



## Request for Proposals

### Cowichan Secondary School Replacement Project

January 14, 2021

CONFORMED – June 15, 2021



## SUMMARY OF KEY INFORMATION

<b>RFP TITLE</b>	The title of this RFP is: <b>Cowichan Secondary School Replacement Project</b> Proponents should use this title on all correspondence.
<b>CONTACT PERSON</b>	The Contact Person for this RFP is: Catherine Silman <b>Email:</b> catherine.silman@infrastructurebc.com Please direct all Enquiries, in writing, to the above named Contact Person. <b>No telephone or fax enquiries please.</b>
<b>ENQUIRIES</b>	Proponents are encouraged to submit Enquiries at an early date and: <ul style="list-style-type: none"> <li>▪ for Enquiries of a technical nature: prior to 16:00 Pacific Time on the day that is 10 Business Days before the Submission Time for Technical Submissions</li> <li>▪ for Enquiries of a financial nature: prior to 16:00 Pacific Time on the day that is 5 Business Days before the Submission Time for Financial Submissions</li> </ul> to permit consideration by the Owner; the Owner may, in its discretion, decide not to respond to any Enquiry.
<b>The following submissions are to be delivered at the times and location indicated below:</b>	
<b>SUBMISSION TIME FOR TECHNICAL SUBMISSIONS</b>	June 23, 2021 at 11:00 Pacific Time
<b>SUBMISSION TIME FOR FINANCIAL SUBMISSIONS</b>	August 10, 2021 at 11:00 Pacific Time
<b>SUBMISSION LOCATION</b>	By electronic upload to the Contact Person in accordance with Section 6.1.1
<b>The following submissions are to be delivered at the times and location indicated below:</b>	
<b>SUBMISSION TIME FOR COLLABORATIVE MEETING 1</b>	February 16, 2021 at 11:00 Pacific Time
<b>SUBMISSION TIME FOR INTERIM FINANCIAL SUBMISSION 1</b>	March 4, 2021 at 11:00 Pacific Time

<b>SUBMISSION TIME FOR COLLABORATIVE MEETING 2</b>	March 22, 2021 at 11:00 Pacific Time
<b>SUBMISSION TIME FOR INTERIM FINANCIAL SUBMISSION 2</b>	April 22, 2021 at 11:00 Pacific Time
<b>SUBMISSION TIME FOR COLLABORATIVE MEETING 3</b>	April 26, 2021 at 11:00 Pacific Time
<b>SUBMISSION LOCATION</b>	By email to the Contact Person: catherine.silman@infrastructurebc.com

## TABLE OF CONTENTS

<b>SUMMARY OF KEY INFORMATION.....</b>	<b>II</b>
<b>1 INTRODUCTION.....</b>	<b>1</b>
1.1 Purpose of this RFP.....	1
1.2 Eligibility to Participate in this RFP.....	1
<b>2 RFP PROCUREMENT PROCESS .....</b>	<b>2</b>
2.1 Estimated Timeline .....	2
2.2 Collaborative Meetings .....	2
2.3 Business-to-Business Networking Event.....	4
2.4 Comments on the Design-Build Agreement .....	5
2.5 Data Room .....	5
2.6 Interim Financial Review Submission .....	6
2.7 Proponent's Contact Representative .....	7
<b>3 KEY PROJECT ELEMENTS .....</b>	<b>8</b>
3.1 Design-Builder .....	8
3.2 Municipal Approvals.....	8
3.3 Geotechnical and Environmental.....	9
3.4 Space Requirements and Indicative Design.....	9
3.5 Furniture and Equipment .....	10
3.6 LEED®/Energy .....	10
3.7 Wood First.....	10
3.8 Apprentices on Public Projects in British Columbia.....	10
3.9 Indigenous peoples procurement and employment opportunities.....	11
<b>4 AFFORDABILITY .....</b>	<b>12</b>
4.1 Design-Build Price Ceiling .....	12
4.2 Nominal Cost Calculation .....	12
4.3 Scope Ladder.....	12
<b>5 PROPOSAL REQUIREMENTS .....</b>	<b>14</b>
5.1 Participation Agreement.....	14
5.2 Proposal Form and Content.....	14
<b>6 SUBMISSION INSTRUCTIONS .....</b>	<b>15</b>
6.1 Submission Times and Submission Location .....	15

