



PORT of  
**vancouver**

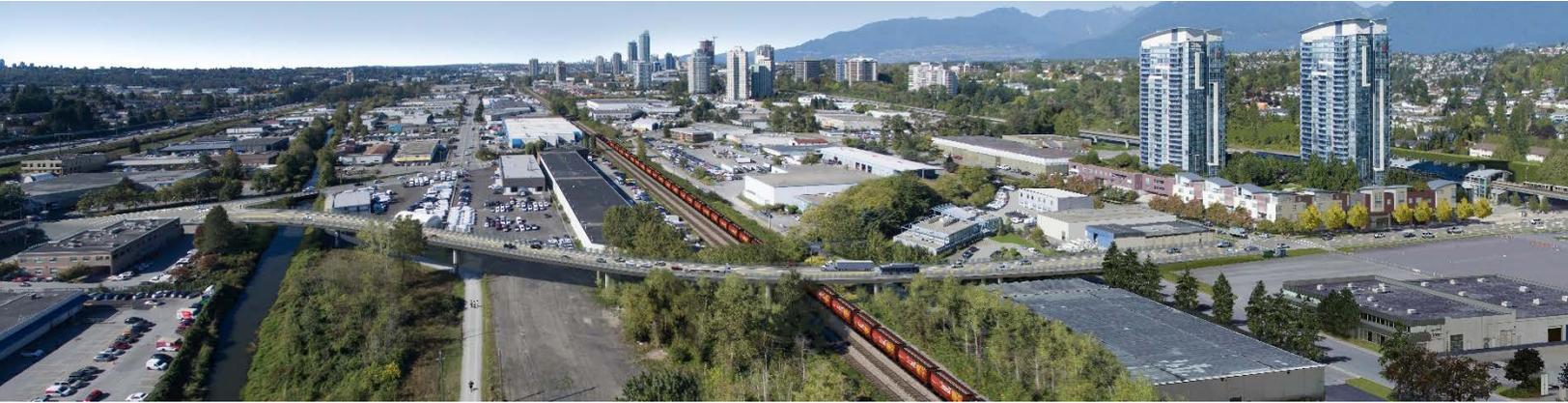
Vancouver Fraser  
Port Authority

# Gateway program

Contractor engagement | Round three: Proposed procurement and commercial approaches

October 2020





## Gateway Program

The Port of Vancouver is Canada's largest port. Each day, commodities and goods from across Canada arrive at the port by rail and road for export, and consumer goods from around the world are imported to Canada. This trade is growing, which means more trade-related traffic through the Lower Mainland.

The Vancouver Fraser Port Authority, as part of our federal mandate to facilitate Canada's trade objectives, is working with partners on infrastructure projects that will ensure efficient road and rail networks in the region and address the impacts of increasing trade and population growth, including on safety, congestion, community access, and general livability.

Referred to as the Gateway Program, the projects are part of the broader [Greater Vancouver Gateway 2030](#) strategy, which includes approximately 40 projects with a cumulative value of about \$3 billion. The strategy was developed by the Gateway Transportation Collaboration Forum, which included the port authority, TransLink, the B.C. Ministry of Transportation and Infrastructure, the Greater Vancouver Gateway Council, and Transport Canada. This portfolio of projects serve as a roadmap for infrastructure investment to ensure the region has the necessary road and rail network to meet our growing trade needs to the year 2030.

The strategy also seeks to find opportunities to minimize the impact of growing trade on surrounding communities by taking advantage of opportunities for safer and more efficient movement of people through the region.

The projects in the port authority's Gateway Program range in value from \$10 million to \$150 million each. They are typically projects involving improvements or construction of roadway overpasses or underpasses of active rail lines, which allow complementary projects to improve adjacent rail infrastructure, usually led by the relevant rail company.

These projects are moving forward with secured funding from the port authority, rail companies, and the Government of Canada through the National Trade Corridors Fund. The projects will support jobs and

economic benefits related to the efficient movement of Canadian trade, including agricultural and forest products and imported consumer goods, while also aligning with the needs and objectives of local communities and Indigenous groups.

