

# Request for Proposals for the Design Build Agreement

## Fraser River Tunnel Project

### Volume 1: Instructions to Proponent

Final - As Issued September 13, 2024

## Summary of Key Information

**RFP Title** Fraser River Tunnel Project

**Contact Person** Email: [Contact.FRTP@gov.bc.ca](mailto:Contact.FRTP@gov.bc.ca).

Please direct all enquiries, by email, to the Contact Person.

**Enquiries** The Proponent is encouraged to submit enquiries at an early date and prior to 15:00 Pacific Time on the day that is ten (10) Business Days before the Proposal Deadline to permit consideration by the Province; the Province may, at its discretion, decide not to respond to any enquiry.

**The Proposal is to be delivered at the time and location indicated below:**

**Proposal Deadline** March 7, 2026, at 1100 Pacific Time

**Submission Location** Fraser River Tunnel Project  
Suite 2100, 401 West Georgia Street  
Attention: Contact Person

**The Interim Submittals are to be delivered at the times and location indicated below:**

**Interim Submittal 1** By electronic upload to the Contact Person in accordance with Section 3.3 by March 12, 2025, at 1100 Pacific Time

**Interim Submittal 2** By electronic upload to the Contact Person in accordance with Section 3.3 by July 10, 2025, at 1100 Pacific Time

**Interim Submittal 3** By electronic upload to the Contact Person in accordance with Section 3.3 by November 7, 2025, at 1100 Pacific Time

**Interim Submittal 4** By electronic upload to the Contact Person in accordance with Section 3.3 by February 5, 2026, at 1100 Pacific Time



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# 1 Introduction

## 1.1 Purpose of this Request for Proposals

This Request for Proposals (“**RFP**”) is issued by His Majesty the King in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the “**Province**”).

The purpose of this RFP is to invite the Proponent to prepare and submit one or more Proposals (if necessary) to complete the design and construction of the Fraser River Tunnel Project (the “**Project**”) under a design-build agreement (the “**DBA**”).

Concurrent with the development of the Project in accordance with the design early works agreement between the Proponent and the Province dated September 13, 2024 (the “**Design Early Works Agreement**” or “**DEWA**”), the Proponent will submit one or more Proposals to enter into the DBA. If a Proposal is acceptable to the Province, the DBA will be finalized.

## 1.2 Eligibility to Participate in this RFP

As a result of the Design Early Works Agreement request for proposals issued on October 26, 2023, by the Province (the “**DEWA RFP**”), the following Proponent is qualified to participate in this RFP:

- ▶ Cross Fraser Partnership

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

Eligibility to participate in this RFP is conditional on:

- (a) the Proponent being identified in this Section 1.2 of Volume 1 of this RFP executing and delivering a Proponent Agreement, substantially in the form attached as Appendix D to the RFP or otherwise acceptable to the Province, in its discretion and thereafter;
- (b) the Proponent observing and ensuring that its Proponent Team Members observe the provisions of this RFP, including observing and satisfying and ensuring that its Proponent Team Members observe and satisfy the terms and conditions that may be required, or otherwise established by the Province, in respect of any waiver or permission to be issued by the Province under this RFP; and



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

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:

- (d) ineligible to continue further in this RFP; and/or  
(e) ineligible to receive any further invitations or information in connection with this RFP.

### 1.3 RFP Structure

This RFP contains the following three volumes:

- ▶ Volume 1 – Instructions to Proponent;
- ▶ Volume 2 – Draft DBA; and
- ▶ Volume 3 – Forms.

## 2 Overview of the DBA

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

### 2.1 DBA

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.

### 2.2 DBA Parties

The parties to the DBA will be the Province, BCTFA and the Design-Builder.

## 3 RFP Process

### 3.1 Indicative Timeline

The following is the Province’s indicative timeline for the RFP activities:

Activity	Timeline
DBA RFP Issued	September 13, 2024
Interim Submittal 1 Deadline	March 12, 2025
Interim Submittal 2 Deadline	July 10, 2025
Interim Submittal 3 Deadline	November 7, 2025
Business to Business Event	Winter 2025/2026
Indigenous Business to Business Event	Winter 2025/2026
Interim Submittal 4 Deadline	February 5, 2026
Environmental Assessment Certificate Issued	February 2026 (Anticipated)
Definitive DBA Issued	February 19, 2026
Proposal Deadline	March 7, 2026
Project Board Approval for Execution of DBA (if acceptable)	Spring 2026
Provincial Approval for Execution of DBA (if acceptable)	Spring 2026
Execution of DBA (if approved)	Spring 2026

The indicative timeline is subject to change at the discretion of the Province.

### 3.2 Communications and Requests for Information

#### 3.2.1 Communications

For communications related to this RFP, the Proponent 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.

#### 3.2.1.1 No Communication with Media or the Public

The Proponent will not communicate, including by media releases, interviews, web or social media postings, and will ensure that their 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 RFP Process, with the media or the public without the prior written consent of the Province.

The 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.

#### 3.2.2 Requests for Information ("RFI")

All RFIs regarding any aspect of this RFP should be directed to the Contact Person by email using a RFI Form in the form attached as Appendix C of Volume 1 of this RFP.

The following applies to any RFI:

- (a) Responses to Proponents ("RTP(s)") in response to an RFI will be in writing;



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- (b) all RFIs, and all RTPs from the Contact Person, will be recorded by the Province; and
- (c) the Province is not required to provide a response to any RFI.

### 3.2.3 Proponent's Representative

The Province intends to communicate solely with the Proponent's Representative as it relates to this RFP and may disregard communications from other persons on behalf of the Proponent related to this RFP.

Although the Province may rely on the Proponent's Representative's authority to bind the Proponent, execution of documents by the Proponent's Representative is not required. The Province may rely on the authority of any person or persons representing the Proponent to bind the Proponent.

## 3.3 Interim Submittals

The Proponent will submit to the Province Interim Submittals which are intended to be a summary of the status of Project development work under the DEWA and progress in development of the Proposal(s).

Four Interim Submittals are anticipated and described in the subsequent sections.

### 3.3.1 Interim Submittal 1

Interim Submittal 1 is to be comprised of a DEWA Deliverables Summary Report outlining activity undertaken since execution of the DEWA, substantially in the form provided as Form 1 in Volume 3 to the RFP, to a maximum of five pages, and in accordance with the approved DEWA Implementation Plan.

