

REQUEST FOR PROPOSAL

COMPANY: Enbridge Energy, Limited Partnership
("Company")

RFP #: L5RT-2-5-05

RFP TITLE: Great Lakes Tunnel Project-Construction

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INTRODUCTION

1. PREAMBLE

- (a) This Request for Proposal (“**RFP**”) is being issued by Company to obtain proposals for the goods and/or services (“**RFP Subject**”) described in the RFP data sheet forming part of this RFP (“**RFP Data Sheet**”). The RFP may only be amended by an addendum issued by Company (an “**Addendum**” and, collectively, the “**Addenda**”) which shall, upon issuance, become part of the RFP.
- (b) All instructions required for the completion of a proposal (a “**Proposal**”) in response to this RFP are included in this RFP. Invited potential suppliers (each, a “**Proponent**”) (for purposes of clarity Proponent shall include joint ventures, partnerships and teams) shall comply with these Instructions to Proponents exactly as they are set out in this RFP. Failure to do so may be grounds for disqualification of a Proposal.
- (c) Should Company decide to proceed,

then Supplier shall enter into a contract (“**Definitive Contract**”) with Company for the purposes of supplying the RFP Subject; the Definitive Contract will be Company’s form of contract (“**Contract**”) attached at Appendix E.

- (d) Where marked as applicable in the RFP Data Sheet, Proponents are to follow instructions in the Confirmation of Receipt section of the RFP Data Sheet.

2. RFP DATA SHEET

Proponents are to refer to the RFP Data Sheet for specific information and requirements applicable to this RFP.

3. RFP DOCUMENTS

The RFP documents (“**RFP Documents**”) shall be read as a whole and comprise of:

- (a) these Instructions to Proponents;
- (b) the RFP Data Sheet;
- (c) all Appendices to the RFP listed in the RFP Data Sheet; and
- (d) any Addenda issued pursuant to this RFP.

If there are any inconsistencies among the RFP Documents, the inconsistencies will be resolved by reference to the following descending order of priority: (i) any Addenda; (ii) these Instructions to Proponents; (iii) the RFP Data Sheet; and (iv) all Appendices to the RFP.

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4. RFP PROCESS

THIS RFP IS GOVERNED BY THE TERMS AND CONDITIONS SET OUT IN THIS RFP.

THIS RFP DOCUMENT IS NOT INTENDED TO BE A CALL FOR TENDERS. If this RFP is being distributed via an RFP posting on a procurement portal (“**RFP Posting**”), Proponent acknowledges that, notwithstanding the use of words such as “bid” or “tender” within such procurement portal, this process is a Request for Proposal.

5. COMPANY POLICIES

Supplier will perform the RFP Subject in accordance with Company’s policies and documentation as directed by Company. Applicable Company policies are identified on the RFP Data Sheet.

6. CONFIDENTIALITY OF INFORMATION

Proponent acknowledges that this RFP and associated information or data whether oral or written (including any subsequently delivered information relating to or supplementing this RFP) constitute proprietary and confidential information of Company (“**Confidential Information**”). Proponent agrees that it will treat all Confidential Information in strict confidence for the sole purpose of reviewing and responding to this RFP and in accordance with the terms and conditions set forth below:

- (a) Proponent will limit access to Confidential Information to only those employees of Proponent or third parties that have a need to know such Confidential Information for the purpose of Proponent preparing its Proposal.
- (b) If Proponent elects not to submit a Proposal in response to this RFP, or if Proponent is notified that it is removed from consideration, then Proponent will immediately destroy or cause to be destroyed all Confidential Information, as well as Proponent’s notes, memoranda, summaries or other writings relating to any Confidential Information. If requested by Company, Proponent will provide Company with an officer’s certificate certifying that all such Confidential Information and other information has been physically destroyed (i.e. deleted and shredded but not merely discarded).

Proponents acknowledge and agree that a breach of the provisions of this Section 6 would cause Company and/or its related entities to suffer a loss which could not be adequately compensated by damages, and that Company and/or any related entity may, in addition to any other remedy or relief, enforce any of the provisions of this Section 6 upon application to a court of competent jurisdiction without proof of actual damage to Company or any related entity. The provisions of this Section 6 shall be binding and shall survive any cancellation of this RFP and the conclusion of the RFP process.