## About the port authority and the Port of Vancouver

The port authority is the federal agency responsible for the stewardship of the Port of Vancouver, Canada's largest port. Like all Canada Port Authorities, we are accountable to the federal minister of transport. Our mandate is to enable Canada's trade through the Port of Vancouver, while protecting the environment and considering local communities.

The port authority is structured as a non-share corporation, is financially self-sufficient and does not rely on tax dollars for operations. Our revenues come from port terminals and tenants who lease port land, and from port users who pay various fees such as harbour dues. Profits are reinvested in port infrastructure.

Located on the southwest coast of British Columbia in Canada, the Port of Vancouver extends from Roberts Bank and the Fraser River up to and including Burrard Inlet, bordering 16 municipalities and intersecting the asserted and established traditional territories and treaty lands of several Coast Salish First Nations.

Port operations are complex and involve many organizations beyond the port authority. Among other roles, we are responsible for overseeing port development as Canada's trade grows, which we do by building infrastructure and by reviewing and permitting development projects in the port.

## Upcoming projects

The port authority expects to start construction of the following projects in mid/late-2021 to mid-2022, with potential for procurement to start as soon as the fall of 2020:

- **Kennedy Overpass in Pitt Meadows**, involving the construction of a single span two-lane overpass of an active rail corridor and extensive retaining walls along Kennedy Road
- **Harris Underpass in Pitt Meadows**, involving the construction of a four-lane underpass of an active rail corridor, extensive retaining walls along Harris Road and relocation of municipal and third-party utilities in an urban environment
- **Holdom Overpass in Burnaby**, involving the construction of a multi-span, four-lane overpass of Still Creek and an active rail corridor, closure of the Douglas Road at-grade rail crossing, and relocation of municipal and third-party utilities
- **Portside Overpass and Blundell Road widening in Richmond**, involving the construction of a single span, two to four-lane overpass of an active rail corridor with suitable clearance to allow for future expansion of the adjacent rail yard, extensive retaining walls along Blundell, No. 8 and Portside roadways, and major relocations of third-party utilities
- **Portside Road extension on port authority land adjacent to Richmond**, involving the construction of a single (or potentially multi-span) three-lane bridge over the No. 7 Road and canal with associated land development utility services
- **Fraser Surrey Port Lands Transportation Improvements Project in Surrey**, involving realignment of the existing Robson Road–Timberland Road (North) Corridor and upgrades to seven existing at-grade rail crossing

## Contractor engagement – Round three

### Results of engagement to date

In mid-2020, the port authority invited contractors to participate in two rounds of engagement to help the port authority plan the Gateway Program. Using questionnaires, our engagement focused on procurement and delivery model selections, procurement processes, commercial, technical and property risks, and COVID-19 strategies.

During these rounds of engagements, we heard that we should consider soliciting feedback on our anticipated approach to the competitive selection process and possible commercial terms under consideration separate to, and in advance of, any project-specific procurement.

### Opportunity for input on proposed procurement and commercial approaches

In response to the feedback received during earlier engagement, we are inviting contractors and consultants to share insights on our proposed procurement and commercial approaches, as outlined in the attached appendices, through an additional round of engagement.

Contractors are advised that this document and the attached appendices are for informational purposes only, and is not a procurement process, nor will it form part of the subsequent procurement process for the Gateway Projects. The port authority may, in our sole discretion, modify or alter any of the approaches contained in this document prior to the issuance of any formal procurement process. The participation in this engagement process and feedback provided by contractors will not be used to select qualified participants for the procurement of any of the Gateway Program projects, and may be subject to change by the port authority as we continue our work developing procurement processes and documentation.

Contractor feedback or conversation that takes place, where applicable, during this engagement process will not influence any participant's pursuit of future procurement opportunities with the port authority.

## How to participate

Contractors are asked to review the attached appendices and submit your feedback or comments on the documents by **November 13, 2020**. You can respond by either:

- a. Sending your feedback via email to [gateway@portvancouver.com](mailto:gateway@portvancouver.com)
- b. Sending your feedback in a Word or PDF and emailing it to [gateway@portvancouver.com](mailto:gateway@portvancouver.com)

Information enclosed in the appendices will also be available on [www.portvancouver.com/infrastructureprocurement](http://www.portvancouver.com/infrastructureprocurement).

