

# PROVINCE OF BRITISH COLUMBIA

## REQUEST FOR PROPOSALS

### OKANAGAN LAKE NEW CROSSING SERVICES

May 31, 2004



Ministry of  
Transportation



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**SCHEDULES:**

Schedule One:	Commercial Proposal Submission Requirements
Schedule Two:	Commercial Evaluation Criteria
Schedule Three:	Technical Proposal Submission Requirements
Schedule Four:	Technical Evaluation Criteria
Schedule Five:	Alternate Proposal Submission Requirements
Schedule Six:	Agreement with the City of Kelowna
Schedule Seven:	List of Restricted Parties

**FORMS:**

[To follow]

## SUMMARY OF KEY INFORMATION

This summary has been prepared for the ease of reference of RFP Proponents. RFP Proponents are responsible to ensure that they have received and fully understood the complete RFP as listed in the table of contents of this RFP, including all Addenda.

<b>RFP Title</b>	<b>REQUEST FOR PROPOSALS, Okanagan Lake New Crossing Services</b> Use the above title on all correspondence
<b>Contact Person</b>	<b>Maria Ciarniello</b> Project Liaison Officer Partnerships British Columbia Inc. Suite 1250 – 999 West Hastings Street Vancouver, British Columbia V6C 2W2  Email Address: <a href="mailto:Maria.Ciarniello@gems7.gov.bc.ca">Maria.Ciarniello@gems7.gov.bc.ca</a> Fax Number: (250) 356 2222
<b>Meetings with RFP Proponents</b>  <b>See Section 5.5</b>	Scheduled for June – July, 2004, subject to change.
<b>Submission Time</b>  <b>See Section 6.3</b>	2:00:00 p.m. Pacific Time on November 1, 2004.
<b>Submission Location</b>  <b>See Section 6.1</b>	Partnerships British Columbia Inc. Suite 1250 – 999 West Hastings Street Vancouver, British Columbia V6C 2W2
<b>Document Viewing</b>  <b>See Section 6.5</b>	Data Room (Restricted Area)

**REQUEST FOR PROPOSALS**  
**OKANAGAN LAKE NEW CROSSING SERVICES**  
**PART ONE – THE PROJECT**

**1. INTRODUCTION**

Capitalized words in this document have the meanings defined in Section 10.

**1.1. Key Project Objectives**

The Province has a number of objectives in respect of the Project.

1.1.1 Ministry of Transportation’s Service Plan

The high level objectives outlined in the Ministry of Transportation’s Service Plan 2003/04 – 2005/06 are:

- (a) British Columbia is provided with a safe and reliable highway system.
- (b) Key transportation infrastructure is improved to drive economic growth.
- (c) Improved competitiveness for British Columbia’s transportation industries.
- (d) Achieve excellence in customer service and be recognized as a good employer.

1.1.2 Specific Project Objectives

The overriding objective of the Project is to replace the aging Existing Bridge with a New Crossing thereby providing the Province and the public with a reliable service based on the fundamental concept of receiving value for money through the transfer of risks and rewards to the successful RFP Proponent. More specifically the objectives are:

- (a) to deliver a new cost effective service which will provide capacity to satisfy medium term traffic demand to at least 2018-2023, and longer term demand if possible;
- (b) to provide improved safety to the public (vehicular, pedestrian and cyclists);
- (c) to provide improved public convenience for marine and highway traffic;
- (d) to deliver new service levels as soon as possible;
- (e) to ensure that the Existing Bridge continues to serve traffic demand while the New Crossing is constructed;
- (f) to deliver the new service levels in a manner which achieves value for money; and

- (g) to optimize asset condition over the long term and ensure that any assets meet minimum acceptable condition levels in view of their design life.

## 1.2 RFP Objectives

The objective of this RFP is to elicit Proposals from RFP Proponents in accordance with the Commercial Proposal Submission Requirements and Technical Proposal Submission Requirements.

Partnerships BC, on behalf of the Province of British Columbia, has initiated a competitive process for the Project involving the provision of services, which may incorporate the design, build, finance, maintenance and operation of a New Crossing and eventual removal of the Existing Bridge, on the basis of Performance Payments.

The Request for Expressions of Interest for the Project was issued in October 2003, followed by the Request for Qualifications in December 2003.

The following RFQ Proponents, in alphabetical order, have been selected to advance to this RFP stage to submit Proposals:

- (a) Bouygues Travaux Publics;
- (b) Okanagan Bridge Group, led by Flatiron Constructors; and
- (c) SNC-Lavalin.

Only these selected RFQ Proponents are eligible to participate in this RFP stage and submit Proposals.

At the end of this RFP stage, the Province will determine which, if any, RFP Proponents will proceed to an optional Best and Final Offer (“BAFO”) stage in accordance with the provisions of this RFP. If there is a BAFO stage, the Preferred Proponent will then be selected based on the BAFO Proponents’ “Best and Final Offers”. If there is no BAFO stage, a Preferred Proponent will be selected based on this RFP. The Province may disclose the identities of the BAFO Proponents and/or the identity of the Preferred Proponent.

**This RFP is an invitation to treat and not a tender or an offer and there is no intention by the Province to make an offer by releasing this RFP.**

## 1.3 RFP Layout

- (a) The main body of this RFP is divided as follows:
  - (i) Part 1 describes the Project.
  - (ii) Part 2 describes the Selection Process.
  - (iii) Part 3 describes the RFP Process.

- (iv) Part 4 describes the Evaluation Process.
  - (v) Part 5 describes Relationships and Disclosure.
  - (vi) Part 6 contains the General Conditions and Glossary of Terms.
- (b) The Schedules are set out after the main body of this RFP and form part of this RFP.
- (c) The various forms referred to in this RFP and set out after the main body and Schedules of this RFP are part of this RFP.

## 2. BACKGROUND

The Existing Bridge, one of the few floating highway bridges in North America, was completed in 1958, extending Highway 97 from the City of Kelowna to communities in the South Okanagan. It is the most congested section of highway in the interior of British Columbia. The Existing Bridge has three-lanes and is 880 metres long with a lift span for marine traffic at the east end as well as a small fill abutment area, and a causeway at the west end. At both ends of the floating section there are 53-metre transition spans which connect the fixed land piers to a pontoon string which is 638 metres long. The Existing Bridge has been instrumental in the growth of the central Okanagan including communities and neighbourhoods on the west side of Okanagan Lake. It is the only bridge to cross Okanagan Lake and it is an essential part of the Okanagan regional transportation system. The Existing Bridge primarily serves Kelowna, the largest city in the Okanagan and a popular tourist destination, on the east approach and the Westbank community, including the Westbank First Nation, on the west approach. The Existing Bridge also became a key link for traffic to and from the Lower Mainland when the Okanagan Connector was completed in 1991.

The Existing Bridge is currently operating well over its capacity during peak periods with “Summer Average Daily Traffic” exceeding 50,000 vehicles per day. Further information is available in the Data Room.



## **2.1 Project Overview**

The Project is to deliver the Services, including:

- (a) operation and maintenance of the Existing Bridge pending the completion of the New Crossing, and the eventual Decommissioning of the Existing Bridge;
- (b) design, build, commissioning and testing of the New Crossing, and operation and maintenance of the New Crossing;
- (c) operation and maintenance of the Westside Works; and
- (d) financing of all such activities.

## **2.2 West and East Approaches**

The Province is responsible for ensuring interchange(s) are constructed on the west approach to facilitate traffic for the New Crossing. The Province is currently negotiating with the Westbank First Nation regarding options for delivery and concepts for the required road works on the west approach to the New Crossing. If these negotiations are successful, it is likely the Westbank First Nation will be responsible for delivery of the west approach.

If the works on the west approach are not delivered as specified in the Revised Concession Agreement on the date the New Crossing is commissioned, the Concession Agreement will specify how the traffic volume component of the Payment Mechanism will be adjusted.

Discussions between the Province and the Westbank First Nation have been limited to the west approach as a distinct segment of this Project. The Westbank First Nation has not been privy to any information regarding procurement of New Crossing Services that would provide it with an unfair competitive advantage and is therefore not considered a Restricted Party by the Province.

RFP Proponents may enter into discussions and reach agreement with the Westbank First Nation on any matter related to their Proposals. Each RFP Proponent by submitting a Proposal agrees that it will not enter into any agreement with the Westbank First Nation that prevents or restricts directly or indirectly any other RFP Proponent from dealing with or entering into an agreement with the Westbank First Nation in any way. RFP Proponents should make initial contact with the Westbank First Nation through the Contact Person. The Province may reject any Proposal from an RFP Proponent who acts contrary to this paragraph.

Improvements to the road network on the east side of the Existing Bridge are also integral to the Project. The Province and the City of Kelowna have been in discussions since the mid 1990s regarding the need for improvements to the Existing Bridge to handle increasing traffic. The City has identified improvements to its road network to handle growth anticipated in its boundaries that complement the capacity of the New Crossing.