6.2	Number of Copies .....	16
6.3	No Fax or Email Submission .....	16
6.4	Language of Proposals .....	16
6.5	Receipt of Complete RFP .....	16
6.6	Enquiries .....	17
6.7	Electronic Communications and Submissions.....	18
6.8	Addenda.....	18
6.9	Intellectual Property Rights .....	18
6.10	Definitive Record.....	19
6.11	Amendments to Proposals.....	19
6.12	Changes to Proponent Teams.....	20
6.13	Validity of Proposals .....	20
6.14	Material Change After Submission Time for Financial Submissions.....	21
6.15	Acceptable Equivalents.....	21
<b>7</b>	<b>EVALUATION .....</b>	<b>23</b>
7.1	Mandatory Requirements .....	23
7.2	Evaluation of Proposals .....	23
<b>8</b>	<b>SELECTION OF PREFERRED PROPONENT AND AWARD.....</b>	<b>27</b>
8.1	Selection and Award .....	27
8.2	Final Draft Design-Build Agreement .....	27
8.3	Preferred Proponent Security Deposit.....	28
8.4	Return of Security Deposit.....	28
8.5	Retention of Security Deposit .....	29
8.6	Partial Compensation for Participation in this RFP.....	30
8.7	Debriefs.....	31
<b>9</b>	<b>CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE.....</b>	<b>32</b>
9.1	Reservation of Rights to Disqualify .....	32
9.2	Relationship Disclosure .....	32
9.3	Use or Inclusion of Restricted Parties.....	32
9.4	Current Restricted Parties .....	33
9.5	Conflict of Interest Adjudicator .....	33
9.6	Request for Advance Decision .....	34
9.7	The Owner May Request Advance Decisions .....	34
9.8	Decisions Final and Binding .....	34

9.9	Shared Use .....	35
9.10	Exclusivity .....	35
<b>10</b>	<b>RFP TERMS AND CONDITIONS .....</b>	<b>37</b>
10.1	No Obligation to Proceed.....	37
10.2	No Contract.....	37
10.3	Freedom of Information and Protection of Privacy Act.....	37
10.4	Cost of Preparing the Proposal.....	37
10.5	Confidentiality of Information .....	37
10.6	General Reservation of Rights.....	38
10.7	No Collusion.....	39
10.8	No Lobbying.....	39
10.9	Ownership of Proposals.....	39
10.10	Disclosure and Transparency .....	40
10.11	Fairness Reviewer .....	40
10.12	Legal Advisor .....	41
10.13	Limitation of Damages .....	41
<b>11</b>	<b>DEFINITIONS AND INTERPRETATION .....</b>	<b>43</b>
11.1	Definitions .....	43
11.2	Interpretation.....	48
	<b>APPENDIX A EVALUATION OF PROPOSALS.....</b>	<b>50</b>
	<b>APPENDIX B PROPOSAL REQUIREMENTS.....</b>	<b>51</b>
	<b>APPENDIX C PROPOSAL DECLARATION FORM.....</b>	<b>52</b>
	<b>APPENDIX D RELATIONSHIP DISCLOSURE FORM.....</b>	<b>55</b>
	<b>APPENDIX E PROPONENT COMMENTS FORM.....</b>	<b>57</b>
	<b>APPENDIX F PARTICIPATION AGREEMENT .....</b>	<b>58</b>
	<b>APPENDIX G PREFERRED PROPONENT SECURITY DEPOSIT.....</b>	<b>64</b>
	<b>APPENDIX H CONSTRUCTION INSURANCE UNDERWRITING QUESTIONNAIRE.....</b>	<b>66</b>
	<b>APPENDIX I INITIAL DRAFT DESIGN-BUILD AGREEMENT.....</b>	<b>67</b>
	<b>APPENDIX J ENQUIRY FORM.....</b>	<b>68</b>
	<b>APPENDIX K BONDING UNDERTAKING .....</b>	<b>69</b>

**APPENDIX L INSURANCE UNDERTAKING – COMMERCIAL GENERAL LIABILITY ..... 70**

**APPENDIX M INSURANCE UNDERTAKING – PROFESSIONAL LIABILITY ..... 71**

**APPENDIX N COLLABORATIVE MEETING STRUCTURE ..... 72**

## 1 INTRODUCTION

### 1.1 PURPOSE OF THIS RFP

The purpose of this request for proposals (the “**RFP**”) is to invite eligible Proponents to prepare and submit Proposals to design and build a new school to replace the Cowichan Secondary School, on a site in Duncan, British Columbia (the “**Project**”) under a design-build agreement (the “**Design-Build Agreement**”).