### 3.3.2 Interim Submittals 2, 3, and 4

Each subsequent Interim Submittal is to be comprised of a DEWA Deliverables Summary Report outlining activity undertaken since the previous Interim Submittal form, substantially in the form provided as Form 1 in Volume 3 to the RFP, to a maximum of five pages, and in accordance with the approved DEWA Implementation Plan.

Interim Submittal 3 is to include evidence of the ability to obtain bonding from a surety, or sureties, authorized to conduct business in Canada (substantially in the form provided as Form 3 in Volume 3 to the RFP). In the event there are changes to the Proponent's ability to obtain bonding, or to the bonding provider at any time, the Proponent must notify the Province immediately.

### 3.3.3 Interim Submittal Review

The Province will review each of the Interim Submittals and then will participate in a Workshop with the Proponent, as described in Section 3.4.

Unless expressly referred to or included by reference in its Proposal, the Proponent's Interim Submittals will not be considered part of its Proposal and the Province will not consider or evaluate them as to adequacy, quality, content or otherwise.

## 3.4 Consultation Process

The Province will facilitate a consultation process with the Proponent which may include exchanges of information, discussions, and clarifications of issues through Workshops and Topic Meetings related to RFP matters.

### 3.4.1 Workshops and Topic Meetings

The Province expects the consultation process to include:

- (a) four workshops ("Workshops"), each one following the Province's review of each of the Interim Submittals, to enable communication between the Province and the Proponent with respect to:
  - (i) Province comments and feedback on each Interim Submittal; and
  - (ii) discussion and alignment on any potential future courses of action.

The Workshops will provide the Province and Proponent the opportunity to openly discuss and provide feedback on the collaborative relationship, including areas for improvement, and on RFP matters including early warning of any difficulty in achieving the Project requirements. The Workshops will also allow the Province and Proponent to consider and implement steps to ensure that one or more Proposals will be able to achieve the Project requirements within the prescribed timeframe;

- (b) one or more topic meetings ("Topic Meetings"), at the request of either the Province or the Proponent to facilitate discussion between the Province and the Proponent in respect of specific topics related to the RFP; 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 this RFP.

The Province may, 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 3.4.2.1 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; and
- (f) ensure that each individual in attendance on behalf of such Proponent Team Member at the Workshops or Topic Meetings observes, abides by, and complies with the terms of this RFP in respect of Workshops and Topic Meetings.

The Province may, at its discretion, including at the request of the Proponent, schedule additional Workshops or Topic Meetings, at the dates, times and locations and for the duration that the Province considers appropriate.

By participating in the Workshops and Topic Meetings, confirm its agreement with these procedures and acknowledge that the meetings are an integral part of this RFP process as described in this RFP and are in the interests of both parties

### 3.4.2 Procedures for Workshops and Topic Meetings

#### 3.4.2.1 Workshops

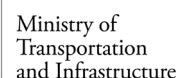
The Proponent will attend each Workshop and may, subject to any restrictions established by the Province on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Workshop on behalf of the Proponent.

#### 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, 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.



If the Proponent wishes to have any matter confirmed, including any statement made by the Province at a Workshop or Topic Meeting, the Proponent will submit an RFI describing the matter and requesting that the Province confirm the matter by RTP 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.

### **3.5 Indigenous Groups' Business-to-Business Networking Event**

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

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

### **3.6 Business-to-Business Networking Event**

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

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

### **3.7 Definitive DBA**

Following receipt of the Environmental Assessment Certificate, the Draft DBA will be amended to incorporate related terms and will be issued by Addendum as the Definitive DBA.

The Definitive DBA will be the basis for the preparation of all Proposals, and the Proponent should not make any modifications, changes, or additions to the Definitive DBA in its Proposal.

It is the intention of the Province that once issued, the Definitive DBA will not be further substantively modified and will be executed by the Proponent without further substantive amendment, except for changes, modifications, and additions:

- (a) relating to the determination by the Province, at its discretion, of which parts, if any, of the Proposal(s) are to be incorporated by reference or otherwise into the DBA, or otherwise pursuant to express provisions of the DBA;
- (b) to those provisions or parts of the Definitive DBA that are indicated as being subject to completion or finalization, or which the Province determines, at its discretion, require completion or finalization, including provisions that require:
  - (i) modification or the insertion or addition of information relating to the formation of the Design-Builder (e.g., corporate, partnership or trust structure); and
  - (ii) modification or the insertion or addition of information in order to reflect accurately the nature of the Design-Builder's relationships with its principal subcontractors (including each of the project contractors);
- (c) required by the Province 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 are necessary to create or provide for a legally complete, enforceable and binding agreement; or
- (e) that enhance clarity in legal drafting.

The Province also reserves the right, at its discretion, to negotiate changes to the Definitive DBA and to the Proponent's Proposal.

### **3.8 Proposal Requirements**

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

### 3.8.1 Submission Time and Submission Location

The Proposal is to be addressed to the attention of the Contact Person and to be received at the Submission Location before the Proposal Deadline as stated in accordance with the Summary of Key Information.

## 3.9 Evaluation Process

### 3.9.1 Validity of Proposals

By submitting a Proposal, the Proponent agrees that:

- (a) its Proposal will remain fixed and irrevocable from the Proposal Deadline until midnight at the end of the 120<sup>th</sup> day following the Proposal Deadline (the “**Proposal Validity Period**”); and
- (b) the Proponent may indicate in its Proposal a Proposal Validity Period that exceeds 120 days, which shall be the Proposal Validity Period for such Proponent in accordance with this RFP.

### 3.9.2 Evaluation of the Proposal

Evaluation of the Proposal 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 the Proposal in the manner set out in Appendix B.

The Province may in its discretion establish its own methods and procedures for the review and evaluation of the Proposal.