These improvements included a one-way couplet utilizing Water/Pandosy Streets and Richter Street. As a result of public consultation the previously planned couplet has been removed from the City's Official Community Plan by Council. The Province and the City of Kelowna

subsequently signed an agreement on May 28, 2004, provided in Schedule Six of the RFP, to provide alternate improvements which achieve traffic volumes on the east side equivalent to those achieved by the earlier proposed couplet.

If the improvements necessary to achieve traffic volumes on the east side of the New Crossing equivalent to those achieved by the earlier proposed couplet are not delivered as specified in the Revised Concession Agreement on the date the New Crossing is commissioned, the Concession Agreement will specify how the traffic volume component of the Payment Mechanism will be adjusted.

RFP Proponents may enter into discussions and reach agreement with the City of Kelowna on any matter related to their Proposals. Each RFP Proponent, by submitting a Proposal, agrees that it will not enter into any agreement with the City of Kelowna that prevents or restricts directly or indirectly any other RFP Proponent from dealing with or entering into an agreement with the City of Kelowna in any way. RFP Proponents should make initial contact with the City of Kelowna through the Contact Person. The Province may reject any Proposal from an RFP Proponent who acts contrary to this paragraph.

### **3. OVERVIEW OF CONCESSION AGREEMENT**

The Concession Agreement is the principal document that the Province and the Concessionaire will enter into in respect of the Project. The Draft Concession Agreement is subject to change during the RFP and BAFO stages as described in this RFP. The following is an overview of some of the key provisions of the Draft Concession Agreement.

#### **3.1 Parties**

The parties to the Draft Concession Agreement are intended to be the Province, including BCTFA, and the Concessionaire.

#### **3.2 Term**

The initial Term will either be 30 years or 40 years, with the possibility of future extensions, depending on the Proposal that is selected by the Province.

#### **3.3 Performance Payments**

##### **3.3.1 Introduction**

The underlying principle in the development of the Payment Mechanism is to achieve the objectives of the Province in an efficient and effective manner. The approach used in the Project is to compensate the Concessionaire based on Services provided rather than specifying how the Service is delivered. A detailed description of the Payment Mechanism is provided in a schedule to the Draft Concession Agreement. The Payment Mechanism has been designed so that its components are:

- (a) cost effective;
- (b) practical to implement;
- (c) manageable by the Concessionaire;
- (d) measurable; and
- (e) independently verifiable.

##### **3.3.2 Overview**

There are two distinct periods regarding the delivery of the Project:

- (a) the Original Service Period during which the New Crossing will be designed, built, commissioned and tested, and the Existing Bridge will be operated and maintained; and
- (b) the Enhanced Service Period during which the Existing Bridge is Decommissioned, and the New Crossing is operated and maintained until the end of the Term.

The Province recognizes the different service levels with respect to the two periods and intends to compensate the Concessionaire accordingly. The proportion of payments with respect to each period is summarized in the following table:

<b>Description</b>	<b>Indicative % of Total NPV Payments over the Term</b>
1. Original Service Payments	
Availability Payments	1-3%
2. Enhanced Service Payments, comprising:	
Availability Payments	60-70%
Traffic Volume Payments	25-30%
Safety Performance Payments	3-5%
Customer Satisfaction Payment	0.5-1%
3. End of Term Payment	1-3%

RFP Proponents are required to submit a payment schedule that conforms to the Payment Mechanism. However, during this RFP stage, RFP Proponents will be given the opportunity to propose variations to the Payment Mechanism that achieve the same objectives.

### 3.3.3 Original Service Payments

A portion of the total payments will be made during the Original Service Period to encourage efficient operation and maintenance of the Existing Bridge and to minimize construction disruption. The payments will be linked to the operation of the Existing Bridge and availability of traffic lanes during the Original Service Period. These payments will be reduced if the Concessionaire fails to meet the minimum performance requirements for the operation, maintenance and availability of the Existing Bridge.

### 3.3.4 Enhanced Service Payments

#### (a) Availability Payments

The Concessionaire will receive payments, in accordance with the Concession Agreement for providing available lanes in the Concession Highway Land, which meet the requirements for the Project. The Concessionaire is encouraged to maximize lane availability, particularly during periods of high traffic volumes.

The Concessionaire is encouraged to schedule operations and maintenance, and asset rehabilitation, in periods to minimize traffic disruptions. In addition, the Concessionaire is encouraged to respond in a timely manner to unscheduled events such as breakdowns and accidents as efficiently as possible to maximize lane availability.

The availability payments will be reduced if the Concessionaire fails to meet the performance specifications with regards to the operations, maintenance and asset rehabilitation of the Concession Highway Land or if the Concession Highway Land is deemed to be unavailable for a period of time.

(b) Traffic Volume Payments

The Province has commissioned studies which indicate that there is strong traffic demand for crossing Okanagan Lake. Demand is limited by supply constraints, both in respect to the Existing Bridge and the feeder and approach roads. The Province therefore wishes to transfer an appropriate level of traffic volume risk and reward to the Concessionaire in order to optimize traffic capacity of the New Crossing and approach roads over the Term.

The Province intends to make payments for incremental traffic over and above current traffic volumes using traffic bands based upon traffic forecasts. The Concessionaire will receive compensation in the form of a per-vehicle rate, in accordance with the Concession Agreement.

(c) Safety Performance Payments

The Concession Highway Land currently experiences an accident rate much higher than the Provincial average. A key objective for the Project is to improve safety performance, through design, operation and maintenance initiatives. The Province believes that the accident rate can be substantially reduced and wishes to provide incentives for the Concessionaire to focus on safety. The Concessionaire will receive safety performance payments which are directly linked to the safety performance of the Concession Highway Land.

(d) Customer Satisfaction Payment

One of the goals for the Ministry of Transportation as stated in their service plan, is to achieve excellence in customer service. A small portion of the payments will be made in relation to the satisfaction of the Services provided to users measured through surveys to encourage the Concessionaire to optimize the service levels.

### 3.3.5 End of Term Payment

The Province has specified a 75-year service life for the New Crossing and wishes to provide incentives to the Concessionaire to ensure that the assets are able to achieve their designed service life.

The Concessionaire will receive an End of Term Payment at the end of the Term, which is directly linked to the End of Term asset condition of the Concession Highway Land. The Concessionaire will receive the full End of Term Payment amount at the end of the Term, if an independent asset report concludes that the asset meets the pre-determined asset condition requirements. If the asset condition requirements are not achieved, the End of Term Payment will be adjusted accordingly to reflect the differences between the actual asset condition versus the pre-specified asset condition. The End of Term Payment may be satisfied by negotiations or extensions or other commercial arrangements.

The Province recognizes that there will be normal “wear and tear” for the New Crossing, and would expect the asset condition to depreciate over time. The Province has developed a manual which provides a guideline with respect to acceptable asset condition relative to time.

### 3.3.6 Payment Retention

The Province wants to ensure that the Services are provided and assets maintained in the manner proposed by the Concessionaire.

A portion of payments made to the Concessionaire will be retained if:

- (a) the Concessionaire does not achieve final completion of the New Crossing by the date specified in the Concession Agreement; or
- (b) the assets on the Concession Highway Land do not meet the pre-determined asset condition requirements.

The payment retention will be returned to the Concessionaire when issues resulting in retentions are rectified.

## 3.4 Allocation of Project Risks

The proposed allocation of risks relating to the Project between the Concessionaire and the Province is set out in the Draft Concession Agreement.

## 3.5 Functional Requirements

The proposed Functional Requirements are set out in the Draft Concession Agreement.

## 3.6 End of Term Provisions

The proposed terms and conditions for the End of Term are set out in the Draft Concession Agreement.

## 3.7 Work by Concessionaire

The Concessionaire will be responsible for the implementation of the Project, in accordance with the Project Schedule and Functional Requirements, for the purposes of providing the Services:

Without limiting the generality of the Concessionaire's responsibilities, the Concessionaire will be responsible for ensuring the timely and complete delivery of the New Crossing in the manner described in the Concession Agreement. The implementation of the Project must at all times comply with all governing laws and with the permits and regulations of the various approving authorities having jurisdiction over the provision of the Project.

More details on the work by the Concessionaire can be found in the Draft Concession Agreement.

### **3.8 Work by Others**

Certain work may periodically be performed by others within or near the Concession Highway Land during the Term. The Concessionaire will co-operate fully with others working in the Concession Highway Land with respect to:

- (a) causeway fill and preload (if not complete);
- (b) Westside Works; and
- (c) utilities work.

More details on the status and timing of the work by others can be found in the Draft Concession Agreement.

### **3.9 Concession Highway Land**

RFP Proponents must ensure that any design put forward in their Proposals can be constructed within the Proposed Right of Way or that they have obtained firm commitments from the owners of any additional land to make that land available for the purposes of the Project.

It is envisaged that the Province will cause to be leased to the Concessionaire for the Term the land contained in the Proposed Right of Way, subject to utility and other reservations, and such other terms and conditions as may be set out in the lease. Rights of access to the land on the west side of the New Crossing may be conferred by way of a licence commencing from the operation and maintenance of the Westside Works to the end of the Term.