Each Proponent agrees that Company may, in Company’s sole discretion, share Proposals, information and documentation arising out of this RFP with Company’s affiliates.

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7. PROPONENTS

- (a) Only those Proponents that have been invited to this RFP shall be eligible to submit a Proposal. Proposals from affiliates of the invited Proponents or other parties associated with the invited Proponents may not be considered without prior written approval from Company.
- (b) Unless otherwise approved in writing by Company, a Proposal must be submitted by a single Proponent.
- (c) Proponents submitting a Proposal shall be actively engaged in the line of goods or services required by the RFP Subject and shall be able to refer to goods or services of a similar nature performed by them.

8. AUTHORIZATIONS

By submitting a Proposal, Proponent represents and warrants that it has or will have satisfied itself that prior to the performance of the RFP Subject, it will be able to obtain all authorizations required by the laws of the jurisdictions in which the RFP Subject will be performed.

REQUEST FOR PROPOSAL INFORMATION

9. RFP SCHEDULE

The RFP Schedule is set out in the RFP Data Sheet with all dates being approximate and subject to change at the sole discretion of Company. Company will communicate to Proponents any changes to the RFP Schedule by issuing an Addendum.

10. COMMUNICATIONS CONCERNING RFP

- (a) All communications related to this RFP shall be submitted to the RFP contact identified in the RFP Data Sheet ("**RFP Contact**") in accordance with the RFP Data Sheet. Communications directed to Company personnel other than the RFP Contact may result in disqualification of Proponent from further consideration by Company.
- (b) Proponent is required to ensure that the RFP number and RFP Title are referenced clearly in all communications to the RFP Contact.
- (c) It is Proponent's responsibility to learn all aspects of the RFP requirements. Should any details necessary for a clear and comprehensive understanding be required, it is Proponent's responsibility to obtain clarification before submitting its Proposal.
- (d) All inquiries or requests for clarifications ("**Queries**") related to this RFP must be submitted to the RFP Contact on or before the Query Deadline set out in the RFP Schedule section of the RFP Data Sheet.
- (e) In setting out the Query and providing a response, Company may at its discretion:
 - (i) answer similar questions from different Proponents only once;
 - (ii) edit the

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questions for purpose of clarity; and/or (iii) ignore Queries which, in Company's opinion, are obscure, ambiguous, unclear or not relevant to this RFP.

- (f) Company is under no obligation whatsoever to treat any Query as confidential and at Company's discretion, any Query of, and Company's response to, one Proponent may be provided to all Proponents.

11. REVISIONS AND CLARIFICATIONS TO RFP

- (a) All clarifications, revisions, interpretations and any supplemental instructions provided by Company will be in the form of written Addenda issued in accordance with the RFP Data Sheet. Any statement, consent, waiver, acceptance, approval, response to Query, clarification, information or anything else said or done by Company, the RFP Contact or any other person is not binding on Company and shall not and will not be relied upon by any Proponent except and only to the extent that a confirming Addendum is issued by Company, provided that Company shall not be under any obligation whatsoever to issue any Addendum.
- (b) All Proponents will be deemed to have read and reviewed all of the Addenda. Failure to comply with clarifications, changes, interpretations or supplementary instructions set out in the Addenda may result in disqualification of a Proponent's Proposal.
- (c) All requests for clarification must be made by Proponent in accordance with Section 10 above.

12. RFP REQUIREMENTS, ERRORS, OMISSIONS AND UNCERTAINTY

Proponent is solely responsible for all errors and omissions in its Proposal. It is the responsibility of Proponent to ensure that its Proposal is submitted strictly in accordance with this RFP. It is also Proponent's responsibility to comprehend and respond to all aspects of the RFP requirements. Should any details necessary for a clear and comprehensive understanding be required by Proponent, it is Proponent's responsibility to obtain clarification in accordance with Section 10 before the Query Deadline set out in the RFP Schedule section of the RFP Data Sheet. Proponent will notify the RFP Contact of any apparent errors, deviations, omissions, or conflicts noted in this RFP. Company shall not be responsible in any way whatsoever for any misunderstanding by Proponent of the RFP Documents, responses to Queries, any documents provided by Company or any other type of information provided by or communication made by Company in connection with this RFP.