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 of any aspect of the Proposal, including if the Province considers that the Proposal or any part of the 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, at its discretion, deems appropriate and in the interests of the Province and this RFP 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;



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- (b) independently consider, investigate, research, analyze, request or verify any information or documentation whether or not contained in any Proposal;
- (c) request interviews or presentations with the Proponent to clarify any questions or considerations based on the information included in Proposals during the evaluation process, with such interviews or presentations conducted in the discretion of the Province, including the time, location, length and agenda for such interviews or presentations;
- (d) conduct reference checks relevant to the Project with any or all of the references cited in a Proposal and any other persons (including persons other than those listed by the Proponent in any part of its Proposal(s) to verify any and all information regarding the Proponent, and to conduct any background investigations that it considers necessary in the course of this RFP Process, and rely on and consider any relevant information from such cited references in the evaluation of the Proposal(s);
- (e) conduct credit, criminal record, litigation, bankruptcy, taxpayer information and other checks;
- (f) not proceed to review and evaluate, or discontinue the evaluation of the Proposal(s) and disqualify the Proponent from this RFP; and
- (g) seek clarification or invite more complete, supplementary, replacement or additional information or documentation from the Proponent in connection with any Proposals or any part of their component packages.

Without limiting the foregoing or Appendix B, the Province may, at its discretion (and without further consultation with the Proponent), reject the Proposal if, in the opinion of the Province, it:

- (h) is materially incomplete or irregular;
- (i) contains omissions, exceptions or variations (including any modifications, changes or additions to the Definitive DBA not acceptable to the Province);
- (j) contains any false or misleading statement, claims or information, or
- (k) for which background investigations reveal any false statements, criminal affiliations or activities by the Proponent or a 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 confidential communications of any kind whatsoever, including by meetings or interviews, with any person, including the Proponent.



The review and evaluation of the 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.

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 Process, or in connection with the Proponent, Proposal, or any part of the Proposal.

As part of the evaluation of the Proposal, the Province may identify that the Province is not satisfied that the Proposal meets one or more requirements of the Definitive DBA. The Province may, but is not required to, reject that Proposal in accordance with the terms of this RFP Process. If the Province does not exercise its discretion to reject the Proposal, the Province may provide to the Proponent a list of the items that the Province is not satisfied meet the requirements of the Definitive DBA. The Proponent will be required to comply with the requirements of the Definitive DBA, including by rectifying any non-compliances (material or otherwise) in its Proposal. By submitting its Proposal, the Proponent will be deemed to have agreed to comply with the requirements of the Definitive DBA, including by rectifying any non-compliances (material or otherwise) in its Proposal.

The Province is not responsible for identifying all areas in which the Proposal does not meet the requirements of the Definitive DBA. Irrespective of whether the Province has identified or has failed to identify any such areas, the Proponent is not relieved in any way from meeting the requirements of this RFP, and will not be relieved from meeting all requirements of the Definitive DBA, including by rectifying any non-compliances (material or otherwise) in its Proposal.

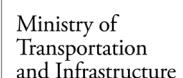
### **3.10 Debriefing**

Following the Effective Date or termination of this RFP Process, representatives of the Province will, upon request, meet with the Proponent and provide them with a debriefing. During this debriefing, the strengths and weaknesses of the Proponent's Proposal will be discussed.

### **3.11 Close Process**

#### **3.11.1 DBA – Finalize Terms and Close**

If the Province is satisfied with the Proposal submitted by the Proponent, and therefore does not require subsequent Proposals, the Province will invite the Proponent to enter



into final discussions to settle all terms of the DBA, based on the Proponent's Proposal, including any clarifications that the Proponent may have provided during the evaluation of the Proposal.

If for any reason and at any time, the Province determines that it is unlikely to reach final agreement with the Proponent, the Province may terminate the discussions with the Proponent and proceed in any manner that the Province may decide, in consideration of its own best interests, including:

- (a) terminating this RFP entirely and proceeding with some or all of the Project in some other manner, including using other contractors; and
- (b) terminating the DEWA in accordance with its terms and proceeding with some or all of the Project in some other manner, including using the same design team and/or other contractors.

Any final approvals required by the Province, including those described in Section 3.11.2 of this RFP, will be conditions precedent to the final execution or commencement of the DBA.

### 3.11.2 Authorizations, Orders, and Approvals

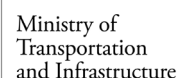
Without limiting any other term of this RFP, the execution of the DBA is subject to the issuance of all necessary Province and governmental authorizations, orders and approvals required in connection therewith, including the following:

- (a) any approvals required under the Financial Administration Act (British Columbia); and
- (b) 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 Proponent and the Province, as applicable, prior to execution of the DBA.

### 3.12 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 Proponent and such notice will constitute a notice of ineligibility for purposes of this Section 3.12 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 the Proponent;
- (b) any Proponent Team Member of the 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 the 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 the Proponent;
- (e) a receiver or receiver manager or other Person with similar powers is appointed of any property of any Proponent Team Member of the Proponent; or
- (f) any Proponent Team Member of the Proponent becomes a Restricted Person.

## 4 General Information and Instructions

### 4.1 Data Room

The Province has established a Data Room for the Project and this RFP Process. At any time and from time to time during this RFP 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. The Proponent is solely responsible for checking the Data Room frequently and on an ongoing basis to inform itself of any such updates. The Proponent is solely responsible for ensuring that it has software, which allows it 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.

### 4.2 Background Investigations, Surveys, and Studies

Investigations, surveys, and studies provided by the Province 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.

## 5 General Matters

### 5.1 Amendment or Cancellation of this RFP 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 Proposal 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 this RFP Process or the Project, the Proposal Deadline, or any of them, by adding to, reducing or otherwise modifying the evaluation process 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 the 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 Proponent execute and deliver the DBA, and then only to the extent expressly set out in the DBA.

### 5.3 No Obligation to Proceed or Make any Selection

The Proponent and each of its 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 this RFP 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 at 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 this RFP or the whole or any part or parts, including the scope, of the Project;
- (b) by delivery of a Termination Notice to the Proponent, at any time, for any reason whatsoever, including for reasons that the Province at its sole discretion considers to be in the interests of or advantageous to the Province, terminate this RFP, including if the Province elects in its sole discretion not to continue

negotiations with the Proponent to settle the DBA or elects in its sole discretion not to execute and deliver the settled form of DBA;

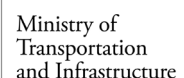
- (c) not accept, review, or evaluate any one or all of the Proposals;
- (d) not offer the Proponent the opportunity to enter into or award the DBA at all;
- (e) implement or issue any other procurement or other process for, or proceed in any other manner whatsoever, including using the Province's own forces, contractors, or authorities, with the whole or any part or parts of the Project; and
- (f) proceed, including in conjunction with any one or more of the activities, processes or works described in subsections 5.3 (g), (h) and (i) 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 terminates this RFP or cancels any part of this RFP, 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 (f) above, the Province may in its sole discretion:

- (g) terminate the DEWA in accordance with its terms, and through its assignment rights, have the same design team continue the design work, and proceed with some or all of the Project in some other manner, including using other contractors;
- (h) contract directly with any person for any or all matters related directly or indirectly to all or any part of the design, construction, operation, or financing in respect of all or any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project; and/or
- (i) contract directly with any one or more of any of the Proponent Team Members of the Proponent, or with any one or more of the sub-contractors, consultants, advisors or other Persons engaged by or through any of them, and no Proponent Team Member of the 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:

- (j) proceed with the Proponent, and the Province may attempt to finalize an agreement, including a DBA, as applicable, with the Proponent on terms, conditions, and as to scope acceptable to the Province; or
- (k) 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 Participation in this RFP Process

If:

- (a) the Proponent fails to observe any term of this RFP or to comply with any term of the Proponent Agreement;
- (b) the Proponent 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
- (c) the Province becomes aware through investigations or checks, or otherwise (including any information provided to the Province in a Proposal), of any:
  - (i) convictions or charges by a public body relating to the Proponent, Proponent Team Member or any of their respective Affiliated Persons related to inappropriate bidding practices or unethical behaviour in relation to a public procurement or broader public competitive selection process in any jurisdiction that:
    - 1. are related to the Project;
    - 2. may compromise the reputation or integrity of the Province or the British Columbia Government so as to affect public confidence in the Project;
    - 3. would contravene any applicable Laws; or
    - 4. could have a material adverse effect on the Proponent or a Proponent Team Member in a way which could impair the Proponent's or the Proponent Team Member's ability to perform any obligations of the Design-Builder under the Design-Build Agreement; or
  - (ii) 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, at its discretion at any time and from time to time, including during the review and evaluation of any Proposal:

- (d) determine that the Proponent is ineligible to continue to participate in this RFP;



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- (e) decline to or cease to review, evaluate or reject outright the Proponent's Proposal;
- (f) disqualify the Proponent; or
- (g) waive the failure or failures on such terms and conditions as the Province may at 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 at the Province's discretion is appropriate in respect of the RFP Process.

## 5.5 Conflicts in Documents

If the 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 3.2 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 the 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.

## 5.6 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 this Section 5.6 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 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.



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## 5.7 No Lobbying

The Proponent is to ensure that it 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, will not in relation to the Project, the Draft DBA, the Definitive DBA, the DBA, or this RFP, 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;
- (b) influencing, or attempting to influence, the outcome of this RFP, including the review and evaluation of Proposals, or any negotiations with the Proponent;
- (c) promoting the Proponent or its interests in the Project; and
- (d) commenting on or criticizing aspects of this RFP, the Project, and/or the DBA.

## 5.8 Disclosure

The following information has been or will be publicly disclosed at [Document Library – Highway 99 Tunnel Program](#) and/or at <https://www.infrastructurebc.com/>:

- (a) the name of the Proponent, and
- (b) the Relationship Review Process Description.

Additional information that may be publicly disclosed, subject to government policy and FOIPPA, by posting it at [Document Library – Highway 99 Tunnel Program](#) and/or at <https://www.infrastructurebc.com/> includes:

- (c) Volume 1 of this RFP.

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



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that may be severed pursuant to the FOIPPA, will be disclosed publicly following the Effective Date.

## **5.9 Changes to Proponent Team Members**

If for any reason the 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, at 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 at 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.



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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.

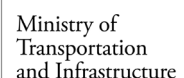
Such a change may not automatically render a Proponent ineligible so as to be disqualified from this RFP. The Province's decision at its discretion as to whether or not to disqualify a Proponent as a result of such a change will be final and binding.

### **5.10 Relationship Disclosure and Review Process**

The Province reserves the right to disqualify, at its discretion, the Proponent, if in the Province's opinion, the Proponent has an actual or perceived conflict of interest or unfair advantage against the Province or has a relationship that has the potential for creating an actual or perceived conflict of interest or unfair advantage against the Province, 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.

The Proponent will, by written notice addressed to the Contact Person, promptly after becoming aware of any such relationship, whether before or after delivery of the Proposal, fully disclose all relationships that the Proponent or any of its Proponent Team Members has or may have, with the 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 against the Province or has the potential for creating an actual or perceived conflict of interest or unfair advantage against the Province.

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 at 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 [Document Library – Highway 99 Tunnel Program](#) and/or at <https://www.infrastructurebc.com/>.

## 5.11 Relationships

### 5.11.1 Restricted Parties

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

- ▶ AMTG Consulting Ltd.
- ▶ Anthony Steadman and Associates Inc.
- ▶ BASIS Engineering Ltd.
- ▶ Bennett Jones LLP
- ▶ BlueSphere Services
- ▶ Boughton Law Corporation
- ▶ BTTC Canada Incorporated
- ▶ Charter Project Delivery Inc.
- ▶ Clark Wilson LLP
- ▶ COWI North America Ltd.
- ▶ DLA Piper (Canada) LLP
- ▶ DM Fourchalk Property Consultants Inc.
- ▶ EcoFish Research Ltd.
- ▶ Ernst & Young Orenda Corporate Finance Inc
- ▶ Farris LLP

- ▶ Gilmour Infrastructure Consulting
- ▶ Iterum Law Corporation
- ▶ Jasco Applied Services Ltd.
- ▶ Kirk & Co Environmental Services
- ▶ Klohn Crippen Berger Ltd.
- ▶ KPMG LLP
- ▶ Lucent Quay Consulting Inc.
- ▶ McTavish Resource Management Consultants Ltd.
- ▶ Michael Mooney Consulting LLC
- ▶ Mike Furey Consulting
- ▶ MP2 Enterprises Inc.
- ▶ Northwest Hydraulic Consultants Ltd.
- ▶ One-Eighty Consulting Group Inc.
- ▶ PBX Engineering Ltd.
- ▶ R.F. Binnie Associates Ltd.
- ▶ RAM Engineering Ltd.
- ▶ Steer Group Ltd.
- ▶ Stratice Consulting Inc.
- ▶ Turner & Townsend Canada Inc.
- ▶ Typlan Consulting Ltd.
- ▶ Westmar Advisors Inc.
- ▶ WMG Construction Management Services
- ▶ WSP Canada Inc.