### **3.10 Community Relations**

The Project represents an important infrastructure commitment by the Province which impacts local and regional communities and various interested parties. Accordingly, a comprehensive and effective communications and community relations plan is essential to the success of this Project over the short and long-term.

The Concessionaire should undertake community relations and communications as a shared responsibility with the Province. In executing its responsibilities, the Concessionaire will be required to communicate in a timely and comprehensive manner with the Province, approving authorities and interested parties as necessary during the Term to ensure uninterrupted delivery of Services.

### **3.11 Traffic Management Communications**

Expertise is required to manage delay and closure communications during construction and during operations and maintenance. The commitment to the community and users of the New Crossing is that the Project will minimize disruption and maximize predictability for users.

The Province will be responsible for and take the lead in traffic communications prior to execution of the Concession Agreement.

After the execution of the Concession Agreement, the Province will be primarily responsible for traffic management communications but will work with the Concessionaire to share the responsibility during a transition period of one year, commencing with the start of the Original Service Period. The Concessionaire will gradually take on an increased role and will arrange appropriate staffing and training in order to become fully responsible for all traffic management communications.

It is expected that the Concessionaire will submit an annual work plan to the Province describing how traffic communications will be managed, and how performance standards will be met. It is further expected that best practices in traffic management communications will be used including use of advertising construction-related closures in radio and print, community notifications as appropriate and an opportunity for the community to have a point of contact such as a website, telephone line and/or radio channel.

The Province will monitor the performance of the Concessionaire to ensure that communication performance standards are met.

### **3.12 Media Relations**

The Concessionaire will be responsible for effectively coordinating responses to media queries with the Province to ensure positive and timely relations with the media. The lead role in media relations will remain with the Province.

## PART TWO - THE SELECTION PROCESS

### 4. OVERVIEW

#### 4.1 Selection Process Stages

The Selection Process stages include:

- (a) the Request for Expressions of Interest (“REOI”) stage;
- (b) the Request for Qualifications (“RFQ”) stage;
- (c) this Request for Proposals (“RFP”) stage;
- (d) an optional Best and Final Offer (“BAFO”) stage; and
- (e) a Concession Agreement and other Project Document finalization and Financial Close process.

The anticipated schedule for the Selection Process is set out below.

#### RFP Timetable

Selection Process	Anticipated Date
REOI	Completed
RFQ	Completed
RFQ Response Submission Date	Completed
Issue this RFP	Completed
Issue Draft Concession Agreement	June 2004
Receive Feedback from RFP Proponents on Proposed Preload	July 15, 2004
Receive Requests for Clarification and Requested Amendments from RFP Proponents on Draft Concession Agreement	July 19, 2004
Meetings with RFP Proponents	June and July, 2004
Issue Revised Concession Agreement	August, 2004
Proposal Submission Date	November 1, 2004
Select Preferred Proponent or BAFO Proponents	January, 2005
Issue Instructions for BAFO	January, 2005
Select Preferred Proponent after BAFO	March, 2005

The Province may change any anticipated date at any time by notice in writing to the RFP Proponents.

#### **4.2 This RFP Stage**

The purpose of this RFP stage is to obtain from RFP Proponents complete and comprehensive Technical Proposals and Commercial Proposals. At the end of this RFP stage, at the option of the Province, two RFP Proponents may be selected to advance to the BAFO stage of the Selection Process. The selection of the BAFO Proponents will be made in accordance with the Evaluation Criteria.

The Province may in its discretion decide not to proceed to BAFO and to select a Preferred Proponent at the conclusion of the RFP stage. If the Preferred Proponent is selected at the end of this RFP stage, it is anticipated that the Preferred Proponent will be required to:

- (a) enter into a binding agreement to participate in the contract finalization and Financial Close process, and
- (b) provide either a deposit or security for the performance of that binding agreement, to be refundable on the execution of a Concession Agreement by the Preferred Proponent,

within a time period that will be specified in the notice of its selection as the Preferred Proponent.

#### **4.3 The BAFO Stage**

If the Province decides to proceed with a BAFO stage, it will notify the RFP Proponents selected and will issue instructions regarding the BAFO stage process.

The Province may require the BAFO Proponents to provide a deposit or security.

The Province intends to select a Preferred Proponent at the end of the BAFO stage.

#### **4.4 Concession Agreement Finalization and Financial Close**

After the Preferred Proponent has been notified, the Province and the Preferred Proponent will enter into discussions and negotiations to finalize the Concession Agreement and its schedules for execution.

If the Preferred Proponent and the Province are unable to finalize the Concession Agreement and its schedules for execution within a time period that will be specified in the notice of its selection as the Preferred Proponent, the Province may terminate discussions and negotiations with the Preferred Proponent. The Province may then select the other BAFO Proponent as the Preferred Proponent, or, if there has not been a BAFO stage, another RFP Proponent, to enter into discussions and negotiations to finalize the Project Documents.

## **PART THREE - THE RFP PROCESS**

### **5. THE RFP PROCESS**

As a condition of participating in this RFP process, each RFP Proponent expressly agrees that this RFP is an invitation to treat and no contract of any kind is formed under, or arises from, this RFP or the submission of Proposals, and that no legal obligations will arise out of this RFP or the Proposals prior to the signing of the Concession Agreement. Notwithstanding the generality of the foregoing, however, each RFP Proponent expressly agrees that the terms of the RFP Proposal Form, the Confidentiality Undertaking, the dispute resolution provisions in this RFP and any other document signed by the RFP Proponent as a part of this RFP process will bind the RFP Proponents and will survive the submission of Proposals.

#### **5.1 RFP Components**

The RFP stage includes:

- (a) issuance of this RFP;
- (b) issuance of the Draft Concession Agreement;
- (c) submission of written comments on the Draft Concession Agreement;
- (d) meetings with RFP Proponents;
- (e) issuance of Revised Concession Agreement;
- (f) submission of Proposals;
- (g) evaluation of Proposals; and
- (h) selection of BAFO Proponents or Preferred Proponent.

#### **5.2 Issuance of Draft Concession Agreement**

A Draft Concession Agreement will be issued to RFP Proponents. RFP Proponents should read this RFP with attached Schedules together with the Draft Concession Agreement and its schedules. RFP Proponents are required to keep the Draft Concession Agreement confidential as provided in the Confidentiality Undertaking.

#### **5.3 Written Comments on Draft Concession Agreement**

The Province invites RFP Proponents to provide written comments on the Draft Concession Agreement that:

- (a) seek clarification of the Draft Concession Agreement;
- (b) identify any Essential Amendments necessary to the participation of an RFP Proponent in the Project, with reasons for the changes; and

- (c) propose any Requested Amendments to the Draft Concession Agreement.

All requests for clarification and amendments must be in writing and must be submitted to the Contact Person in accordance with Section 6.1 on or before the date set out in the RFP Timetable.

#### **5.4 Revised Concession Agreement**

The Province will consider all written requests for clarification and amendments received from RFP Proponents and discussions at the meetings with RFP Proponents discussed in the following section.

The Province may also consult with third parties after the issuance of this RFP with respect to amendments to the Draft Concession Agreement. In consulting with third parties, the Province will not disclose the source of proposed amendments, and will keep all consultations confidential.

The Province will then issue a Revised Concession Agreement, in accordance with the RFP Timetable, to all RFP Proponents incorporating such changes as the Province deems appropriate. This Revised Concession Agreement will then form the basis of Base Case Proposals.

#### **5.5 Meetings with RFP Proponents**

The Province may hold meetings that include all RFP Proponents.

The Province or an RFP Proponent may request individual meetings which will be held on a confidential basis as described below. The Province or RFP Proponents will provide a written agenda in advance of any meeting outlining the topics to be discussed. These meetings are intended to, among other things:

- (a) clarify any issues relating to the Draft Concession Agreement;
- (b) clarify any issues relating to the Project;
- (c) clarify the provisions relating to Performance Payments;
- (d) discuss the Alternate Proposals being considered by that RFP Proponent; and
- (e) discuss any other issues pertaining to this RFP.

The Province will request the presence of the Fairness Auditor at these meetings.

Neither verbal information nor written information disclosed at any meeting forms a part of this RFP. The Province may expressly incorporate into this RFP any such information by Addendum. RFP Proponents must rely solely on the terms of this RFP and any Addenda issued by the Province in the preparation of their Proposals.

## **5.6 Site Visit**

At the request of RFP Proponents, the Province will arrange individual site visits to the Existing Bridge for each RFP Proponent.

## **5.7 Base Case Proposals**

The Province is seeking Base Case Proposals which conform to all requirements of this RFP. Base Case Proposals will ensure that there is a benchmark for evaluation of Proposals. The Province does not wish to constrain the scope for innovation by RFP Proponents and RFP Proponents are, therefore, free to submit Alternate Proposals.