13. CONFLICT OF INTEREST DISCLOSURE

Each Proponent must declare whether it has an actual or potential Conflict of Interest (as defined below). At the discretion of Company, if Proponent is found to be in a Conflict of Interest that it has not disclosed or that cannot be addressed or rectified by Proponent to the satisfaction of Company, Company may disqualify Proponent from the RFP process and any Proposal submitted by Proponent.

"Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

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- (a) in relation to the RFP process, Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to: (i) having or having access to information in the preparation of its Proposal that is confidential to Company or any entity related to Company and not available to other Proponents; (ii) communicating or engaging with any person with a view to influencing preferred treatment in the RFP process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations, Proponent's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

14. OWNERSHIP OF RFP DOCUMENTS

All materials submitted by Proponents in response to this RFP shall become the property of Company without payment or liability for payment by Company and shall not be returned. Company reserves the right to, in its discretion, make a reasonable number of copies of Proposals, and utilize information and concepts contained in Proposals except to the extent such information and concepts are protected by copyright, patent or industrial design protection.

15. NO RELIANCE BY PROPONENT

Company will not be responsible for any claim, action, loss, damage, or liability arising from Proponent's reliance or use of this RFP or any other technical or historical appendices, data, materials, photographs, or documents provided by Company. Proponent is fully responsible for obtaining all information required for the preparation of its Proposal and for the execution of the Definitive Contract.

16. RESERVATION OF RIGHTS

- (a) Company has the right, at its discretion, without incurring any liability or obligation for claims, actions, costs, expenses, damages, penalties or losses incurred by any Proponent or any person or entity related or otherwise connected with it or its Proposal ("**Liability**"), to:
 - i. change the dates, schedule, deadlines, process and requirements set out in the RFP Documents;
 - ii. accept for review any Proposal in whole or in part;
 - iii. reject any or all Proposals;
 - iv. change the RFP process or any of the RFP Documents;
 - v. change the limits or scope of the procurement;

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- vi. negotiate with one, some or all Proponents;
 - vii. not select the lowest price Proposal;
 - viii. reissue the same RFP or a different request for proposal in relation to the RFP Subject;
 - ix. cancel this RFP, or the procurement of the RFP Subject, for any reason whatsoever, at any time;
 - x. accept for review any future proposal or other offer;
 - xi. waive any irregularity or non-compliance with the requirements of this RFP where the irregularity or non-compliance is determined by Company, in its discretion, to be minor or inconsequential; and
 - xii. if only one Proposal is received, elect to accept for review or reject it or enter into negotiations with Proponent.
- (b) Company may independently verify any information in any Proposal. Company also has the right to disqualify any Proponent and reject the Proposal of any Proponent which, whether intentional or not, has failed to disclose any information that would, if disclosed, materially adversely affect Company's evaluation of the relevant Proponent's Proposal.
- (c) Company may, in its discretion, without Liability at any time, reject any Proposal or disqualify a Proponent if, in the discretion of Company, such Proposal contains materially false, incorrect, or misleading information or reveals a Conflict of Interest that Company is not prepared to waive in its discretion.
- (d) If Company is of the opinion that a Proposal materially deviates from the requirements set out in the RFP Documents, Company may in its discretion and without Liability reject the Proposal. Proponent's submission of a complete but poor quality Proposal shall not be considered a failure to comply with the requirements set out in the RFP Documents but may adversely affect the evaluation and scoring of Proponent's Proposal.
- (e) Company shall not be obligated to accept for review Proposals that are unsigned, incomplete, conditional, illegible, obscure or contain irregularities of any kind.
- (f) Company shall have no Liability to any Proponent or any other person or entity (including, without limitation, direct, indirect, special or punitive damages) arising directly or indirectly out of or otherwise relating to this RFP or the RFP process, including without limitation:
- i. any Proponent's Proposal; or
 - ii. any compliant or non-compliant, qualified or unqualified submission or participation or involvement in this RFP process; or

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- iii. acts, omissions or any course of conduct by the Company, the RFP Contact or any agent or representative of Company in connection with the conduct of this RFP process.
- (g) The waiver and exclusion set out in this Section 16 applies to all possible claims, whether arising in contract, tort, equity, or otherwise, including, without limitation, any claim for breach by Company of a duty of fairness or relating to a failure by Company to comply with the rules set forth in this RFP.
- (h) Each Proponent has read, understood and agrees that this waiver and exclusion of liability is clear and unambiguous and by making its Proposal submission it agrees that it has no claim in any way connected to any of the circumstances described in this Section 16 or the RFP.
- (i) The provisions of this Section 16 shall survive any cancellation of this RFP and the conclusion of this RFP process.

