First Nation, Ts’uubaa-asatx (Lake Cowichan) Nation, Lyackson First Nation, Katzie First Nation, Penelakut Tribe, Kwantlen First Nation, Stz’uminus First Nation, Seabird Island Band, Snuneymuxw First Nation, Shxw’ow’hamel First Nation, Squamish First Nation, Sto:lo Tribal Council.

“**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, 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, 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.

“Infrastructure BC” means Infrastructure BC Inc.

“Intellectual Property” means, without limitation, all algorithms, application programming interfaces (APIs), apparatus, circuit designs and assemblies, concepts, data, databases and data collections, designs, diagrams, documentation, drawings, equipment designs, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice) and patents and applications therefor and the right to apply for patents thereon, IP cores, know-how, materials, marks (including registered and unregistered trade-marks, official marks, brand names, product names, logos, and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers, including uniform resource locators (URLs), user interfaces, web sites, works of authorship, and other forms of technology.

“Intellectual Property Rights” means all past, present and future rights of the following types which may exist or be created under the laws of any jurisdiction in the world in respect of any Intellectual Property in any medium or format, whether now known or hereafter devised:

- (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights and mask work rights;
- (b) trade-mark and trade name rights and similar rights;
- (c) trade secret rights;
- (d) patent and industrial property rights;
- (e) rights to bring actions and other proceedings against third parties for the past, present or future infringement or misuse of any Intellectual Property;
- (f) all other proprietary rights in Intellectual Property of every kind and nature; and
- (g) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in subsections (a) through (f) of this definition.

“Key Individuals” means specific Persons, exclusive to one Proponent, including the Project Manager, 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.

“Letter of Adherence” means a letter of adherence between each Proponent Team Member (other than Key Individuals) and those Unions Signatory to the George Massey Crossing -Corridor Improvement regarding use of the SPNA

“Limited License” means a license for the Permitted Use in respect of any Third Party IP which, due to the specialized and proprietary nature of that Third Party IP, cannot be provided by way of a Complete License and therefore has more restrictive terms than a Complete License.

“List of Non-Work Product IP” means the list that specifically identifies, categorizes and describes Background IP and Third Party IP, as such list is described in Section 3.7.4 of this RFP.

“Modifications” mean, in respect of any Intellectual Property or other property, all modifications, including any alterations, changes, deletions, amendments, upgrades, updates, enhancements, revisions or improvements.

“Permitted Use” means in connection with the Design-Build Agreement, the Project or otherwise in connection with any one or more of the current or future development, design, construction, operation, maintenance, repair, modification, alteration, adaptation, rehabilitation, reconstruction, improvement, expansion, extension, financing or regulation (including with respect to the contemplation, procurement or undertaking of any such activities by the Province or any third parties) of all or any part or parts of the Project, including the lands and infrastructure comprising or anticipated to comprise the Project, and also including use in connection with any works, projects or activities implemented as part of any Derivative Activity and/or the carrying out of any statutory, public or other duties or functions in respect of any of the foregoing.

“Preferred Proponent” means the Proponent selected by the Province pursuant to this RFP to finalize the Design-Build Agreement.

“Preferred Proponent Security Deposit” means the sum of \$200,000 by way of an irrevocable letter of credit in the form set out as Form 7 of Volume 3 to this RFP or otherwise in form and content acceptable to the Province in its sole discretion.

“Project” or “Steveston Interchange Project” means the “Project” as defined in the Definitive DBA.

“Proponent” means shortlisted 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 the agreement relating to the Competitive Selection Process substantially in the form attached to the RFQ, to be executed and delivered by the Proponent and each of the 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) as identified in the Proponents RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

“Proponent Team Member” means a member of a Proponent Team as identified in the Proponents RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

“Proposal” means the Technical Submittal and the Financial Submittal submitted by a Proponent in accordance with this RFP.

“Proposal Validity Period” has the meaning set out in Section 3.7.5.

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

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

“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 for Major Projects and Alternative Procurement posted by the Province at:
<https://engage.gov.bc.ca/app/uploads/sites/52/2021/06/Relationship-Review-Process-Description.pdf>

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

“Representatives” means the Province Parties, TI Corp, Infrastructure 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.

“Request for Information” or **“RFI”** means a request for information in the form attached as Appendix C to Volume 1 of this RFP.

“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 3.3.3 of Volume 1 of this RFP.