## How we will refine our procurement processes and documents

There are many factors that the port authority must take into consideration in the development of our approaches, procurement processes, and associated documentation.

The Gateway Program projects typically involve funding from multiple project partners such as the port authority, Transport Canada, railway companies, and municipalities. While the port authority is the project lead and owner, from a contract perspective; in many instances, a project is within municipal or railway jurisdictions; where the applicable municipality or railway will ultimately own, operate and maintain the finished products.

As such, the unique interests and requirements of relevant municipal and rail partners will need to be taken into consideration by the port authority when developing our approaches, procurement processes, and documents, including the specific technical and commercial elements that will need to be included in each design-build agreement associated with a project.

## What's next

We appreciate your time and input. Your insight will help us improve and finalize procurement packages, which will ultimately assist the port authority in effective delivery of the projects. We will review submitted feedback and incorporate input, where applicable, as we refine our approaches, procurement processes, and associated documentation related to the Gateway Program projects.

We may reach out in writing or by telephone with additional questions to clarify feedback given. Where appropriate, we may issue a response to contractor questions in the form of a written document made available to all who participated (questions will not be attributed to specific contractors).

While we will carefully review the feedback we receive from contractors, the port authority will, in our sole discretion, make the final determination on what is included in our procurement and commercial processes, and the documentation arising from such processes. The port authority makes no representations or warranties that the information contained in this document or the feedback and comments that we may receive as part of this process will be included in the final procurement processes and documents that we may issue for these projects. The proposed procurement and commercial approaches outlined in this document relate to the Gateway Program projects only, and the port authority may not necessarily apply these approaches to our other infrastructure projects or programs.

## Confidentiality

This engagement is an open and transparent process and the information the port authority shares in this document with contractors will be available publicly. All feedback and subsequent discussions, if any, will be available for review by port authority employees, but will not be shared with other contractors or the public. If the port authority responds to any feedback, responses will be returned to the contractor and made available, anonymously, to other contractors on the port authority website.

Where the port authority determines that responses to contractor questions would be commercially sensitive, or if the port authority determines it would be inappropriate to respond to a question at this stage, no response will be provided.

Information provided by contractors will not be protected by a non-disclosure agreement. The port authority may, at our sole discretion, issue a summary report that will be used by port authority staff for internal purposes.

**Appendix A**  
**Vancouver Fraser Port Authority – Gateway Program design-build projects**  
**Summary of anticipated procurement approaches**

The tables in Appendix A and B outline a summary of some of the elements that the port authority is currently considering and which it anticipates will be included as part of its procurement documentation and design-build agreements respectively for upcoming gateway design-build projects. The information in these tables is not meant to be exhaustive and is subject to change as the port authority continues to develop its procurement approach and associated documentation. Depending on the project, some or all of these elements may be modified, adapted or adjusted in order to align with specific project requirements. These tables are not a competitive process and are provided for informational purposes only and do not create any contractual obligations on the port authority. For the purposes of these tables “Respondent” means that entity that responds to a Request for Qualifications (RFQ) issued by the port authority for a specific project and “Proponent” means that entity that has been shortlisted by the port authority to participate in a Request for Proposals (RFP) for a particular project following the completion of an RFQ. The port authority, in its sole discretion, will make the final determination on what it includes in its procurement processes and associated documents.

**Request for Qualifications (RFQ)**

<b>Approach</b>	<b>Description</b>
<b>1 – Issuance of RFQ</b>	Each Respondent to the RFQ will be required to provide the Vancouver Fraser Port Authority (VFPA) the following: <ul style="list-style-type: none"> <li>• Form of surety confirmation</li> <li>• Form of insurer confirmation</li> <li>• Form of participation and confidentiality agreement (“PA”), to be executed by Short-Listed Proponents prior to receiving the RFP</li> </ul>
<b>2 – RFQ Information Session</b>	VFPA will hold an RFQ information session with all Respondents following the issuance of the RFQ. Attendance at the RFQ information session is not mandatory and any information that may be provided at any information session will be shared with all Respondents participating in the RFQ.  <i>* it is anticipated these information sessions will be held by a virtual meeting platform (i.e. Microsoft Teams, WebEx)</i>
<b>3 – RFQ Evaluation Criteria</b>	VFPA will provide evaluation criteria and weighting within the RFQ.
<b>4 – Form of Contract</b>	VFPA will not include the draft form of contract(s) within the RFQ, and such documents will be included in the RFP.
<b>5 – Evaluation of RFQ Responses &amp; Debrief</b>	VFPA will evaluate the Responses to the RFQ according to weighted Evaluation Criteria, and select three Short-Listed Proponents.  VFPA will debrief any Respondent who requests a debrief.
<b>6 – Stipends</b>	VFPA will not provide compensation to Respondents for participating in the RFQ Phase of the competitive procurement process.