- ▶ The Province, BCTFA, TI Corp, and 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 this RFP Process.

### 5.11.2 Use or Inclusion of Restricted Parties

The Province may, at its discretion disqualify the Proponent, or may permit the 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 any of its Proponent Team Members, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, and any other persons associated with any of them is a Restricted Party or if the Proponent, any of its Proponent Team Members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, and any other persons associated with any of them uses, directly or indirectly, a Restricted Party:

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

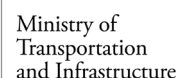
The Proponent is responsible to ensure that, in connection with the Proponent's participation in this RFP, neither it nor any of its Proponent Team Members nor any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any 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.

### 5.11.3 Conflict of Interest Adjudicator

Doug H. Hopkins of Boughton Law Corporation has been appointed as the Conflict of Interest 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.

### 5.11.4 Proponent Requests for Advance Rulings

The Proponent, a current or prospective Proponent Team Member or a current or prospective advisor or consultant to the 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 whom 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 the 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 RFP documents as a Restricted Party.

#### 5.11.5 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.

#### 5.11.6 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 the Proponent, 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.



## 5.12 Delivery and Receipt

The Proponent is solely responsible for ensuring that it has received the complete RFP. By submitting a Proposal, the 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 the Proponent or the Province, whether by email, by courier, by hand; 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 the 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.

## 5.13 Proponent Team Members and Subcontractors

The Proponent is responsible for ensuring 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.

## 5.14 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 the Proponent believes it 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, the Proponent or its 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 the Proponent or its 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 this RFP, the Draft DBA, the Definitive DBA, the DBA, Project Requirements or the Project, at any time or times during this RFP Process, including 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 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 the Proponent issued by the Province.

By submitting a Proposal, the 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 the Proponent from undertaking its own investigations and examinations, including as it consider necessary, desirable, beneficial, or appropriate, and developing its 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 its Proposal(s), 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 5.14 or any statements, representations, assurances, commitments or agreements which the Proponent believes it 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.

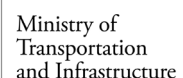
### **5.15 No Liability**

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 the Proponent, Proponent Team Member, prospective member of the 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 this RFP Process, or any part of this RFP Process, including this RFP, the Proposal or any Proposal, 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.

### **5.16 Dispute Resolution**

The Proponent 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 Process will continue despite any such ongoing dispute resolution.

### 5.17 Releases and Waivers

(a) The 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 the 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); and

(ii) releases, acquits and forever discharges the Releasees and each of them from any and all Claims;

arising out of, in connection with or relating in any way to this RFP or any one or more parts of this RFP Process, including matters or issues contemplated or considered in the decisions and rulings of the Conflict of Interest Adjudicator.

(b) The Proponent will indemnify, and where the 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 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 this RFP or any one or more parts of this RFP, including matters or issues contemplated or considered in the decisions and rulings of the Conflict of Interest Adjudicator, including in connection with the performance of the obligations of each of the Proponent Team Members of the Proponent under this RFP.

(c) Each of the Proponent Team Members of the 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 this RFP or any one or more parts of this RFP, including the Workshops and Topic Meetings and other consultative or facilitative or facilitated processes in this RFP Process;

(d) For the avoidance of doubt, this Section 5.17 shall not apply to Claims made under the Design Early Works Agreement.

## 5.18 Legal Advisor

DLA Piper (Canada) LLP (“**DLA Piper**”) is a Restricted Party. By submitting a Proposal, the Proponent, and each Proponent Team Member, expressly consents to DLA Piper continuing to represent the Province for all matters in relation to this RFP and the Project, including any matter that is adverse to the Proponent, or any Proponent Team Member or any of their respective related parties, despite any information of the Proponent, or any Proponent Team Member or any of their respective related parties, and any solicitor-client relationship that the Proponent, or any Proponent Team Member or any of their respective related parties, may have had, or may have, with DLA Piper in relation to matters other than this RFP and the Project. This Section 5.18 is not intended to waive any of the Proponent’s, or relevant Proponent Team Member’s, rights of confidentiality or solicitor-client privilege. The Province reserves the right at any time to waive any provision of this Section 5.18.



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## 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 the Proponent.

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.

**“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.

“**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.

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



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“**Conflict of Interest Adjudicator**” or “**COI Adjudicator**” has the meaning set out in Section 5.11.3 of Volume 1 of this RFP.

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

“**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.

“**DBA Price Proposal**” means the price proposed by the Proponent, substantially in the form set out in Form 2 in Volume 3 of this RFP, in its Proposal.

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

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

- (a) the Definitive DBA, as may be changed, modified or added to in accordance with 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, the DEWA RFP or as may be changed pursuant to this RFP.

“**Design Early Works Agreement**” means the agreement between the Proponent and the Province executed September 13, 2024.

“**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, the DEWA RFP or as may be changed pursuant to this RFP.

“**DEWA Deliverables Summary Report**” means the report, substantially in the form set out in Form 1, Volume 3 of this RFP, and submitted in accordance with this RFP.

“**DEWA RFP**” has the meaning set out in Section 1.2 of Volume 1 of this RFP.



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**“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.

**“Financial Submittal”** has the meaning set out Appendix A of this RFP

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

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

**“Interim Submittals”** means the submittals described in Section 3.3 of Volume 1 of this RFP.

**“Outstanding DEWA Works Plan”** means a plan setting out any DEWA Works that have not been completed as of the date of the Proposal.

**“Project”** or **“Fraser River Tunnel Project”** means the “Project” as defined in the Definitive DBA.

**“Proponent”** means the entity identified in Section 1.2 of Volume 1 of this RFP 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 an agreement substantially in the form set out in Appendix D to this RFP.

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

**“Proponent Team”** means, the Proponent and the Proponent’s Key Individuals, Design-Builder and Design Firm(s) as identified in the Proponent’s RFQ Response and the Notice of Continued Status issued under the DEWA RFP, as may have been changed pursuant to the RFQ or the DEWA RFP or as may be changed pursuant to this RFP.

**“Proponent Team Member”** means a member of a Proponent Team as may be changed pursuant to this RFP.

**“Proposal”** means the proposal (comprised of 3 packages as set out in Appendix A) submitted by the Proponent in accordance with this RFP.