“Restricted Party” means those persons (including their former and current employees) who had, or currently have, participation or involvement in the Competitive Selection Process or the design, planning or

implementation of the Project, and who may provide a material unfair advantage or confidential information to any Proponent that is not, or would not reasonably be expected to be, available to other Proponents
“RFP” or “Request for Proposals” means this Request for Proposals including all volumes, appendices, and Addenda.

“RFP Title” means **“RFP –Steveston Interchange Improvement”** 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 June 22, 2021, titled “RFQ - Steveston Interchange Project”, including all “Addenda” thereto as defined in the RFQ.

“Shared Use Person” has the meaning set out in Section 5.13.3 of Volume 1 of this RFP.

“Special Project Needs Agreement” or “SPNA” means the Special Project Needs Agreement for the George Massey Crossing - Corridor Improvements entered into June 18, 2021 by and between Construction Labour Relations Association of BC and those unions signatory thereto, as amended, supplemented or replaced from time to time.

“Stipend” means the sum of CDN \$200,000, inclusive of GST, PST and any and all other applicable taxes.

“Stipend Invoice” means the invoice referenced in section 3.12 of this RFP.

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

“Technical Submittal” means the documentation and information as described in Section 3.6.1 of Volume 1 of this RFP 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 3.12 of Volume 1 of this RFP.

“Termination Fee” means:

- (a) in respect of a Termination Notice that is delivered at any time after completion the Workshop, an amount not to exceed \$200,000; or
- (b) in respect of a Termination Notice that is delivered after the Financial Submittal Deadline, an amount not to exceed \$400,000;

in each case inclusive of GST, PST and any and all other applicable taxes, in respect of the actual and reasonable expenditures incurred by the Proponent up to the date of the Termination Notice to prepare its Conforming Proposal or Proposal, as applicable, as fully demonstrated in sufficient detail to the satisfaction of the Province with supporting documentation.

“Termination Fee Invoice” means the invoice referenced in Section 3.13 of Volume 1 of this RFP.

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

“Third Party” means a Person that is not related to, or is not an Affiliate of, any Proponent Team Member or any other firm, individual or entity involved in the Project.

“Third Party IP” means Intellectual Property that is owned by a Third Party and is specifically set out in the List of Non-Work Product IP and is embedded in or used in connection with the Work Product or in the preparation or development of the Work Product, or necessary or desirable to implement, operate or exploit the Work Product, but which does not otherwise form part of the Work Product.

“TI Corp” means Transportation Investment Corporation, a corporation established under the *Transportation Investment Act* (British Columbia).

“Topic Meetings” means the meetings described in Section 3.4 of Volume 1 of this RFP and “Topic Meeting” means any one of such meetings.

“Work Product” means:

- (a) all Deliverables;
- (b) all Intellectual Property, in any stage of development, that is not Background IP or Third Party IP and that is or was conceived, created, authored, developed, reduced to practice, acquired or otherwise obtained or provided on behalf of a Proponent pursuant to the RFP or otherwise in connection with such Proponent’s Proposal, the Project, the Deliverables or as part of the Competitive Selection Process; and
- (c) the electronic files for, and all tangible embodiments of, all Intellectual Property referred to in the above subsection (other than Background IP and Third Party IP), including computer-aided design and drafting and other electronic development, design, documentation and modelling files, drawings, renderings, models, presentations, prototypes, reports, samples and summaries.

“Workshops” means the workshops described in Section 3.4 of Volume 1 of this RFP 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 and a Financial Submittal, each of which consist of the following packages, and each of which correspond to the outline in Section 3 of this Appendix A, and Section 4 of this Appendix A, respectively.

Technical Submittal

Package 1: Transmittal

Contents List

- 1.1 Contact information
- 1.2 Form 1 of Volume 3 of this RFP - Technical Submittal Certificate and Declaration
- 1.3 Letters of Adherence
- 1.4 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 Firm
- 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
- 3.7 Community Benefits and Respect in the Workplace

Financial Submittal

Package 4: Transmittal

Contents List

- 4.1 Form 2 of Volume 4 of this RFP - Financial Submittal Certificate and Declaration
- 4.2 Overview Table of Contents for the Financial Submittal

Package 5: Financial

Contents List

- 5.1 Price Validity
- 5.2 Form 3 of Volume 3 of this RFP – Contract Price Proposal
- 5.3 Insurance and Bonding

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 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 – 3.7 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 one (1) complete copy of the Technical Submittal marked as “Master” in one or more 3-ring binders.