Base Case Proposals and Alternate Proposals will both be evaluated against the Evaluation Criteria. The Province may choose to select any Base Case Proposal or Alternate Proposal to proceed to the BAFO stage of the Selection Process or to select the Preferred Proponent. If two RFP Proponents are selected to proceed into a BAFO stage, the Province may evaluate any Base Case Proposal or Alternate Proposal offered by the BAFO Proponents.

A Base Case Proposal means a Proposal that meets all the requirements and specifications set out in this RFP including:

- (a) submission of a complete proposal in the format set out in Section 6.2;
- (b) conforming with all aspects of the Commercial Proposal Submission Requirements set out in Schedule One;
- (c) conforming with all aspects of the Technical Proposal Submission Requirements set out in Schedule Three;
- (d) conforming with the Payment Mechanism Requirements set out in a schedule to the Revised Concession Agreement;
- (e) conforming with Functional Requirements set out in a schedule to the Revised Concession Agreement;
- (f) providing a black-lined Revised Concession Agreement that does not change the risk transfer profile of the Project.

It is mandatory that RFP Proponents submit a Base Case Proposal with a 30 year Term, for evaluation in accordance with the Evaluation Criteria.

RFP Proponents are requested but are not required to submit a Base Case Proposal with a 40 year Term, for evaluation in accordance with the Evaluation Criteria.

## 5.8 Alternate Proposals

The Province wishes to provide the opportunity for RFP Proponents to submit Alternate Proposals that may incorporate creative and innovative means to achieve the objectives of the Project as set out in Section 1.1.2.

RFP Proponents may, but are not required to, submit Alternate Proposals. Each RFP Proponent may submit any number of Alternate Proposals, which may consist of alternative commercial terms including alternative Payment Mechanisms, alternative Terms or other commercial arrangements at the end of the Term, alternative legal provisions, alternative risk transfer, alternative forms of land ownership, alternative design specifications and performance specifications which the RFP Proponent believes may offer enhanced benefits and value for money of the Project to the Province compared to the Base Case (after taking into account the cost of any risks retained by the Province). The onus will be on RFP Proponents to demonstrate the reasons why they believe their Alternate Proposals offer enhanced benefits and value for money.

Alternative Proposals must be submitted in accordance with the Alternate Proposal Submission Requirements.

### 5.8.1 Unacceptable Alternate Proposals

It is the intent of the Province to consider Alternate Proposals that materially satisfy and conform to the objectives of the Project as set out in section 1.1.2. Any Alternate Proposal which fails to meet these objectives may be rejected.

It is strongly recommended that RFP Proponents submit confidential enquiries to the Province regarding Alternate Proposals as set out in Section 5.8.2 below if in any doubt as to whether such Alternate Proposals may be of interest to the Province.

Alternate Proposals will not be considered that involve:

- (a) performance characteristics that do not meet the minimum service requirements as defined in the Operation and Maintenance Requirements and Specifications of the Draft Concession Agreement;
- (b) alternate technical solutions which put public safety at risk;
- (c) any Proposal that requires the Province to retain Design or Construction risk;
- (d) any Price Proposal that indexes the majority of payments to inflation;
- (e) any Proposal which includes a guaranteed minimum payment stream to the RFP Proponent from the Province;
- (f) unproven or undemonstrated technology, methods or materials; and
- (g) any Proposal that utilizes steel grillage decking.

### 5.8.2 Discussions Regarding Alternate Proposals

In order to facilitate discussions between the Province and an RFP Proponent who wishes to submit an Alternate Proposal, the deadline for submission of confidential enquiries to the Province is one month prior to submission of Proposals.

RFP Proponents will increase the likelihood of their Alternate Proposals being considered if they submit confidential enquiries as early as possible, and the Province may refuse to evaluate an Alternate Proposal if the RFP Proponent has not submitted details of the Alternate Proposal before the deadline set out in the previous paragraph.

RFP Proponents should submit in writing to the Contact Person, in accordance with Section 6.1, a description of the proposed Alternate Proposal in sufficient detail to enable the Province to understand how the proposed Alternate Proposal varies from the requirements for a Base Case Proposal, together with perceived advantages to the Province.

The Province may comment in writing on a proposed Alternate Proposal, but is not obliged to do so. No comment from or discussion with the Province in respect of any proposed Alternate Proposal obligates the Province or create any liability for the Province in any way.

The Province will keep confidential all details of any proposed Alternate Proposal received and related discussions with the RFP Proponent, subject to the *Freedom of Information and Protection of Privacy Act*, and disclosure required by any other law. The Province may disclose general information about Alternate Proposals in the form of Addenda to this RFP.

RFP Proponents should indicate in any submission of potential Alternate Proposals which aspects of those Proposals they consider proprietary. The Province will assess whether this information is proprietary to the RFP Proponent and will at all times take reasonable care to protect such proprietary information. The RFP Proponent will be given the opportunity to withdraw the proposed Alternate Proposal in whole or in part, if it disagrees with the Province's decision as to what information is to be disclosed.

## **6. INSTRUCTIONS TO RFP PROPONENTS**

### **6.1 Contact Person**

There are certain delivery, format and content requirements for Proposals and communications to facilitate fairness and consistency in evaluation and to ensure proper consideration of each Proposal.

All communications or enquiries about this RFP, all requests for clarification and amendment, and all revisions should be made in writing and sent by email, hand or courier delivery or facsimile to the Contact Person, as follows:

#### **Maria Ciarniello**

Project Liaison Officer  
Partnerships British Columbia Inc.  
Suite 1250 – 999 West Hastings Street  
Vancouver, British Columbia  
V6C 2W2

Email Address: [Maria.Ciarniello@gems7.gov.bc.ca](mailto:Maria.Ciarniello@gems7.gov.bc.ca)

Fax Number: (250) 356 2222

Delivery of communications or enquiries at the office of the Contact Person will be accepted on weekdays (excluding holidays) from 9:00 a.m. to 5:00 p.m. Pacific Time. The Contact Person, in carrying out her duties, may obtain and rely on any advice, input or direction from any Person, including without limitation, Province officials or private sector advisors to the Province.

The Province is not responsible for any error that may occur in respect of the submission of communications or enquiries.

### **6.2 Proposal Requirements**

In order to ensure that the Evaluation Criteria are applied to the Proposals in a uniform and consistent manner, RFP Proponents are requested to comply with the rest of the provisions of this section. The Province may reject Proposals that do not meet all such requirements, but may also consider and accept such Proposals.

#### **6.2.1 General Requirements**

Each Proposal should:

- (a) be on single sided 8.5” x 11” paper;
- (b) be in English and have text with 1.5 x spacing and 11 point or larger typeface;
- (c) include one original and six copies, all of which should be unbound or in three ring binders, with every page numbered sequentially;

- (d) be contained in a sealed container with a return address on the sealed container;
- (e) be addressed to the Contact Person;
- (f) be clearly marked “Okanagan Lake New Crossing Services Proposal”;
- (g) be received at the Submission Location before the Submission Time; and
- (h) contain Package 1, Package 2, and Package 3, that are clearly labelled as such.

#### 6.2.2 Package 1 - Forms

Package 1 should contain the following forms that are included in this RFP, duly completed, executed and submitted without alteration, qualification, deletion or substitution:

- (a) **Form A:** The Proposal Form properly executed by an Authorized Signatory of the RFP Proponent.
- (b) **Form B:** The completed Contact Details and RFP Proponent Form properly executed by an Authorized Signatory of the RFP Proponent.
- (c) **Form C:** The completed Relationship Disclosure Form properly executed by an Authorized Signatory of the RFP Proponent and each Team Member.
- (d) **Form D:** A Letter of Availability Form D properly executed by the Authorized Signatory of each Team Member and each Core Organization.

#### 6.2.3 Package 2 – Base Case Proposal(s)

Package 2 should contain the Base Case Proposal(s) in two separate volumes:

- (a) Volume A: Technical Proposal
- (b) Volume B: Commercial Proposal

The Commercial Proposal should, in turn be divided into 3 parts:

- (i) Part 1: Legal And Commercial
- (ii) Part 2: Price Proposal
- (iii) Part 3: Financial Plan

One complete copy of the Commercial Proposal and Technical Proposal should be on DVD and should be Microsoft Office<sup>®</sup> and AutoCad<sup>®</sup> compatible respectively.

#### 6.2.4 Package 3 – Alternate Proposals

Package 3 should contain any Alternate Proposals.

One complete copy of each Alternate Proposal should be on DVD and should be Office<sup>®</sup> and AutoCad<sup>®</sup> compatible.

### **6.3 Submission Time**

Proposals must be submitted by hand or courier to the Contact Person before 2:00:00 p.m. Pacific Time, November 1, 2004 at the Submission Location. Proposals posted by mail or sent by facsimile or email will not be considered. Proposals received after the Submission Time will not be considered and will be returned unopened. Deliveries of Proposals at the office of the Contact Person will be accepted on weekdays from 9:00 a.m. to 5:00 p.m. Pacific Time.