**“Proposal Deadline”** means the date and time identified as such in the Summary of Key Information.

**“Proposal Validity Period”** has the meaning set out in Section 3.9.1 of Volume 1 of this RFP.

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

**“Relationship Review Process Description”** means the Relationship Review Process Description for Major Projects and Alternative Procurement posted by the Province at: [Document Library – Highway 99 Tunnel Program](#).

**“Releasees”** means and includes each of the Province, BCTFA, TI Corp, Infrastructure BC, 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.

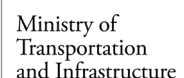
**“Representatives”** means the BCTFA, TI Corp, Infrastructure BC, the Conflict of Interest Adjudicator, or any of their or the Province’s respective elected officials, directors, officers, employees, servants, representatives, agents, consultants and advisors, and includes members of the Executive Council.

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

**“Response to Proponent”** or **“RTP”** is a written document specifically identified as a “Response to Proponent”.

**“Restricted Party”** means those persons (including their former and current employees) who had, or currently have, participation or involvement in this RFP Process or the design, planning or implementation of the Project, and who may provide a material unfair advantage or confidential information to the Proponent that would put the Province at a disadvantage.

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



**“RFP Process”** means the process from this RFP release to execution of the DBA.  
**“RFP Title”** means **“RFP – Fraser River Tunnel Project”** 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 14, 2023, titled “RFQ – Fraser River Tunnel Project”, including all “Addenda” thereto as defined in the RFQ.

**“RFQ Response”** means the Proponent’s formal response to the RFQ.

**“Submission Location”** means the submission location identified as such in the Summary of Key Information.

**“Technical Submittal”** has the meaning set out in Appendix A of this RFP.

**“TI Corp”** means the 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.

**“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 Proposal Guidelines

## 1. Proposal Guidelines Overview

This Appendix A and attachments describe the specific documentation that the Proponent is required to submit to satisfy the Proposal submission 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 is to comprehensively address the requirements set out in this RFP, including Appendix A and the Definitive DBA most recently issued prior to the Proposal Deadline.

## 2. Proposal Submission Requirements

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

### (a) Language

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

### (b) Delivery

The packages comprising the Proposal are to be received at the Proposal Submission Location before the Proposal Deadline.

### (c) Containers and Labeling

- 1) 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.
  - A.) 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.
- 2) 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.

(d) Format

- 1) 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.
- 2) Electronic files should be in the form set out in Table 1.

TABLE 1: ELECTRONIC FILE FORMATS

File Type	Software Package
Text base document	Adobe PDF format (unprotected and searchable)
Spreadsheet based document	Microsoft Excel (unprotected)
Graphic files	Adobe PDF format
Schedule files	Oracle Primavera P6

(e) Packages

Submit two complete electronic copies on separate USB flash drive(s) of the Proposal in the format described in the tables below, in the following file and directory structure:

- ▶ Package 1: Transmittal Package
- ▶ Package 2: Technical Submittal
- ▶ Package 3: Financial Submittal

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.

### 3. 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 the Proposal.

TABLE 2: TRANSMITTAL (PACKAGE 1)

Transmittal	
The transmittal package is to contain the following information and documents:	
1.	The Proponent Representative including name, employer, mailing address, telephone number and e-mail addresses, for all future communications between the Province and the Proponent;
2.	One (1) duly executed Proposal Certificate and Declaration in the form set out in Form 6 of Volume 3 of this RFP; and
3.	Overview table of contents for all parts of the Proposal.

TABLE 3: TECHNICAL SUBMITTAL (PACKAGE 2)

Section	Title	Contents
2.1 DEWA Works		
2.1.1	DEWA Deliverables Summary Report	Provide a DEWA Deliverables Summary Report, substantially in the form provided in Form 1 of Volume 3 of this RFP, for Stages 1 to 4 of the DEWA that form part of the Proposal.
2.1.2	Outstanding DEWA Works Plan	Provide an Outstanding DEWA Works Plan which includes a summary of outstanding DEWA Works items and plan for addressing those outstanding items (if there are no outstanding DEWA Works items, please specify);
2.2 Key Individuals		
2.2.1	Confirmation of Key Individuals	Provide confirmation that: a) the following Key Individuals, accepted by the Province, meet the qualification requirements set out in the Definitive DBA:



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Section	Title	Contents
		<ul style="list-style-type: none"> <li>i. Design-Builder’s Representative;</li> <li>ii. Design Director;</li> <li>iii. Construction Director;</li> <li>iv. Procurement Director;</li> <li>v. Immersion Director;</li> <li>vi. Safety Director;</li> <li>vii. Contractor Indigenous Relations Lead;</li> <li>viii. Environmental Director;</li> <li>ix. Quality Director;</li> <li>x. Communications and Engagement Director;</li> <li>xi. Traffic Manager;</li> </ul> <p>and</p> <p>b) that if 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 5.9 of Volume 1 of the RFP and that the qualification requirements in (a) are met. The Proponent will clearly identify each change.</p>
2.3 Design-Builder Organization		
2.3.1	Design-Builder Organization and Governance	A plan, including organizational chart(s), outlining the transition from the DEWA to the DBA as it relates to Project governance.



TABLE 4: FINANCIAL SUBMITTAL (PACKAGE 3)

Section	Title	Contents
3.1 DBA Financial Proposal		
3.1.1	DBA Price Proposal	Submit the DBA Price Proposal substantially in the form provided as Form 2
3.1.2	Confirmation of Proposal Validity	Confirmation all prices listed in the Proposal will remain valid for the period of at least 120 days after the Proposal Deadline.
3.1.3	Design-Builder Financial Management Plan	Submit a draft Financial Management Plan in accordance with Appendix 10H of Schedule 10 [Payments] of the Definitive DBA.
3.2 Insurance		
3.2.1	Insurance	Demonstrate the insurability of the Design-Builder and the Subcontractors by providing written undertakings substantially in the forms provided as Form 4 and Form 5 of Volume 3 of this RFP, from insurers licensed in Canada to provide the insurance coverage required by the Definitive DBA if the Proponent is awarded the DBA.
3.3 Financial Capacity		
3.3.1	Financial Statements	Provide financial statements, including: <ul style="list-style-type: none"> <li>a) The estimated value (and percentage) of the scope of work for each member of the Design-Builder, and if the Design-Builder is a joint venture, confirmation of the type of guarantee in effect and whether these are joint and several guarantees;</li> </ul>