**Request for Proposals (RFP)**

<b>Approach</b>	<b>Description</b>
<b>1 – Issuance of RFP and Delivery of PA</b>	VFPA will collect a signed PA from each Short-Listed Proponent, as a condition to issuing the RFP to such Proponent. The RFP will include: <ul style="list-style-type: none"> <li>• Initial Draft Technical Requirements; and</li> <li>• Initial Draft DB Contract.</li> </ul>
<b>2 – Comments to Technical and Commercial Requirements</b>	Proponents will have the opportunity to issue written comments to the Initial Draft Technical Requirements and the Initial Draft DB Contract (in each case, stating rationale and benefit for the VFPA), which will be treated confidentially by the VFPA.  Proponents’ comments may include technical equivalents or alternates for consideration by the VFPA before issuance of the Final Technical Requirements (as outlined in item no. 3).

Approach	Description
	<p>VFPA may, but is not obligated to:</p> <ul style="list-style-type: none"> <li>• Invite a Proponent to one or more meetings to discuss any or all of the comments submitted in writing. Nothing said at the meeting will be binding on either side or deemed to modify the RFP, unless and only to the extent the VFPA issues an Addendum to address the issue; and</li> <li>• Take any such comments into account when it later issues the Final Technical Requirements as the basis for the Technical Proposals, and the Final Draft DB Contract as the basis for Commercial Proposals.</li> </ul>
<b>3 – Issuance of Final Technical &amp; Commercial Requirements</b>	<p>VFPA will issue:</p> <ul style="list-style-type: none"> <li>• Final Technical Requirements as the basis for Technical Proposals, highlighting areas that are considered critical requirements by the VFPA (e.g. clearance envelope and seismic design criteria for structures, location of intersections); and</li> <li>• Final Draft DB Contract for consideration by the Proponents when preparing their Technical Proposals and as the basis for Commercial Proposals, highlighting areas that are considered critical requirements by VFPA.</li> </ul>
<b>4 – Submission of Technical Proposals</b>	<p>Proponents should not deviate from the critical requirements set out in the Final Technical Requirements when preparing their Technical Proposals:</p> <ul style="list-style-type: none"> <li>• Proponents who do not meet such critical requirements in their Technical Proposal may not be invited to submit a Commercial Proposal;</li> <li>• VFPA reserves the right to ignore any deviations from such critical requirements, in which case Technical Proposals will be deemed to not include such deviations</li> </ul> <p>Proponents are <u>strongly discouraged</u> from deviating from the rest of the Technical Requirements (i.e., those portions other than the critical requirements). If a Proponent feels strongly that it must deviate from such other Technical Requirements, it should set out the change in a table with the rationale for the change and its benefit for the VFPA. Unless a change is so set out in the table, the Proponent will be deemed to accept all Final Technical Requirements.</p>
<b>5 – Evaluation Criteria</b>	<p>VFPA will disclose the evaluation criteria and weighting within the RFP.</p>
<b>6 – Evaluation of Technical Proposals and Invitation to submit Commercial Proposals</b>	<p>The VFPA will conduct a weighted evaluation of the Technical Proposals. Those Proponents whose Technical Proposal receives a “passing score” will be invited to submit a Commercial Proposal based on their Technical Proposal and the Final Draft DB Contract.</p> <p>Proponents should not deviate from the critical requirements set out in the Final Draft DB Contract when preparing their Commercial Proposal:</p> <ul style="list-style-type: none"> <li>• Proposals that vary critical requirements of the Final Draft DB Contract may receive fewer or no points during the commercial evaluation; and</li> <li>• The VFPA reserves the right to ignore any deviations from such critical requirements, in which case Commercial Proposals will be deemed to not include such deviations.</li> </ul> <p>Proponents are <u>strongly discouraged</u> from deviating from the rest of the Final Draft DB Contract (i.e., those portions other than the critical requirements). If a Proponent feels strongly that it must deviate from such other portions of the Final Draft DB Contract, it should set out the change in a table with the rationale for the change and its benefit for the VFPA. Unless a change is so set out in the table, the Proponent will be deemed to accept all terms of the Final Draft DB Contract.</p>
<b>7 – Evaluation of Commercial Proposals</b>	<p>The VFPA will conduct a weighted evaluation of the Commercial Proposals. In selecting the Preferred Proponent, the VFPA may consider both the technical and commercial scores received by a Proponent. The VFPA is not obligated to select the Proponent with the lowest price.</p>
<b>8 – Selection of Preferred Proponent &amp; Debrief</b>	<p>The VFPA selects a Preferred Proponent and enters into negotiations to execute the DB Contract with such Proponent. The VFPA reserves the right to negotiate with any other Proponent should the Preferred Proponent fail to execute the contract.</p> <p>After the execution of the DB Contract, the VFPA will debrief any unsuccessful Proponent who requests a debrief.</p>