### **6.4 Revisions to Proposals Prior to the Submission Time**

RFP Proponents may make revisions to their Proposals at any time before the Submission Time after they have submitted their Proposals on the condition that each revision should:

- (a) be in English;
- (b) clearly indicate the revision made, with every page numbered;
- (c) be enclosed in one sealed container;
- (d) be addressed to the Contact Person;
- (e) be clearly marked “Revision to Okanagan Lake New Crossing Services Proposal of (RFP Proponent’s name)”; and
- (f) be submitted by hand or courier to the Submission Location before the Submission Time.

Each revision supersedes any previous revisions and the relevant Proposal to the extent of any inconsistency. If, in the opinion of the Province, any revision or any part of a revision is unclear or ambiguous, or does not substantially comply with the requirements of this RFP, the Province may request clarification or disregard that revision or part of that revision.

All revisions must be in writing and delivered to the Submission Location. Revisions posted by mail or sent by facsimile or email will not be considered. Revisions received after the Submission Time will not be considered and will be returned unopened.

### **6.5 Data Room**

A Data Room that contains information relating to the Project has been established in a virtual format. An RFP Proponent will be able to access the Data Room after the issuance of this RFP after signing the appropriate Confidentiality Undertaking and by accepting the terms and conditions of such access set out in the Data Room website.

The Data Room contains confidential information and that information must not be disclosed to anyone except Team Members and sureties, insurance companies, financiers, agents, consultants

or advisors to the RFP Proponents or Team Members as permitted in the Confidentiality Undertaking.

Information in the Data Room may be modified, supplemented or updated from time to time by the Province. RFP Proponents are advised to check the Data Room website on a regular basis for new postings and updates.

The information and documents included in the Data Room are provided for historical and background purposes only and the information contained therein may not properly, adequately or accurately represent the current context or circumstances or current policies in relation to the subject matter. Accordingly, the Province does not represent or warrant the accuracy, sufficiency, adequacy, appropriateness or interpretation of this RFP, any of the materials in the Data Room or the Background Information Website.

RFP Proponents should consider and satisfy themselves as to the applicability of the materials in this RFP, Data Room and the Background Information Website, and any and all conditions that may in any way affect their Proposals.

## **PART FOUR - THE EVALUATION PROCESS**

### **7. EVALUATION PROCESS AND CRITERIA OVERVIEW**

#### **7.1 Evaluation Committee**

Review and evaluation of Proposals will be conducted by an Evaluation Committee. The size and composition of the Evaluation Committee is at the discretion of the Province.

The Province anticipates that the Evaluation Committee, and any subcommittees, may include representatives of the Province and external advisors. It is anticipated that Macquarie North America Ltd., Westmar Consultants Inc., Geoplan Opus Consultants Inc., and others, will participate in the evaluation. These companies may have commercial relationships in other jurisdictions or other projects with one or more Team Members of one or more RFP Proponents. By submitting a Proposal, RFP Proponents accept that the Evaluation Committee will contain such representatives.

In carrying out the evaluation of the Proposals and related activities, the Evaluation Committee may:

- (a) obtain a ruling from the Adjudicator where the Evaluation Committee determines that there may be a conflict of interest or unfair advantage issue at any time during the Selection Process; and
- (b) in confidence, obtain and rely upon any technical, managerial and other input and direction from any Person, including without limitation, officials of the Province and private sector advisors to the Province.

#### **7.2 Preliminary Review**

Members of the Evaluation Committee will review all Proposals submitted by the RFP Proponents. The Evaluation Committee will determine whether the submission conforms to the requirements for a Base Case Proposal. If an RFP Proponent does not, in the opinion of the Evaluation Committee, submit a conforming Base Case Proposal, the Province may request clarification or rectification as it may require, and failing satisfactory clarification or rectification, the Province may reject the RFP Proposal, including the Alternate Proposal if any, and they will not be considered further in the evaluation process.

If an RFP Proponent does submit a conforming Base Case Proposal, the Evaluation Committee will then consider any Alternate Proposal submitted by that RFP Proponent, and will then determine whether the Alternate Proposal:

- (a) is in compliance with the Alternate Proposal Submission Requirements;
- (b) is potentially acceptable to the Province; and
- (c) can be generally evaluated using the Evaluation Criteria.

If the Evaluation Committee determines that an Alternate Proposal is not in compliance with the Alternate Proposal Submission Requirements, the Evaluation Committee may reject and not consider the Alternate Proposal in the evaluation process.

If the Evaluation Committee determines that all of the three points above are met, the Alternate Proposal will be evaluated with the Base Case Proposal.

### **7.3 Overview of Evaluation Criteria**

The Evaluation Committee will evaluate all Base Case Proposals and any Alternate Proposals against the Evaluation Criteria set out in Schedules Two and Four. The following is an overview of the areas the Evaluation Committee will assess:

- (a) Compliance with all mandatory requirements of the RFP, including the completeness of the Proposal and the satisfaction of the minimum requirements laid out in the Technical and Commercial Proposal Submission Requirements.

Proposals will be subject to the completeness review before being subjected to detailed commercial and technical evaluations. The Province may seek clarification and, if necessary, rectification of any incomplete Proposal or Proposals which do not meet all mandatory criteria, or to disqualify the Proposal without further consideration.

- (b) The strengths of the Proposal and the demonstrated ability to implement and deliver all facets of the Proposal, including without limitation the following:
  - (i) commercial and legal content;
  - (ii) design and construction content;
  - (iii) operations and maintenance; and
  - (iv) financial matters.

The strengths of the Technical Proposals will be evaluated on a pass/fail basis. A Technical Proposal must pass in all respects to be evaluated further.

- (c) The risk-adjusted aggregate net present value of the Performance Payments proposed by the RFP Proponent. The Evaluation Committee will use the Base Case scenarios provided by the Province and advisors rather than the RFP Proponents' forecasts to evaluate Proposals uniformly. Sensitivity analyses will be undertaken to assess the Province's risk with regards to Performance Payments.

The discount rate used to calculate the net present value of the Performance Payments will be based on the Province's best estimate of a required internal rate or return (or weighted average cost of capital) for a project of this nature. The

Province will assess the capital markets' environment with respect to risk and return expectation, and examine project financing options available to the Project.

Risk adjustments determined by the Evaluation Committee will take into account in the context of the Evaluation Criteria:

- (i) the value of risk transferred to the Concessionaire under the Proposal including technical, commercial and financial risks and the impact of any changes proposed by the RFP Proponent to the Revised Concession Agreement,
- (ii) the strength and deliverability of Technical Proposals including the likely reliability of the proposed New Crossing when in operation and the condition of the New Crossing at the end of the Term, and
- (iii) the strength and deliverability of Commercial Proposals, including their robustness to project risk as assessed through sensitivity analyses.

The Province is not obligated to select the Proposal that offers the lowest price or cost or Performance Payments with the lowest net present value.

- (d) The value for money offered by the Proposal. It is intended that value for money will be primarily captured through the Payment Mechanism;
- (e) The comparison of the Proposal, based on the risk adjusted net present value of the Performance Payments required under the Proposal plus the expected value of any additional traffic payments, with the theoretical risk-adjusted cost of public sector delivery.

#### **7.4 Verification of Proposals**

To assist in evaluation of the Proposals and in determining their suitability, acceptability and credibility, the Province may:

- (a) conduct reference checks with any or all of the references cited in a Proposal; and
- (b) rely on and consider any information from such cited references.

If an experience, capacity, commercial or other information contained in a Proposal is not verified to the satisfaction of the Province through such reference checks, the Province is not obliged to, and may not, consider such cited experience, capacity, commercial or other information.

The Province may, in the evaluation process, take into consideration information from other sources and seek clarification from the RFP Proponents on such information.

## **7.5 Priority of Evaluation Criteria**

The Evaluation Committee will consider the merits of Proposals as a whole. The Province may apply different priority or weighting to the Evaluation Criteria prior to the Submission Time, which will then be applied uniformly to the evaluation of all Proposals.

The Province anticipates that satisfaction of the requirements for Base Case Proposals as described in Section 5.7 and an offer of the lowest risk adjusted net present value Performance Payments stream will be the most significant elements in the evaluation of Proposals.

## **7.6 Selection of BAFO Proponents or Preferred Proponent**

The Province will select the BAFO Proponents or the Preferred Proponent, as applicable, based on the evaluation of their Proposals.

The Province is not bound to evaluate or accept any Proposal.

## **7.7 Clarification and Rectification of Proposals**

The Province may request clarification or rectification of Proposals or request further information from any or all RFP Proponents for any reason including to ensure that all Proposals are responsive to the Commercial and Technical Proposal Submission Requirements, and that all aspects of the Proposal are fully described as the Evaluation Committee may advise.

The Province may proceed with the evaluation of, or reject a Proposal if an RFP Proponent fails to provide a written response for clarification or rectification that adequately satisfies the reason for the request, or fails to provide information within the time specified for the request.

The procedure for requests for clarification of this RFP by an RFP Proponent is set out in section 9.6.

## **7.8 Non-compliance**

If any Proposal does not meet the Commercial or Technical Proposal Submission Requirements, the Province may request clarification or rectification of the Proposal, and failing satisfactory clarification or rectification, may terminate the evaluation process and reject the Proposal forthwith.