17. NO IMPLIED OFFER OR BINDING COMMITMENT

No contract or other binding obligation on Company will be implied (by law or otherwise) unless and until Company and Proponent have executed the Definitive Contract.

18. NO PUBLIC DISCLOSURE

Proponent agrees not to refer to Company in relation to this RFP or any related activities in any public disclosure without prior written approval from Company.

19. INCURRED COSTS AND EXPENSES

Proponent participates in this RFP process at its sole risk, cost and expense; Proponent is solely responsible for all costs and expenses of preparing and submitting its Proposal and any activity associated with the RFP.

20. GOVERNING LAW

The construction, validity, interpretation, performance, and effect of this RFP shall be governed by the laws of the state of Texas (exclusive of any principles of conflicts of laws which would require application of the substantive law of another jurisdiction).

21. RFP INTERPRETATION

Company shall be the interpreter of the RFP. Proponent shall be bound by the decision of Company. All references in this RFP to Company's "discretion" or "sole discretion" means in the sole and absolute discretion of Company.

22. PROPONENT CONDUCT

- (a) Company may preclude any Proponent from proceeding with this RFP if it is found that gratuities in the form of entertainment, gifts or otherwise were offered or given by Proponent, or any employee, agent or representative of Proponent, to any

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officer, director, agent, or employee of Company (including the RFP Contact) or their consultants or agents, for the purpose of securing an award of the Definitive Contract.

- (b) No Proponent may discuss or communicate with any other Proponent about the preparation of its Proposal or the Proposal of any other Proponent. Proponents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.
- (c) Company has the right, in its discretion, to disqualify any Proponent and/or reject any Proposal where it is of the opinion that such Proponent has taken part in collusive or fraudulent behaviour.
- (d) If, on or after the Proposal Submission Deadline and prior to executing the Definitive Contract, there is a change in circumstances that may materially adversely affect Proponent in a way which could impair Proponent's ability to perform its obligations under either or both this RFP or the Definitive Contract, then Proponent shall promptly notify Company in writing by email to the RFP Contact. In such an event, Company may, in its discretion, disqualify Proponent from continuing in the RFP process and elect not to consider any Proposal that it submitted.

PROPOSAL SUBMISSION

23. PROPOSAL TIMING AND RECEIPT

- (a) See Appendix A for the Proposal Format and Contents, which sets out the format and content requirements.
- (b) Proposals must be received (i) no later than the date and time identified in the RFP Schedule section of the RFP Data Sheet ("**Proposal Submission Deadline**"); and (ii) by the method identified in the Proposal Submission section of the RFP Data Sheet.
- (c) All Proponents must submit their Proposals in accordance with the RFP Data Sheet.
- (d) Proposals submitted in alternative methods or formats may be disqualified.
- (e) Company is not responsible for any loss or delay with respect to the submission of any Proponent's Proposal.

24. PRE-PROPOSAL MEETINGS AND SITE VISITS

- (a) The RFP Schedule section of the RFP Data Sheet will specify whether a site visit ("**Site Visit**") and/or a pre-proposal meeting ("**Pre-Proposal Meeting**") are mandatory for all Proponents. Where such meetings or site visits are mandatory, the failure of Proponent to attend the mandatory Site Visit and/or Pre-Proposal Meeting may disqualify that Proponent's Proposal from consideration.

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- (b) The details, including location and time, of the Site Visit and the Pre-Proposal Meeting shall be specified in the RFP Data Sheet.
- (c) Confirmation of attendance must be provided by Proponents to the RFP Contact by email (identified in the RFP Data Sheet) on or before the date and time set out in the RFP Data Sheet.
- (d) Where multiple Pre-Proposal Meetings and Site Visits are being conducted Proponents will identify the specific meetings and Site Visits they intend to attend in their confirmation of attendance.