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Section	Title	Contents
		<p>b) For each member of the Design-Builder that is not proposed to be guaranteed by a Design-Builder Guarantor:</p> <ul style="list-style-type: none"> <li>i. If not provided at the RFQ stage, copies of annual audited financial statements, the audit letters, and the notes to the financial statements, or other similar financial information, for the last three fiscal years (the entire annual report should not be provided);</li> <li>ii. if available, a copy of the interim financial statement for the last quarter or, if produced semi-annually the last half year, since the last annual audited financial statement provided in i) or, if not available, an explanation as to why;</li> <li>iii. details of any material off-balance sheet financing arrangements currently in place or, if none, a confirmation as such;</li> <li>iv. details of any material events that may affect the entity's financial standing since the last annual or interim financial statements provided or, if none, a confirmation as such;</li> <li>v. details of any credit rating, including any downgrades of credit rating since the RFQ stage, or if none, a confirmation as such;</li> <li>vi. details of any bankruptcy, insolvency, company creditor arrangement or other insolvency proceedings in the last 36 months, and any litigation or other material adverse</li> </ul>

Section	Title	Contents
		<p>proceedings (arbitration or regulatory investigations or proceedings) that are still outstanding that may affect the Design-Builder's or the Design-Builder Guarantor's (if any) ability to perform its obligations in relation to the Project or, if none, a confirmation as such; and</p> <p>vii. evidence of the Design-Builder's good standing with a Qualifying Bank in the form of a signed letter, from a senior officer of the Design-Builder's bank, or (an)other financial institution(s).</p> <p>c) For each member of the Design-Builder whose performance is proposed to be guaranteed by a Design-Builder Guarantor:</p> <p>i. Evidence, in the form of a signed letter from a senior officer of the Design-Builder Guarantor, of the Design-Builder Guarantor's willingness to act as a Design-Builder Guarantor; and a description of such guarantee; and</p> <p>ii. Items b)(i) to b(vii) above for the Design Builder Guarantor</p>

## APPENDIX B Evaluation of Proposals

### Part 1. Proposal Evaluation Process

The Province will evaluate the Proposal in accordance with this Appendix B of this RFP.

### Part 2. Technical Submittal (Package 2) Evaluation Criteria

Subject to the terms of this RFP the Province will determine whether the Province is satisfied that the Technical Submittal substantially satisfies the following requirements:

- (a) The provisions of this RFP, including the requirements set out in:
  - (i) Appendix A of this RFP; and
  - (ii) the Definitive DBA;
- (b) Demonstration the Proponent has a good understanding of the Project and the obligations of the Design-Builder under the Definitive DBA;
- (c) Demonstration the Proponent is capable of:
  - (i) performing the obligations and responsibilities of the Design-Builder; and
  - (ii) delivering the Project in accordance with the DBA.

The Province may accept or reject a Technical Submittal, negotiate with the Proponent, or terminate the process with the Proponent. If the Technical Submittal is not accepted by the Province, the Province will proceed as it determines, in its discretion, including inviting the Proponent to submit subsequent Technical Submittal(s).

### Part 3. Financial Submittal (Package 3) Evaluation Criteria

Subject to the terms of this RFP the Province will determine whether the Province is satisfied that the Financial Submittal substantially satisfies the following requirements:

- (a) The provisions of this RFP, including the requirements set out in:
  - (i) Appendix A of this RFP; and
  - (ii) the Definitive DBA; and
- (b) The DBA Price Proposal is efficient in consideration of market conditions at the time and represents value to the Province. The Province intends to utilize its cost support resources, and any other resources in its discretion, to review the DBA Price Proposal, this will include the Province having access to completed tender pricing prior to execution of the Design-Build Agreement.



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The Province may accept or reject a Financial Submittal, negotiate with the Proponent, or terminate the process with the Proponent. If the Financial Submittal is not accepted by the Province, the Province will proceed as it determines, in its discretion, including inviting the Proponent to submit subsequent Financial Submittal(s).



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## APPENDIX C Request for Information Form

### Fraser River Tunnel Project Request for Information/Clarification/Meeting

<b>Request Number</b> (Proponent name and sequential number)	
<b>Contact Name</b>	
<b>Date Raised</b>	
<b>Response Date Request</b>	
<b>Type of Request</b>	<input type="checkbox"/> Information <input type="checkbox"/> Clarification <input type="checkbox"/> Meeting
<b>Source of Query</b> (reference document section and date, if applicable)	
<b>Query (One query/request per sheet)</b>	
<b>Request Query to be Commercial in Confidence?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO

# APPENDIX D Proponent Agreement

**THIS PROPONENT AGREEMENT** made as of \_\_\_\_\_ **[Insert Date]**

His Majesty the King in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the “**Province**”)

Attention: Contact Person

Re: **Fraser River Tunnel Project** – Proponent Agreement in respect of the Request for Proposals for the Design Build Agreement issued by the Province on **[Insert Date]**, as amended or otherwise clarified from time to time, including by all Addenda (the “**RFP**”).

This letter agreement sets out the terms and conditions of the Proponent Agreement between **[Insert Proponent Name]** (the “**Proponent**”), **[Insert name of each Proponent Team Member]**, and any other parties who may become Proponent Team Members in accordance with the terms of the RFP, and the Province, pursuant to which the Proponent agrees with the Province as follows:

## 1.0 DEFINITIONS AND INTERPRETATION

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

## 2.0 PARTICIPATION

2.1 The Proponent and each of the Proponent Team Members agree that as a condition of participating in the RFP, including the Workshops and Topic Meetings and receiving access to the Data Room, the Proponent and the Proponent Team Members will comply with the terms of this Proponent Agreement and the terms of the RFP.

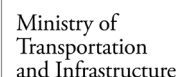
## 3.0 CONFIDENTIALITY

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

## 4.0 TERMS OF RFP

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

- (a) that the terms of the Proponent Agreement do not limit the obligations and requirements of the Proponent and the Proponent Team Members under the RFP,



any Data Room agreement, or any other document or requirement of the Province; and

- (b) to be bound by the disclaimers, limitations and waivers of liability and Claims and indemnities contained in the RFP, including Sections 5.15 [No Liability] and 5.17 [Releases and Waivers] of the RFP.