If any Proposal is obscure or contains a defect or fails in some way to comply with any requirement of this RFP that is not material in the opinion of the Province, the Province may waive the obscurity, defect, or non-compliance and accept the Proposal as submitted or request further clarification or rectification before further considering the Proposal.

The Province may determine what is material in the context of a Proposal, whether or not to reject any Proposal or waive any obscurity, defect, or failure to comply, whether or not to request rectification, and the adequacy and acceptability of any clarification or rectification submitted by an RFP Proponent. The Province is not bound by industry custom or practice in the exercise of its discretion.

## **7.9 Debriefing**

After Financial Close, representatives of the Evaluation Committee will, upon request, meet with unsuccessful RFP Proponents and provide them with a debriefing. During such debriefing, confidential information including any scores awarded to any Proposal, the pricing of any Proposal, and the order of ranking of Proposals or any other aspect of the evaluation, scoring and ranking of Proposals will not be disclosed. During such debriefing, only the relative strengths and weaknesses of that RFP Proponent's Proposal will be disclosed and discussed.

## **7.10 Fairness Auditor**

The Province has appointed a Fairness Auditor with responsibility to review the evaluation process undertaken by the Evaluation Committee, and to review the Province's selection of the BAFO Proponents or the Preferred Proponent. The Fairness Auditor will provide a written report to the Province.

The Fairness Auditor will be:

- (a) provided full access to all documents and information related to the evaluation processes under this RFP which the Fairness Auditor decides is required; and
- (b) kept fully informed by the Province of all documents and activities associated with this RFP.

## **PART FIVE – RELATIONSHIPS AND DISCLOSURE**

### **8. RELATIONSHIP DISCLOSURE AND RELATIONSHIP REVIEW PROCESS**

#### **8.1 No Use or Inclusion of Restricted Parties**

Restricted Parties:

- (a) are not eligible to advise any RFP Proponent or Team Member in the Selection Process; and
- (b) must not participate as an employee, advisor, consultant or member of an RFP Proponent or Team Member.

The Province may reject the Proposals of an RFP Proponent who uses or whose Team Member uses in any manner or who includes in its Proposal a Restricted Party. The onus is on RFP Proponents to ensure that they and their Team Members do not use or include any Restricted Party.

#### **8.2 Who are Restricted Parties**

Restricted Parties are those Persons (including their former and current employees) who had or currently have participation or involvement in the Selection Process or in the design, planning or implementation of the Project, and who may provide a material unfair advantage or confidential information to an RFP Proponent or a Team Member that is not, or would not reasonably be expected to be, available to other RFP Proponents or their Team Members. Government employees (current or former) who have been involved in the Selection Process or the design, planning and implementation of the Project may also be Restricted Parties.

At this RFP stage, the Province has identified the Persons listed in Schedule Seven as Restricted Parties because of their recent or current direct participation or involvement in the Selection Process or the design, planning or implementation of the Project.

Schedule Seven does not set out an exhaustive list of Restricted Parties. Additional Persons may be added to the list at any stage of the Selection Process. Neither the Province nor any of its employees, advisors and representatives is liable to any RFP Proponent or Team Member for any Claim, whether for costs of preparation of the Proposal, loss of anticipated profit, loss of opportunity or any other matter whatsoever, for any use or reliance on this list or use or inclusion of Restricted Parties in any submission for the Selection Process.

#### **8.3 Appointment of Adjudicator**

The Province has appointed an Adjudicator to make decisions on conflict of interest or unfair advantage including whether any Person is a Restricted Party. The decisions of the Adjudicator on any conflict of interest or unfair advantage issue, whether on a request for rulings or on request by the Evaluation Committee at any stage of the Selection Process, is final and binding on the Person requesting the ruling, all RFP Proponents, their Team Members and the Province.

#### **8.4 Requests for Rulings Encouraged**

An RFP Proponent, Team Member, prospective Team Member or an advisor who has any concerns regarding whether a Person is or may be a Restricted Party for the purposes of the Selection Process is encouraged to seek a ruling.

#### **8.5 Requests for Rulings**

In order to request a ruling of whether a Person is a Restricted Party, an RFP Proponent, Team Member, prospective Team Member or advisor should submit to the Contact Person, not less than 10 days prior to the Submission Time by hand or courier delivery, email or facsimile (see further details in Section 6.1), the following information:

- (a) the names and contact information of the RFP Proponent and Team Members and the Person or firm for which the ruling is requested;
- (b) a description of the relationship that raises the possibility or perception of a conflict of interest or unfair advantage;
- (c) a description of the steps taken to date and future steps proposed to be taken to mitigate the conflict of interest or unfair advantage; and
- (d) copies of any relevant documentation.

RFP Proponents, Team Members, prospective Team Members and advisors agree by submitting a request for a ruling that the ruling provided by the Adjudicator will be final and binding on the Person submitting the request, the RFP Proponents, all its Team Members, all other RFP Proponents and their Team Members and the Province. Neither the Province nor the Adjudicator guarantees the timely provision of a ruling.

Subject to Section 9.14, all requests for rulings will be treated in confidence. If an RFP Proponent, a Team Member, a prospective Team Member or advisor becomes a Restricted Party, it may be listed in an Addendum or in subsequent Selection Process documents as a Restricted Party.

#### **8.6 Province May Request Rulings**

The Province may also independently ask for rulings where it identifies Persons who may be Restricted Parties. The Province will give notice to the possible Restricted Party so that it can make its own submission to the Adjudicator.

## **PART SIX – GENERAL CONDITIONS AND GLOSSARY OF TERMS**

### **9. GENERAL CONDITIONS**

#### **9.1 RFP and Draft Project Documents**

If there is any inconsistency between or among any provision of this RFP, the draft Project Documents or any form or schedules contained in this RFP, such conflict or inconsistency will be resolved in the following order:

- (a) Revised Concession Agreement;
- (b) Draft Concession Agreement;
- (c) other draft Project Documents;
- (d) this RFP, excluding the schedules and forms;
- (e) the forms in this RFP; and
- (f) the schedules in this RFP.

#### **9.2 Paper and Electronic Form**

If there is any inconsistency between the paper form of a document issued by or on behalf of the Province to RFP Proponents and the digital, electronic or other computer readable form, the paper form of the document prevails.

#### **9.3 No Collusion**

An RFP Proponent or a Team Member must not discuss or communicate, directly or indirectly, with any other RFP Proponents or their Team Members regarding their Proposals. Proposals must be submitted without any collusion, connection, knowledge, comparison of information or arrangement with any other RFP Proponent or their Team Members.

#### **9.4 No Lobbying**

RFP Proponents or any member of an RFP Proponent or RFP Proponent's consortium or their agents will not engage in any form of political or other lobbying or communications whatsoever with respect to the Project; or to influence, or to appear to influence, the outcome of the Selection Process. This includes, but is not limited to, contact with: any Ministers; Ministerial staff; Members of the Legislative Assembly and staff; Province or Partnerships BC staff; and project team members, advisors or consultants to the Project team.

RFP Proponents may state publicly that they have been short listed, but they must not publicly discuss or disclose the nature or any aspect of their Proposal, nor promote their Proposal in the media. All communications, questions or other inquiries must be directed through the Contact Person as specified in the RFP. In the event that any such lobbying or communications occur,

the Province may at any time reject any Proposal submitted by that RFP Proponent without further consideration.

The Province may either terminate that RFP Proponent's right to continue participating in the RFP stage and subsequent stages of the Selection Process, or impose such conditions on that RFP Proponent's continued participation in the Selection Process as the Province may consider in the public interest or otherwise appropriate.

#### **9.5 No Unauthorized Contact**

All communication on matters related to the Project or the RFP be directed in writing to the Contact Person. RFP Proponents must not attempt to, or actually, communicate directly or indirectly on matters related to the Project or the RFP any representative of any Restricted Party, the Province or any other government employees who are involved in the Project or the RFP stage under the penalty of peremptory disqualification from the Selection Process. Information offered from sources other than the Contact Person with regard to the content, intent or interpretation of this RFP or the Background Information Website is not official, may be inaccurate and should not be relied on in any way by any Person for any purpose.

#### **9.6 Clarification of RFP**

RFP Proponents should review the entire RFP, including any and all Addenda, prior to submitting a Proposal. Save as otherwise provided in this RFP, any request for clarification of issues related to the RFP must be transmitted in writing by email, hand, courier delivery or facsimile to the Contact Person not less than 10 business days prior to the Submission Time. The Province will notify all RFP Proponents of any written clarification issued by the Province regarding this RFP and all Addenda. The Province will endeavour to provide any requested clarification as soon as possible after the receipt of a request from an RFP Proponent.

#### **9.7 Receipt of Complete RFP**

RFP Proponents are responsible to ensure that they have received the complete RFP, as listed in the table of contents of this RFP. Submission of a Proposal by an RFP Proponent constitutes a representation by that RFP Proponent that it has verified receipt of a complete RFP. Each and every Proposal is deemed to be made on the basis of the entire RFP issued prior to the Submission Time. The Province accepts no responsibility for any RFP Proponent lacking any information.