25. INSPECTION OF SITES

Where applicable, Proponent shall carefully examine the work location(s) and available industry information on the location before submitting a Proposal. If a Site Visit is not identified in the RFP Data Sheet, Proponent will not be allowed access to the work location(s) without the approval of Company and compliance with Company's site requirements. Any requests for such site visits must be communicated by Proponent to the RFP Contact.

26. PROPOSAL VALIDITY PERIOD

Where specified as applicable under the RFP Data Sheet:

- (a) Proposals submitted by the Proposal Submission Date (and not withdrawn under Section 27) shall be irrevocable and remain in effect for acceptance in accordance with this Section 26, through the period of time ("**Proposal Validity Period**") as set out in the RFP Data Sheet.
- (b) The Proposal Validity Period for any Proponent(s) that has been identified as a Supplier shall automatically extend until the execution of the Definitive Contract. Once the Supplier has executed the Definitive Contract (as applicable), the Proposal Validity Period for all Proposals shall terminate.

27. AMENDMENTS AND WITHDRAWAL OF PROPOSALS

- (a) Proponent may only amend its Proposal after submission by submitting a revised Proposal before the Proposal Submission Deadline.
- (b) Proponent may withdraw its Proposal only by giving notice in accordance with the RFP Data Sheet.

28. MODIFICATION OF PROPOSAL FORMS

Other than data input, modifications or alterations of any kind to Proposal forms supplied by Company are not permitted. Modification or alteration of Proposal forms may result in a Proposal being deemed as non-compliant.

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29. PROPOSAL EXECUTION

The Proposal Submission Acknowledgement Form identified in the RFP Data Sheet shall be executed by a person with the authority to bind Proponent.

30. POST PROPOSAL INFORMATION REQUIREMENTS

Company may request additional information about a Proposal by sending a written inquiry to Proponent. Company may require a visit to Proponents/Respondents site (at Company's expense) to evaluate Proponent's operation and clarify issues of methodology and experience.

EVALUATION AND SELECTION

31. EVALUATION AND SELECTION

- (a) Proposals submitted in response to this RFP may be selected without further negotiation by Company and are binding upon the selected Proponent(s). Company will evaluate all Proposals considering Proponents' respective abilities to meet each of the requirements as defined herein.
- (b) Proposals will be used as the basis of the evaluation. Company shall have sole discretion in its evaluation of Proposals received.
- (c) Proposals will be evaluated based upon criteria determined by Company, in its sole discretion. Such criteria (in no particular order) shall include, but not be limited to, those criteria set out in the RFP Data Sheet.
- (d) A short list of Proponents may be established upon completion of an initial round of evaluations.
- (e) Proponent may be requested to make a presentation regarding its Proposal to Company. Proponent's key management and technical people are expected to participate in any presentations that occur.
- (f) Company reserves the right to review Proposal submitted by Proponent, and then to enter into simultaneous negotiations with all or any other Proponents for purposes of refining the scope of the RFP Subject or finalizing the terms of the Definitive Contract.
- (g) Proponents will be notified whether they have been selected as a Supplier. Company will not be obligated to provide reasons for acceptance for review, selection of Proponent or rejection of any Proposal.

The table below outlines a list of evaluation criteria that may be considered during the RFP evaluation process:

EVALUATION CRITERIA	Examples of information applicant needs to describe to support criteria evaluation
Project Approach	<ul style="list-style-type: none">• Key issues and constraints associated with constructing the proposed facilities.• Proposed means and methods for installation of the tunnel and pipeline.• A cost proposal/level of effort for the construction services.

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EVALUATION CRITERIA	Examples of information applicant needs to describe to support criteria evaluation
	<ul style="list-style-type: none">• Overall construction schedule.
Key Project Personnel	<ul style="list-style-type: none">• Proposed staff and their associated roles and responsibilities of all key staff for the construction phase. Resumes for all key individuals and approximate percentage of the time this person will be working on the project.
Project Management Plan/ Approach	<ul style="list-style-type: none">• Overall plan to manage the project, for example, approach to managing costs and schedule during construction; approach to outreach and utilization of subcontractors in the execution of the work; approach to risk management.
Safety Approach	<ul style="list-style-type: none">• Proposed safety program approach and how safety will be managed during construction.