Approach	Description
9 – Stipends	<p><b>For Traditional Design-Build Contracts:</b></p> <p>If the competitive procurement process is completed and a Design Build Contract is executed and delivered, it is anticipated that a stipend in an amount relative to the scope of a particular project and commensurate with the expected level of effort in preparing Proposals, will be available to each Proponent participating in the RFP phase not selected as the Preferred Proponent on the terms and subject to the conditions outlined in the procurement process and documents. .</p> <p>The conditions for payment of the stipend include, among other things, transfer of intellectual property rights and execution and delivery of a full and final release of claims and a waiver of liability.</p> <p><i>For Progressive Design Build Contracts:</i></p> <p>No compensation will be available to Proponents participating in the RFP phase based on structure of this procurement model which has a more limited scope of effort associated with preparing Responses and Proposals.</p>

**Appendix B**  
**Vancouver Fraser Port Authority – Gateway Program design-build projects**  
**Summary of anticipated risk allocation approaches in design-build contracts**

The tables in Appendix A and B outline a summary of some of the elements that the port authority is currently considering and which it anticipates will be included as part of its procurement documentation and design-build agreements respectively for upcoming gateway design-build projects. The information in these tables is not meant to be exhaustive and is subject to change as the port authority continues to develop its procurement approach and associated documentation. Depending on the project, some or all of these elements may be modified, adapted or adjusted in order to align with specific project requirements. These tables are not a competitive process and are provided for informational purposes only and do not create any contractual obligations on the port authority. For the purposes of these tables “Respondent” means that entity that responds to a Request for Qualifications (RFQ) issued by the port authority for a specific project and “Proponent” means that entity that has been shortlisted by the port authority to participate in a Request for Proposals (RFP) for a particular project following the completion of an RFQ. The port authority, in its sole discretion, will make the final determination on what it includes in its procurement processes and associated documents.