#### **9.8 Addenda**

Written Addenda are the only means of amending or clarifying this RFP. Only the Province, through the Contact Person, is authorized to amend or clarify this RFP by issuing an Addendum. No other employee or agent of the Province is authorized to amend or clarify this RFP. The Province may, through the Contact Person and with notice in writing to RFP Proponents, amend or clarify the terms or contents of this RFP at any time before the Submission Time. The Province shall make reasonable efforts to deliver each Addendum to all RFP Proponents. The Province makes no guarantee of timely delivery of any Addenda to any Person.

## **9.9 Cost of Preparing Proposals**

RFP Proponents are solely responsible for all costs they incur in the preparation of their Proposals, including the costs of providing information requested by the Province, attendance at meetings and conducting due diligence.

## **9.10 Notification of Success at this RFP Stage**

A written notice in the form of a letter to the contact representative for an RFP Proponent (as identified in completed Form B) is the only valid form of notification of success at this RFP stage. The Province may select a Preferred Proponent upon conclusion of this RFP stage or it may select two BAFO Proponents to participate in the BAFO stage.

## **9.11 Access to Partnerships BC's Business Directory**

The Business Directory of Partnerships BC is an online directory for all Partnerships BC projects ("Business Directory"). It provides an opportunity to interact for Persons seeking business arrangements or who may be interested in participating in Partnerships BC projects. Any business may place information in the Business Directory such as contact details, brief description of organization, nature of services offered and relevant expertise. Further, any business may access the Business Directory online to seek organizations for potential business arrangements. Such placements do not, however, assure the formation of a consortium, joint venture, partnership or other business arrangement and do not assure participation in any Partnerships BC project, including the Project. Placement of information on the Business Directory is optional and is not part of the Selection Process.

The Business Directory can be accessed as follows:

[http://www.partnershipsbc.ca/business/bu\\_directory.asp](http://www.partnershipsbc.ca/business/bu_directory.asp)

Users of the Business Directory are responsible for verifying the accuracy, reliability, relevance and sufficiency of all information in the Business Directory and the status, standing, capabilities or experience of any listed Person. The Province and Partnerships BC do not review, verify or approve the information in the Business Directory and therefore are not responsible for, and do not make any representation with respect to, such information. Continuous access to or operation of the Business Directory is at the discretion of the Province and Partnerships BC. Either the Province or Partnerships BC may refuse or choose not to post any information on the Business Directory.

## **9.12 Discretion of the Province**

- (a) The Province may make any judgment, assessment, determination under or in connection with this RFP, and exercise any of its discretions, powers or rights referred to in this RFP, in its sole and absolute discretion.

- (b) The Province may:
  - (i) amend the scope or timing of the Project, modify, cancel or suspend the Selection Process or any or all stages of the Selection Process at any time for any reason;
  - (ii) accept or reject any Proposal based on an evaluation process as determined in the discretion of the Province;
  - (iii) not accept the highest ranked or any Proposal;
  - (iv) reject all or any Proposal without any obligation, compensation or reimbursement to any RFP Proponent or any of its Team Members; and
  - (v) verify any and all information regarding an RFP Proponent or any of its Team Members whether or not contained in the Proposal and to conduct any background investigations including criminal record investigations, verification of the Proposal, credit enquiries, litigation searches, bankruptcy registrations, taxpayer information investigations and any other investigations that it considers necessary in the course of the Selection Process.

### **9.13 Limitation of Damages**

Each RFP Proponent and each of its Team Members, by submitting a Proposal, agree that:

- (a) in the event any or all Proposals are rejected or the Project or Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of the RFP or BAFO or both), neither the Province nor any of its employees, advisors or representatives will be liable, under any circumstances, for any Claim or to reimburse or compensate the RFP Proponent or any of its Team Members in any manner whatsoever including but not limited to costs of preparation of the Proposal, loss of anticipated profits, loss of opportunity or for any other matter;
- (b) the RFP Proponent and its Team Members waive any and all Claims whatsoever, including Claims for loss of profits or loss of opportunity, in the event that the RFP Proponent is rejected or is not successful in being selected as a BAFO Proponent or the Preferred Proponent or for any other reason; and
- (c) with respect to circumstances not listed in the foregoing paragraphs (a) and (b), the RFP Proponent and its Team Members will not make any Claim against the Province or its employees, advisors or representatives in excess of an amount equivalent to the reasonable costs of preparation of the Proposal for any matter relating to the RFP, the Project or the Selection Process.

#### **9.14 Confidentiality and the *Freedom of Information and Protection of Privacy Act***

All documents and other records in the custody of or under the control of the Province are subject to the *Freedom of Information and Protection of Privacy Act* (“FOIPPA”) and other applicable legislation. Except as expressly stated in this RFP and subject to the FOIPPA or other applicable legislation, all documents and other records submitted in response to this RFP will be considered confidential however such information or parts thereof may be released pursuant to requests under FOIPPA or other applicable legislation.

FOIPPA can be accessed as follows:

[www.qp.gov.bc.ca/statreg/stat/F/96165\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/F/96165_01.htm).

#### **9.15 Dispute Resolution**

Each RFP Proponent, by submitting a Proposal, agrees that:

- (a) the contact representative for the RFP Proponent identified in Form B must, within 14 days of any dispute arising in connection with this RFP, submit written notice to the Contact Person of such dispute; and
- (b) 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 RFP Proponent within 60 days of the date of the written notice of the dispute, will be referred to and finally resolved by binding arbitration in accordance with the *Commercial Arbitration Act*.

#### **9.16 No Representation or Warranty**

Each RFP Proponent acknowledges by its submission of a Proposal that it has investigated and satisfied itself of every condition that affects the Project. Each RFP Proponent further acknowledges and represents that its investigations have been based on its own examination, knowledge, information, and judgment, and not upon any statement, representation, or information made or given by the Province, the Contact Person or any advisor to the Province, other than the information contained in this RFP. Submission of a Proposal is deemed to be conclusive evidence that the RFP Proponent has made such investigations and that the RFP Proponent is willing to assume and does assume all risks affecting the Project, except as otherwise specifically stated in this RFP. The Province accepts no responsibility for any RFP Proponent lacking any information.

#### **9.17 Material Change After Submission Time**

RFP Proponents are required to notify the Province immediately of any change that occurs after the submission of their Proposals that could materially affect their ability to undertake the Project, including changes in Team Members’ key personnel and ownership.

## **9.18 Publicity**

RFP Proponents must not issue any news release or other public announcements that discloses the details of any version of the Concession Agreement and its schedules, any Proposal, information about or relating to the Selection Process, or any other document or information provided to them.

## **9.19 Previous Submissions Superseded**

- (a) Subject to paragraph (b), the expressions of interest and responses to the RFQ submitted by the RFP Proponents during the earlier stages of the Selection Process are superseded entirely by this RFP. Accordingly, if any information requested in this RFP was previously contained in RFP Proponents' expressions of interests or responses to the RFQ, RFP Proponents should include current information requested under the relevant section of their Proposals.
- (b) Notwithstanding paragraph (a), the Evaluation Committee in its evaluation and consideration of the Proposals may at its sole and absolute discretion take into account and rely on any and all of the following:
  - (i) information submitted in expressions of interest and responses to the RFQ submitted by the RFP Proponents that the Evaluation Criteria expressly state will be used and relied on by the evaluation committees;
  - (ii) the Evaluation Committee's views and comments on information in such expressions of interests and responses that may be substantially the same as information submitted in the Proposals; and
  - (iii) the results of investigations, verifications, credit enquiries and searches conducted at earlier stages of the Selection Process.

## 10 GLOSSARY OF TERMS

In this RFP:

“Addenda” or “Addendum” means each and every written document issued by the Contact Person for the purpose of amending this RFP.

“Adjudicator” means the person appointed by the Province to provide opinions and rulings regarding conflicts of interest or unfair advantage.

“Alternate Proposal” means a Proposal that is not a Base Case Proposal.

“Alternate Proposal Submission Requirements” means the requirements set out in Schedule Five.

“Approving Agencies” has the meaning set out in the Concession Agreement.

“Authorized Signatory” means the individual duly authorized to sign on behalf of the legal entity they represent as certified by a board resolution.

“BAFO” means the ‘best and final offer’ stage of the Selection Process entered into by the Province, and includes any Addenda thereto.

“BAFO Proponent” means an RFP Proponent whom the Province selects to advance to the BAFO stage.

“Background Information Website” means the background information website of the Province that contains this RFP and general background information with respect to the Project.

“BCMOT Proposed Design” means an indicative design for a potential New Crossing prepared on behalf of the Province and contained in the Data Room.

“BCTFA” means the BC Transportation Financing Authority, a corporation continued under the Build BC Act, R.S.B.C. 1996, C. 40.

“Base Case Proposal” has the meaning set out in Section 5.7, and includes Base Case.