- Package 1
- Package 2
- Package 3, sections 3.1 – 3.2 of this Appendix A.
- Package 3, sections 3.3 – 3.7 of this Appendix A.

- (d) Submit the following in 3-ring binders with each marked “Copy X of Y” as appropriate:

- three (3) identical copies of all drawings relating to Package 3, sections 3.1-3.2 of this Appendix A.
- two (2) identical copies of all drawings relating to Package 3, sections 3.3-3.7 of this Appendix A

Financial Submittal

- (a) 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.

- (b) Submit one (1) complete copy of the Financial Submittal marked as “Master”, together with one (1) complete and identical copy of the Financial Submittal in one or more 3-ring binders marked “Copy 1 of 1”.

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. 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.

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

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

- 1.1 The contact person for all future communications between the Province and the Proponent, including name, employer, mailing address, telephone number and e-mail addresses;
- 1.2 One (1) duly executed Technical Submittal Certificate and Declaration in the form set out in Form 1 of Volume3 of this RFP;
- 1.3 One (1) duly executed Letter of Adherence from the Proponent and each of its Proponent Team Members (other than Key Individuals); and Overview table
- 1.4 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:

- 2.1 Proponent Information;
- 2.2 Details of the Design Builder;
- 2.3 Details of the Design Firm; and
- 2.4 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. 1.4 Overview table of contents for all parts of the Technical Submittal.

Section	Title	Contents
2.1 Proponent Information		
2.1.1	Confirmation of RFQ Qualification Response	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. If changes were made to any of these Proponent Team Members with the consent of the Province, the Proponent will clearly identify each change.
2.1.2	Confirmation of Key Individuals	Confirmation either: <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 and that 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 extra-provincial 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 the Design-Builder or as applicable each legal entity which comprises the Design-Builder, is duly authorized to carry on business in British Columbia. <p>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 ownership.</p>
2.3	Details of the Design Firm	
2.3.1	Name	Full legal name(s)

Section	Title	Contents
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 Firm; (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 Firm; 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 sections are:

- 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
- 3.7 Community Benefits and Respect in the Workplace

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	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) the construction start and completion dates for the New Project Infrastructure; c) the Substantial Completion Date; and d) the Total Completion Date.
3.1.2	Draft Works Schedule	<p>A draft Works Schedule, using Oracle Primavera P6 Professional 18 Release 18.8.0 or earlier scheduling software, prepared in accordance with Schedule 4 Part 1 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) intended construction start date including all milestones and constraints required to be met prior to the start of construction; b) critical path; c) securing approvals, permits, and licenses, including environmental, and utilities; d) design and submittal schedule; e) earthworks/soft soils/consolidation periods; f) road construction; g) structures construction; h) utility relocations and/or protection; i) construction mobilization, demobilization and site remediation; j) construction of temporary or offsite facilities; k) procurement of major prefabricated and other critical materials; l) George Massey Tunnel reversible lane control system relocations; and m) any other significant work functions.

Section	Title	Contents
3.2 Design and Construction		
3.2.1	Traffic Performance	<p>Demonstration of how the Proponent’s design meets the traffic operation performance requirements of the DBA, including documentation of the achieved performance of each of the requirements set out in Schedule 4 Part 4 of the DBA.</p> <p>Include a traffic operations model, including all related files, that satisfies the Traffic Operations Requirements.</p> <p>Provide one copy of the Proponent’s VISSIM traffic operations model (including all related files) and the data logs electronically.</p>
3.2.2	Roadway Design	<p>Demonstrate how the roadway design substantially satisfies the roadway design requirements of the DBA by providing a description of the Proponent’s approach to the roadway design requirements and the proposed design including:</p> <ul style="list-style-type: none"> a) key attributes and issues; b) demonstrate how impact on potential archaeological sites is minimized; c) provide the following roadway design drawings: <ul style="list-style-type: none"> (i) a key plan; and (ii) laning and geometric drawings, including plan, profile, typical cross-sections and property lines, at an appropriate scale to describe the proposed design for roads (including major drainage channels, transit and pedestrian/cycling accommodation); and d) demonstrate the results of the Proponent’s engagement with BC Hydro Transmission to review the Proponent’s proposed concept design for potential impacts to utilities of BC Hydro Transmission, and the agreed resolution. <p>Drawings shall be in accordance with the BC Ministry of Transportation and Infrastructure standards.</p>
3.2.3	Structural Design	<p>Provide a narrative and General Arrangement drawings to illustrate the Proponent’s proposed Structural Design methodology, concepts, and configurations which shall comply with the Definitive DBA and address the following:</p> <ul style="list-style-type: none"> a) key structural dimensions, vertical clearance, horizontal clearance, lane arrangement, pedestrian/cyclist accommodation, span arrangement, and structure articulation;