Topic	Anticipated Risk Allocation / Approach
<b>1 – Pre-construction services and preliminary design*</b>  <i>*only applies to progressive-design build projects</i>	<p>If the Design Builder (“DB”) is also engaged to perform the pre-construction services, all pre-construction services will be deemed to have been performed under the Design Build Contract (the “DB Contract”), including any preliminary designs.</p> <p>If the DB did not perform the pre-construction services, it will be provided the preliminary design prepared by the pre-construction services provider as part of the RFP process. The DB will be free to use such preliminary designs in whole or in part, as it sees fit, but will remain fully responsible for the design, including any aspects based on such preliminary design.</p>
<b>2 – Good Industry Practice</b>	<p>In addition to the express requirements of the DB Contract, and all applicable laws, the DB will be required to perform the work required by the DB Contract (the “Work”) in accordance with “Good Industry Practice”.</p> <p>If more than one standard applies to the performance of the Work, the strictest of such standards will apply</p> <p>Sample language:</p> <p><i>“The standards, practices, methods and procedures to a good professional and commercial standard in the marine, port terminal, civil infrastructure and transportation industry, conforming to Laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced design-builder contractor engaged in a similar type of undertaking under the same or similar circumstances and in the same or similar geographic region.”</i></p>
<b>3 – Errors in Contract Documents</b>	<p>The DB will be required to notify the Vancouver Fraser Port Authority (VFPA) of any errors identified in the DB Contract documents. Any Work performed by the DB in the face of an error that would have been identified by a competent contractor reasonably experienced in the Work, prior to receiving additional instructions from VFPA, will be done at the DB’s own risk.</p>
<b>4 – Road and rail operations</b>	<p>All roads and rail lines will remain operational throughout the performance of the Work, and the DB assumes all risks associated with any delays or interruptions required to maintain such operations in accordance with VFPA’s interface agreements with the road and rail operators. It is anticipated that interface agreements will form part of the contract documents.</p>
<b>5 – Permits</b>	<p>The DB will be required to obtain and maintain all permits necessary for the performance of the Work, with the exception of those project specific permits expressly listed in the DB Contract as being the responsibility of VFPA.</p> <p>The DB will comply with all permits, and takes all risk if it requires any such permits to be amended in order to allow the DB to perform its Work. To the extent any permits (including those obtained by VFPA) obtained after the date the DB Contract is executed necessitate a change to the Work, the DB will be entitled to claim a change in accordance with the DB Contract.</p>
<b>6 – Site Safety</b>	<p>The DB will be nominated as “prime contractor” for the site and will be responsible for discharging those obligations and managing site safety, including the implementation of protocols and other measures required to address COVID-19 risks.</p>

Topic	Anticipated Risk Allocation / Approach
<b>7 – Risk of loss and damage to property</b>	<p>Care, custody, control and security of the Work, and all risk of loss will remain with the DB until substantial completion, except for those parts of the Work taken over by VFPA at an earlier stage. The DB will also be responsible to protect VFPA property and third party property, and all equipment, materials and other items to be used in or provided to or by the DB in connection with the Work.</p> <p>The DB will make good any loss or damage to such property, but will not be responsible to the extent such loss or damage is caused by VFPA or other contractors engaged by VFPA</p>
<b>8 – Labour Disputes</b>	<p>The DB will use all commercially reasonable efforts to avoid labour disputes between the DB and its employees, and between other employers and their employees, and to bring to an end any strikes, slowdowns, work stoppages, or other interruptions by its employees or those of its subcontractors.</p>
<b>9 – Completion and deficiencies holdbacks</b>	<p>When the DB considers substantial completion to have been achieved, as defined in the DB Contract, it will submit an application to VFPA. The parties will inspect the Work and when VFPA is satisfied that substantial completion has been achieved it will issue a certificate to the DB confirming same.</p> <p>The parties will prepare a punch list of minor defects and deficiencies existing at the time that substantial completion is certified, and VFPA may hold back from any amounts owing at substantial completion an amount equal to two times the estimated cost of correcting such punch list items.</p> <p>When the DB considers total completion to have been achieved, including close-out of all punch list items, it will submit an application to VFPA for certification of same.</p>
<b>10 – Waiver of Claims</b>	<p>At each stage of submitting its application for substantial completion and total completion, the DB will waive and release VFPA from all claims it has or reasonably ought to have known it had against VFPA with respect to the Work and the DB Contract, except those set out in the applicable application and still unsettled.</p>
<b>11 – Covid-19</b>	<p>The parties will acknowledge and agree that the DB Contract is being entered into during the ongoing COVID-19 pandemic, and that neither party will be entitled to make any claims, including for force majeure, as a result of the conditions existing at execution of the DB Contract.</p> <p>In the event that a new condition of COVID-19 arises during the performance of the Work (which is not a “change in law”) and such condition did not exist at the effective date, the DB will be entitled to force majeure relief in the form of an extension of time, but no additional costs.</p> <p>To the extent a COVID-19 restriction is the direct result of a change in law after the effective date, and such change in law causes an unavoidable material cost increase, then the DB will be entitled to both an extension of time and additional costs.</p>
<b>12 – Concurrent Delay</b>	<p>To the extent one or more concurrent events delay the performance of the Work, an order of priorities will be established such that the DB will not be entitled to claim any relief for any periods of concurrency between VFPA delays and DB delays.</p>
<b>13 – Acceleration</b>	<p>VFPA may direct the DB to accelerate the Work in the event of DB delays, or otherwise for VFPA’s convenience. The DB will not be entitled to any compensation for acceleration due to its own delays.</p>
<b>14 – Termination for Cause</b>	<p>VFPA may terminate the DB Contract in the event that the DB is in default and fails to rectify that default within seven days of receipt of notice from VFPA, or otherwise take all reasonable steps to correct the default (including providing a schedule to VFPA for such correction and complying with that schedule).</p> <p>The DB may terminate the DB Contract in the event VFPA fails to pay an undisputed amount as required by the DB Contract, and fails to rectify that default within 30 business days of receipt of a notice from the DB.</p>
<b>15 – Suspension and termination for convenience</b>	<p>VFPA may at any time, for any reason, suspend or terminate the DB Contract. VFPA will reimburse the DB: (a) for any such suspension, the reasonable and substantiated direct costs, including reasonable stand-by equipment rental rates, incurred by the DB, and (b) for any such termination, the reasonable and substantiated third party cancellation costs incurred by the DB (provided such charges could not reasonably have been avoided or mitigated), and the reasonable and substantiated direct costs for site demobilization.</p>
<b>16 – Disputes</b>	<p>All disputes arising under the DB Contract will, in the first instance, be referred to members of senior management for resolution and, failing such resolution within 20 days of issuance of a dispute notice, be referred to an independent referee in accordance with a referee procedure set out in the DB Contract. The decision of the referee will be binding on the parties, but not final (unless a party does not commence proceedings within 30</p>