“Causeway Fill and Preload Contract” means the contract that the Province intends to tender in 2004 to supply and install causeway fill and preload at the west approach.

“Claim” means any claim, demand, liability, damage, loss, suit, or any other action or cause of action and all costs and expenses relating thereto, including legal fees on a solicitor and own client basis.

“Commercial Evaluation Criteria” means the criteria referred to in Schedule Two.

“Commercial Proposal” means that part of a Base Case Proposal or Alternate Proposal submitted by an RFP Proponent in response to the Commercial Proposal Submission Requirements.

“Commercial Proposal Submission Requirements” means the requirements set out in Schedule One.

“Concession Agreement” means the executed concession agreement between the Province and the Concessionaire under which the Province confers the rights on the Concessionaire, and the Concessionaire undertakes, to implement the Project.

“Concession Highway Land” has the meaning set out in the Concession Agreement.

“Concessionaire” means the Preferred Proponent or the entity nominated by the Preferred Proponent and accepted by the Province, who enters into the Concession Agreement.

“Confidentiality Undertakings” mean the confidentiality undertakings in form and substance satisfactory to the Province executed or to be executed by the RFP Proponents or their Team Members prior to receipt of the Draft Concession Agreement and obtaining access to the Data Room.

“Contact Person” means the Person designated by the Province in Section 6.1.

“Core Individuals” means the Technical Director, Construction Manager, Senior Design Engineer, Bridge/Structural Engineer, Floating Bridge/Marine Structure Engineer, Facility and Asset Manager, and Quality Manager (all as defined in the RFQ) and the financial manager and lead negotiator of the RFP Proponent.

“Core Organization” means a Person who:

- (a) will direct, coordinate or undertake all or part of the following aspects of the Project:
  - (i) design;
  - (ii) build;
  - (iii) operate and maintain; or
  - (iv) finance;or,
- (b) contributes any equity interest in the Project or carries out or is responsible for arranging any of the debt financing for the Project.

“Data Room” means the virtual room at a secured website and the physical data room (if any) established pursuant to this RFP, which contains information for the purposes of facilitating the preparation of Proposals by RFP Proponents.

“Decommissioning” means the removal and disposal of the Existing Bridge, as further set out in the Concession Agreement.

“Design Criteria” means the design criteria to be submitted by RFP Proponents as part of their Technical Proposal.

“Draft Concession Agreement” means the draft concession agreement relating to the Project provided by the Province to the RFP Proponents shortly after the issuance of this RFP.

“End of Term Payment” means the payment to be made by the Province to the Concessionaire at the end of the Term, which may consist of any combination of payment, negotiated terms, extensions, or other commercial arrangements.

“Enhanced Service Period” means the period commencing immediately after the expiry of the Original Service Period and ending on, and includes, the last day of the Term.

“Essential Amendments” means the amendments to the Draft Concession Agreement identified as such and requested by RFP Proponents, the rejection of which would significantly affect that RFP Proponent’s interests in the Project.

“Evaluation Committee” means a committee, including its sub-committees, established by the Province to evaluate Proposals.

“Evaluation Criteria” means the Commercial Evaluation Criteria and the Technical Evaluation Criteria, taken together.

“Existing Bridge” means:

- (a) the existing bridge known as the “Okanagan Lake Bridge”, including all pontoons, works, superstructure, decking, anchors, cables, floatation devices, railings, signals, signs, wires, lift equipment and attachments; and
- (b) the existing causeways that adjoins that existing bridge,

but excludes the land on which the bridge, causeways or roads are located.

“Fairness Auditor” means the person appointed by the Province to review the meetings, communications, evaluation and selection processes undertaken by the Province with respect to issues of fairness to Persons participating in this RFP.

“Financial Close” means the date on which the Concession Agreement becomes unconditional.

“Financial Model” means the financial model to be submitted by RFP Proponents as part of their Commercial Proposal.

“Financing Plan” means the financing plan to be submitted by RFP Proponents as part of their Commercial Proposal.

“FOIPPA” means the *Freedom of Information and Protection of Privacy Act*, SBC 1996, c. 165.

“Functional Requirements” means those requirements set out in a schedule to the Concession Agreement.

“IGTR” means the Comprehensive Traffic Report produced by Halcrow Group Limited with TSi Consultants contained in the Data Room.

“New Crossing” means the structure constructed or to be constructed by the Concessionaire pursuant to the design build requirements in the Concession Agreement, including all travel lanes, sidewalks, pathways, shoulders, fixtures, appurtenances and attachments.

“Original Service Period” means the period commencing on the first day of the Term and expiring on the commissioning of the New Crossing.

“Partnerships BC” means Partnerships British Columbia Inc.

“Payment Mechanism” has the meaning set out in the Concession Agreement.

“Payment Schedule” means the payment schedule to be delivered by RFP Proponents as part of the Commercial Proposal.

“Performance Payments” means the amount of compensation to be paid by the Province to the Concessionaire for the Services in accordance with the terms of the Concession Agreement.

“Person” means an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation.

“Price Proposal” means the price proposal to be submitted by RFP Proponents as part of their Commercial Proposal.

“Project” means the provision of the Services during the Term, including the implementation of the following for the purposes of providing the Services:

- (a) operation and maintenance of the Existing Bridge;
- (b) design, build, completion, commissioning and testing of the New Crossing;
- (c) operation and maintenance of the New Crossing;
- (d) Decommissioning;
- (e) operation and maintenance of the Westside Works; and
- (f) financing of all the activities referred to in paragraphs (a) to (e) above.

“Project Documents” means:

- (a) the Concession Agreement;
- (b) the lease of the Concession Highway Land to the Concessionaire; and

- (c) any other documents and agreements that the Concessionaire is required to sign relating to or as contemplated by the Concession Agreement.

“Project Schedule” means the schedule for completion of the New Crossing as set out in the Functional Requirements.

“Proponent Schedule” means the RFP Proponent’s proposed schedule for completion of the New Crossing to be submitted as part of the Technical Proposal.

“Proposal” means a written submission by an RFP Proponent in response to this RFP, comprising a Commercial Proposal and a Technical Proposal, and includes a Base Case Proposal and any Alternate Proposal.

“Proposed Right of Way” means the right of way that the Province has identified as sufficient to allow construction of the BCMoT Proposed Design, as outlined in heavy black on the plan in the Data Room with the same name.

“Province” means Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of Transportation.

“REOI” means the request for expressions of interest issued by the Province as the first stage of the Selection Process and includes any addenda thereto.

“Requested Amendments” means amendments to the Draft Concession Agreement requested by an RFP Proponent that are not Essential Amendments.

“Restricted Parties” means those Persons (including their former and current employees) who had or currently have participation or involvement in the Selection Process or the design, planning or implementation of the Project, and who may provide a material unfair advantage or confidential information to an RFP Proponent or Team Member that is not, or would not reasonably be expected to be, available to other RFP Proponents or their Team Members.

“Revised Concession Agreement” means the version of the Concession Agreement issued by the Province incorporating comments received from RFP Proponents to the Draft Concession Agreement including any other amendments the Province considers appropriate.

“RFP” means this request for proposals issued by the Province as the third stage of the Selection Process and includes any Addenda.

“RFQ” means the request for qualifications issued by the Province as the second stage of the Selection Process and includes any addenda thereto.

“RFP Proponent” means an RFQ Proponent who has been accepted by the Province as eligible to respond to this RFP.

“RFP Timetable” means the timetable set out in Section 4.1.

“RFQ Proponent” means a Person who submitted an RFQ Response, as defined in the RFQ, in response to the RFQ.

“Schedule” unless expressly stated otherwise, means and refers to the specified schedule of or to this RFP.

“Section” unless expressly stated otherwise, means and refers to the specified section of this RFP.

“Selection Process” means the overall process for selection of a Preferred Proponent for the Project including, but not limited to, the REOI, RFQ, RFP and the optional BAFO.

“Services” means the services of making road lanes available for public use across the Okanagan Lake and on the Concession Highway Land in all respects as set out in this RFP and the Functional Requirements.

“Submission Time” means the time and date as described in Section 6.3 for the submission of Proposals.

“Submission Location” means the location, as described in Section 6.1, for the submission of Proposals.

“Team Member” means a Person who has agreed to participate as part of an RFP Proponent

“Technical Evaluation Criteria” means the criteria referred to in Schedule Four.

“Technical Proposal” means that part of a Base Case Proposal or Alternate Proposal by an RFP Proponent in response to the Technical Proposal Submission Requirements.

“Technical Proposal Submission Requirements” means the requirements set out in Schedule Three.

“Term” means the term of the Concession Agreement during which the Concessionaire will provide the Services.

“Westbank First Nation” includes the legal entity under the Indian Act R.S.C. 1985, c. I-5, as amended, members of the Westbank First Nation and corporations or other business entities owned or controlled by the Westbank First Nation or members of the Westbank First Nation.

“Westside Works” means the work that will be done on the west approach to the New Crossing to meet the Functional Requirements as laid out in the Concession Agreement.