Section	Title	Contents
		<ul style="list-style-type: none"> b) access considerations for future maintenance, inspections, and rehabilitation; c) approach and methods to achieve Design Life; d) seismic design, including modes of vibration, load paths, soil improvements, seismic isolation systems, shock transmission strategies and proposed seismic analysis methods; e) aeroelastic design, where appropriate, including anticipated behaviour and mitigation measures if required; f) strategy regarding noise mitigation including treatment of joints and wearing surfaces and other methods; and g) structure drainage. <p>Drawings shall be in accordance with the BC Ministry of Transportation and Infrastructure standards.</p>
3.2.4	Foundation Design	<p>Provide a narrative and drawings to illustrate the Proponent's approach to geotechnical issues, constraints and foundation design required for the Structure(s), including the following:</p> <ul style="list-style-type: none"> a) a description of geotechnical issues, conditions, constraints, and risk related to the proposed design concept such as settlement, embankment construction and groundwater issues, including a description of the proposed approach to resolve these concerns and issues; b) a description of the foundation concept, including how the foundation design addresses the geotechnical characteristics of the site; c) interaction between the new Structures and existing adjacent structures during construction; (e.g., existing Steveston Highway bridge structure and BC Hydro Transmission monopole); and d) identification of seismic design issues and a description of the methodology to solve these issues, including, but not limited to, retaining walls, stability of embankments, soil liquefaction, lateral load deformation response of foundations, and spatial incoherence. <p>Drawings shall be in accordance with the BC Ministry of Transportation and Infrastructure standards.</p>
3.2.5	Construction Approach	<p>Provide a narrative illustrating how the Proponent will achieve its proposed Works Schedule in a reasonable and realistic manner, 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) roadway traffic management;

Section	Title	Contents
		<ul style="list-style-type: none"> c) coordination with communications and environmental management activities; d) transportation and delivery of critical construction components; e) details of in-stream works, including temporary access and other temporary works; f) method of pile installation; g) interaction with other concurrent projects; h) major Temporary Works; i) major prefabricated elements; j) demonstration of how impact on potential archaeological sites is minimized; k) George Massey Tunnel reversible lane control system relocations; and l) approach to operations and maintenance of Project Infrastructure during construction.
3.2.6	Construction and User Safety	<p>Provide a description of the Proponent's approach to safety, including:</p> <ul style="list-style-type: none"> a) a safety policy statement providing the Proponent's health and safety objectives; b) an outline of the overall safety plan; c) the 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 the public.
3.2.7	Construction Staging	<p>Provide a narrative and drawings illustrating the Proponent's construction staging approach to align the Project Schedule and the Works Schedule including:</p> <ul style="list-style-type: none"> a) carrying out the proposed Construction including identification of all associated major milestones; b) constructing temporary roadwork and detours; c) providing for local access and operational requirements during construction; and d) delivering and erecting major structural components, including temporary works.

Section	Title	Contents
3.2.8	Traffic Management	<p>Provide a narrative and drawings illustrating how traffic will be managed during Construction for the Project, including:</p> <ul style="list-style-type: none"> a) approach and methods the Proponent will take in providing detours, Closures and Stoppages which minimize the impacts to roadway users and other local stakeholders; b) approach and methods to maintain accesses through and to adjacent properties at each stage of construction; c) approach of the construction team to integrating communications requirements in relation to detours, Closures, and Stoppages; d) approach to integrating the construction schedule and staging with the Traffic Management Plan; e) approach to dealing with traffic accidents and other incidents; and f) approach to dealing with unplanned Closures.
3.3 Quality Management		
3.3.1	Quality Management System Framework	<p>Provide a description of 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 the requirements stated in the Definitive DBA.</p> <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; b) processes for: <ul style="list-style-type: none"> (i) the control of nonconforming product and services; (ii) continuous improvement; (iii) the assessment and procurement of Subcontractors, and suppliers, and the application of QMS requirements into the activities of these external parties; and (iv) QMS performance evaluation. c) an 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; and