Topic	Anticipated Risk Allocation / Approach
17 – Insurance	<p>days of receipt of that decision). Final resolution will be through arbitration (if both parties agree) or by litigation in the courts.</p> <p>The DB will be required to have in place the following insurance coverage for the Work (limits will vary depending on each project – this is a general framework of the types of insurance coverage that the VFPA would expect from the DB):</p> <ul style="list-style-type: none"> <li>(a) Workers' compensation coverage as required by law;</li> <li>(b) Employer's liability insurance;</li> <li>(c) Commercial general liability insurance;</li> <li>(d) Automobile liability insurance;</li> <li>(e) Professional liability insurance, which is to remain in place for 48 months after completion or earlier termination of the DB Contract;</li> <li>(f) if aircraft or watercraft will be used in connection with the Work, aircraft or watercraft insurance;</li> <li>(g) Hull and Machinery insurance to full market value covering each and every marine vessel or craft owned, chartered, hired or otherwise procured by the DB and its subcontractors, on terms no less broad than the Canadian Hull (Pacific) Clauses 1991;</li> <li>(h) Property insurance covering loss or damage to all tools, equipment and property owned by, leased by, or rented by and use by the DB in performing the Work;</li> <li>(i) Wrap-up liability insurance; covering all sums which the insured may be obligated to pay as compensatory damages for death or bodily injury to persons, or loss or damage to property, arising from the Work;</li> <li>(j) Builder's Risk (Course of Construction) insurance in the name of VFPA and the DB; (<i>amount to be determined by a multiplier times the Project value</i>);</li> <li>(k) Marine transit insurance in an amount commensurate with the full replacement value of the items to be incorporated into the final project, if applicable; and</li> <li>(l) such additional insurance as may be required by laws, or which the DB considers necessary</li> </ul> <p>The DB will be responsible for payment of all deductibles.</p>
18 – Indemnities	<p>The DB will indemnify and save harmless and assume the defence of VFPA and its directors, officers, employees, consultants and agents, from and against any and all losses, claims, demands, damages, actions, suits, causes of action, costs and expenses whether in respect to losses suffered by any Indemnified Parties or in respect to claims by third parties that arise out of or occur, directly or indirectly, by reason of the negligent acts or omissions, willful misconduct, fraudulent or criminal acts or breach of the DB Contract of or by the DB or any representative, agent, employee, officer, director, or subcontractor of the DB pursuant to the DB Contract, excepting always liability that directly arises out of the independent negligent acts of VFPA.</p>
19 – Intellectual Property Rights	<p>The DB will grant VFPA an irrevocable, non-exclusive, perpetual, royalty-free, transferable, assignable, sublicense-able and worldwide license to use the intellectual property created by or on behalf of the DB in connection with the Work, for the life of the Work in connection with the project.</p> <p>The DB will indemnify, hold harmless and assume the defence of VFPA from and against any third party claims for unauthorized disclosure, use or infringement of intellectual property rights relating to or arising out of the Work.</p>