## 5.0 AMENDMENTS

5.1 The Proponent and the Proponent Team Members acknowledge and agree that:

- (a) the Province may, in its sole and absolute discretion, amend the RFP at any time and from time to time; and
- (b) by submitting a Proposal, the Proponent and the Proponent Team Members accept, and agree to comply with, all such conditions or amendments therein and, if the Proponent or the Proponent Team Members do not agree to any such conditions or amendments, the sole recourse of the Proponent and the Proponent Team Members is not to submit a Proposal.

## 6.0 GENERAL

- 6.1 *Survival following cancellation of the RFP.* Notwithstanding anything else in this Proponent Agreement, if the Province, for any reason, cancels the RFP, the Proponent and the Proponent Team Members agree that they continue to be bound by, and will continue to comply with, Section 3 of this Proponent Agreement.
- 6.2 The Province may in its sole discretion, on prior written notice to the Proponent and the Proponent Team Members, transfer or assign this Proponent Agreement to a permitted assignee of the Province's rights under the Design Early Works Agreement.
- 6.3 *Enurement.* This Proponent Agreement will enure to the benefit of and be binding upon the Province and its assigns and upon each of the Proponent Team Members and their respective successors and permitted assigns. For greater certainty, this Proponent Agreement will continue to be binding on each of the Proponent Team Members notwithstanding that it may subsequently cease to be a Proponent Team Member.
- 6.4 *Severability.* If any portion of this Proponent Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, then that portion will be severed and the remaining portion will remain in full force and effect.
- 6.5 *Entire Agreement.* This Proponent Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and cancel and supersede all prior proposals, agreements, understandings, representations, conditions, warranties, negotiations, discussions and communications, whether oral or written, statutory or otherwise, and whether express or implied, between the parties with respect to the subject matter of this Proponent Agreement.



- 6.6 *Applicable Law.* This Proponent Agreement is deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.
- 6.7 If the Proponent or any Proponent Team Member is a partnership (general or limited) or a consortium or joint venture:
- (a) each partner (general or limited) in the partnership and each of the entities comprising the consortium or joint venture, as the case may be, shall have executed this Proponent Agreement by its duly authorized representatives, both on behalf of the partnership, consortium or joint venture, as the case may be, and in its own behalf, in the same manner as if such partner or entity, as the case may be, was the sole party executing this Proponent Agreement; and
  - (b) if any partner or entity, as the case may be, has not executed this Proponent Agreement as required by subsection 6.7(a), this Proponent Agreement will be valid and binding on the partners and entities, as the case may be, who have executed this Proponent Agreement, each of whom by execution of this Proponent Agreement expressly agrees to be jointly and severally liable to the Province for the obligations that would have been assumed hereunder by the partner or entity, as the case may be, that has not executed this Proponent Agreement had it executed this Proponent Agreement.
- 6.8 By executing this Proponent Agreement, the Proponent and Proponent Team Members, and each entity comprising the Proponent or Proponent Team Members each hereby represents, warrants and agrees that:
- (a) it is jointly and severally liable, with each of the other entities comprising the Proponent and/or the Proponent Team Members, to the Province for all covenants, obligations and liabilities of the Proponent, or Proponent Team Member, as the case may be, set forth in this Proponent Agreement; and
  - (b) the signatories to this Proponent Agreement include all of the entities comprised in the Proponent and the Proponent Team Members.
- 6.9 Each of the Proponent Team Members will from time to time and upon the reasonable request of the Province make, do, execute, and deliver or cause to be made, done, executed and delivered all such further assurances, acts, instruments and documents as may be requested for the purpose of giving full force and effect to this Proponent Agreement.
- 6.10 The rights, powers and remedies conferred on the Province under this Proponent Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Proponent Agreement, under the RFP Process or any part thereof, at law or in equity or under statute, and the exercise by the Province in its discretion of any right, power or remedy will not preclude the later exercise of that same right, power

or remedy or the simultaneous or later exercise by the Province of any other right, power or remedy.

- 6.11 *Capacity to Enter Agreement.* The Proponent and each Proponent Team Member hereby represents and warrants, on its own behalf, that:
- (a) it has the requisite power, authority and capacity to execute and deliver this Proponent Agreement;
  - (b) this Proponent Agreement has been duly and validly executed and delivered by it or on its behalf by its duly authorized representatives; and
  - (c) this Proponent Agreement constitutes a legal, valid and binding agreement enforceable against it in accordance with its terms.
- 6.12 The Province may in its sole discretion request any party executing this Proponent Agreement to provide, and on such request such party will deliver to the Province, proof, in a form and content satisfactory to the Province in its sole discretion, that any signatory to this Proponent Agreement on behalf of such party had the requisite authority to execute this Proponent Agreement on behalf of and to bind such party and that this Proponent Agreement has been duly and validly executed and delivered by or on behalf of such party and constitutes a legal, valid and binding agreement enforceable against such party in accordance with its terms.
- 6.13 This Proponent Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the parties to this Proponent Agreement will constitute a full, original and binding agreement for all purposes. Counterparts may be executed in original, or electronic scanned or PDF file type.
- 6.14 *Headings.* The use of headings is for convenience only and headings are not to be used in the interpretation of this Proponent Agreement.
- 6.15 *Gender and Number.* In this Proponent Agreement, words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa.
- 6.16 *Including.* The word including when used in this Proponent Agreement is not to be read as limiting.

Yours truly,

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Authorized Signatory

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Full Name and Title

**<> [insert legal name(s) and appropriate signature block(s) for the Proponent and each Proponent Team Member]**



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## SCHEDULE 1 TO PROPONENT AGREEMENT CONFIDENTIALITY CONDITIONS

**1. Definitions.** In these confidentiality conditions:

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



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or any other person contributing to or involved with the preparation or evaluation of Proposals or proposals or otherwise retained by the Receiving Party, the Province, TI Corp or Infrastructure BC in connection with the Project.

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



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Corp or Infrastructure BC may be irreparably harmed if any provision of this Schedule 1 were not performed by the Receiving Party or any party to whom the Receiving Party provides Confidential Information in accordance with its terms, and that any such harm could not be compensated reasonably or adequately in damages. The Receiving Party further acknowledges and agrees that the Province will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any provision of this Schedule 1 by the Receiving Party or any of its Representatives, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the Province may be entitled at law or in equity.

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



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