Section	Title	Contents
		a 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.
3.4 Environmental Management Strategy		
3.4.1	Environmental Impact Report	Provide a description of any elements of the design(s) that are not addressed by the Environmental Assessment Certificate or the Table of Commitments that have an environmental impact. For each of the impacts so identified, provide an assessment of the environmental impacts together with a mitigation strategy to demonstrate how the Proponent will ensure compliance with the requirements of the Definitive DBA, including Schedule 6.
3.4.2	Environmental Management Strategy	Provide a description of the Proponent's strategy to meet the requirements of Schedule 6 of the Definitive DBA 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.
3.4.3	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 an assessment of the environmental impacts together with a mitigation strategy to demonstrate how the Proponent will ensure compliance with the requirements of the Definitive DBA, including Schedule 6.
3.5 Communications and Engagement		
3.5.1	Communications and Engagement Approach	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 Design-Builder, including planning and execution of: 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.
3.6 Indigenous Participation		

Section	Title	Contents
3.6.1	Indigenous Participation Strategy	<p>Provide a description of the Proponent's strategy for meeting the requirements of Schedule 12 to the Definitive DBA and those sections of Schedule 6 of the Definitive DBA requiring:</p> <ul style="list-style-type: none"> a) Indigenous engagement; b) Indigenous construction monitoring; c) Indigenous archaeological monitoring; and d) Employment and Business Opportunities. <p>The description will demonstrate the Proponent's understanding and capability in meeting the requirements of Schedule 12</p>
3.7 Community Benefits and Respect in the Workplace		
3.7.1	Community Benefits	Provide a description of the Proponent's understanding, capability, and strategy for meeting the requirements of Schedule 13 to the Definitive DBA.
3.7.2	Respect in the Workplace	Provide a description of the Proponent's understanding, capability, and strategy for meeting the requirements of Section 4.10 of the Definitive DBA.

4. 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 evaluated, and the highest ranked Proposal will be selected.

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).

Package 4 Transmittal Package

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

- 4.1 One (1) duly executed Financial Submittal Certificate and Declaration in the form set out in Form 2 of Volume 3 of this RFP; and
- 4.2 Overview table of contents for all parts of the Financial Submittal.

Package 5 Financial

Package 5 sections are as follow:

- 5.1 Price Validity
- 5.2 Form 3 of Volume 3 of this RFP – Contract Price Proposal
- 5.3 Insurance and Bonding

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	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	Form A1 – Contract Proposal Price	<p>Submit Form 3 of Volume 3 of this RFP which will include:</p> <ul style="list-style-type: none"> a) The breakdown of the price adding up to the Contract Proposal Price; and b) Estimated monthly Progress Payments over the construction schedule with work completed based on the Works Schedule. <p>The Proponent's Form 3 should be consistent with the following:</p> <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 whether 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>
5.3	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 4 and 5 of Volume 3 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 6 of Volume 3 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.

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, and the Definitive DBA, 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 that the Proponent has a good understanding of the Project and of the Project Work.

B – 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, and the Definitive DBA.

Ranking Process

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

Each Proposal will be examined to determine whether the requirements of this RFP and the Definitive DBA, other than the Affordability Requirement, have been substantially satisfied.

If two or more Proposals meet the requirements referenced in paragraph 1 of this "Ranking Process" section, the Proposal which offers the lowest Contract Price Proposal that is less than or equal to the Affordability Requirement will receive the highest ranking and be designated the highest-ranked Proposal.

If only one Proposal meets the requirements referenced in paragraph 1 of this "Ranking Process" section, and offers a Contract Price Proposal that is less than or equal to the Affordability Requirement, that Proposal will receive the highest ranking and be designated the highest-ranked Proposal.

If no Proposal offers a Contract Price Proposal that is less than or equal to the Affordability Requirement, the Province may in its discretion select the Proposal which offers the lowest Contract Price Proposal and which otherwise substantially satisfies the requirements of this RFP to receive the highest ranking and be designated the highest-ranked Proposal.

APPENDIX C REQUEST FOR INFORMATION FORM

STEVESTON INTERCHANGE PROJECT

Request For Information / Clarification / Meeting

Request Number: (Proponent name and sequential number)

Raised By: (contact name)

Date Raised:

Date by Which Response Required:

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

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

Meeting:

Date:

Other:

REQUEST / QUERY (One query / request per sheet)

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