**Appendix C**  
**Vancouver Fraser Port Authority – Gateway Program design-build projects**  
**Risk allocation approaches in design-build contracts – under development**

The table in Appendix C outlines a summary of certain risk allocation topics that are currently under consideration and development as part of the port authority’s procurement planning and document development. Once finalized by the port authority, such topics are anticipated to be included as part the port authority’s procurement documentation and design-build agreements respectively for upcoming gateway design-build projects. The topics contained in this table are not meant to be exhaustive and are subject to change as the port authority continues to consider and develop its procurement approach, risk allocation and associated documentation. Depending on the project, some or all of these topics may be modified, adapted or adjusted in order align with specific project requirements. These tables are not a competitive process and are for informational purposes only and do not create any contractual obligations on the port authority. The port authority, in its sole discretion, will make the final determination on what it includes in its procurement processes and associated documents including but not limited to these topics as outlined in this Appendix C and is not bound to incorporate any of the feedback or comments that it may receive.

Topic	Description
<b>1 – Site Conditions</b>	<p>Vancouver Fraser Port Authority (VFPA) seeks feedback and comments from contractors related to site conditions.</p> <ul style="list-style-type: none"> <li>VFPA anticipates that the Design Builder (DB) will take all risk of site conditions, including geotechnical and subsurface conditions, access, local weather, the availability of labour, equipment and materials, and other site-specific issues, all as would be apparent to a qualified and experienced contractor upon review of the DB Contract documents and inspection of the site.</li> </ul>
<b>2 – Project Schedule</b>	<p>VFPA seeks feedback and comments from contractors related to project schedule.</p> <ul style="list-style-type: none"> <li>VFPA anticipates that the initial schedule for the Work (the “Project Schedule”) agreed between the parties will be attached to the DB Contract.</li> <li>VFPA anticipates that the DB will be required to update and submit the Project Schedule to VFPA within seven (7) days of the execution of the DB Contract, and then submit updated Project Schedules to VFPA each month with its monthly payment applications, the receipt of which will be a condition of payment</li> </ul>
<b>3 – Liquidated Damages</b>	<p>VFPA seeks feedback and comments from contractors related to liquidated damages:</p> <ul style="list-style-type: none"> <li>VFPA anticipates that if the DB fails to achieve substantial completion on or before the date for substantial completion specified in the DB Contract, the DB will pay liquidated damages to VFPA as a daily amount per day (TBD), up to a maximum percentage (TBD) of the contract price</li> </ul>
<b>4 – Changes</b>	<p>VFPA seeks feedback and comments from contractors related to the DB’s entitlement to any mark-up where VFPA makes changes to the Work.</p> <ul style="list-style-type: none"> <li>VFPA makes changes by altering, adding to or deducting from the Work, with adjustments, if any, to the contract price and time for performance of the Work.</li> <li>DB will not make any change prior to receiving a written change order or change directive. If the DB receives a direction, instruction or decision that it considers to be a change, it must notify VFPA within ten business days of receipt, failing which the right to claim such a change will be waived.</li> </ul>
<b>5 – Termination for prolonged force majeure or suspension</b>	<p>VFPA seeks feedback and comments from contractors related to a termination for a prolonged force majeure or suspension.</p>
<b>6 – Limitation of Liability</b>	<p>VFPA seeks feedback and comments from contractors in relation to any potential limitation of liability, in particular, the maximum aggregate liability of the DB for all claims relating to or arising out of the DB Contract, whether or not terminated, and whether arising in contract, tort (including negligence), indemnity, by statute, as a matter of strict or absolute liability, or from any other cause.</p>

**Learn more:**

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