### 1.2 ELIGIBILITY TO PARTICIPATE IN THIS RFP

Through a request for qualifications (the “**RFQ**”) issued July 7, 2020 by the Board of Education of School District No. 79 (Cowichan Valley) (the “**Owner**”), the following design-builders are qualified to participate in this RFP:

- Yellowridge Design Build Ltd.;
- Kinetic Construction Ltd.; and
- Urban One Builders;

(the “**Proponents**”).

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



## 2 RFP PROCUREMENT PROCESS

### 2.1 ESTIMATED TIMELINE

The following is the Owner's estimated timeline for the Project:

Activity	Timeline
Issue RFP and Initial Draft Design-Build Agreement to Proponents	January 14, 2021
Submission Time for Collaborative Meeting 1	February 16, 2021 at 11:00 Pacific Time
First Collaborative Meeting	Week of February 22, 2021
Submission Time for Interim Financial Submission 1	11:00 Pacific Time on March 4, 2021
Business-to-Business Networking Event	Week of March 29, 2021
Submission Time for Collaborative Meeting 2	March 22, 2021 at 11:00 Pacific Time
Second Collaborative Meeting	Week of March 29, 2021
Submission Time for Interim Financial Submission 2	11:00 Pacific Time on April 22, 2021
Submission Time for Collaborative Meeting 3	April 26, 2021 at 11:00 Pacific Time
Third Collaborative Meeting	Week of May 3, 2021
Issue Final Draft Design-Build Agreement	Week of June 2, 2021
Submission Time for Technical Submissions	11:00 Pacific Time June 23, 2021
Invitation to Submit Financial Submission	July 28, 2021
Submission Time for Financial Submissions	11:00 Pacific Time on August 10, 2021
Selection of Preferred Proponent	August 24, 2021
Contract Execution	Fall 2021
Design and Construction Commences	Fall 2021
Substantial Completion	Spring 2024

This estimated timeline is subject to change at the discretion of the Owner.

### 2.2 COLLABORATIVE MEETINGS

The Owner will make available certain of its personnel, consultants and advisors (the “**Owner Representatives**”) to participate in collaborative discussions with the Proponents (the “**Collaborative Meetings**”). It is expected that Collaborative Meetings will be held via a virtual meeting platform with screen sharing capabilities, unless otherwise permitted at the discretion of the Owner.

The Owner expects the Collaborative Meetings to take place as follows:

- (a) the purpose of the Collaborative Meetings is to provide a process that will assist the Proponents to develop optimal solutions for the Project while minimizing the risk that a Proponent's solution is unresponsive to the Owner's requirements, and in particular:
  - (1) to permit the Proponent's representatives to provide the Owner's Representatives with comments and feedback on material issues such as affordability or provisions of the Initial Draft Design-Build Agreement; and
  - (2) to permit a Proponent to discuss with the Owner potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal;
- (b) in advance of each Collaborative Meeting, and no later than the Submission Time for Collaborative Meeting 1, Submission Time for Collaborative Meeting 2, and Submission Time for Collaborative Meeting 3, each Proponent is strongly encouraged to provide the Owner with:
  - (1) a proposed meeting agenda (including any consultants and advisors a Proponent would like in attendance from the Owner Representatives); and
  - (2) a list of prioritized issues the Proponent would like to discuss, and any materials relevant to such issues;

Materials not submitted by the Submission Time for Collaborative Meeting 1, Submission Time for Collaborative Meeting 2, and Submission Time for Collaborative Meeting 3, may not be reviewed by the Owner.

The Owner may provide Proponents with comments on the agenda and a list of any prioritized issues the Owner would like to discuss.

An example of the structure of the Collaborative Meetings, as well as an agenda and suggested submission items, are included in Appendix N;

- (c) the Owner will determine which Owner Representatives will be present at any Collaborative Meeting;
- (d) except as may be expressly stated otherwise in this RFP, including Section 10.5, the Owner will retain all information received from a Proponent during a Collaborative Meeting(s) as strictly confidential, and will not disclose such information to the other Proponents or any third party. The Owner may disclose such information to its consultants and advisors who are assisting or advising the Owner with respect to the Project;
- (e) at each Collaborative Meeting, a Proponent may have such officers, directors, employees, consultants and agents of the Proponent and the Proponent Team members present as the Proponent considers reasonably necessary for effective communication with the Owner and to

fulfil the objectives of the Collaborative Meeting provided that the Owner may, in its discretion, limit the number of participants at any one meeting;

- (f) to facilitate free and open discussion at the Collaborative Meetings, Proponents should note that any comments provided by or on behalf of the Owner during any Collaborative Meeting, including in respect of any particular matter raised by a Proponent or which is included in any documents or information provided by a Proponent prior to or during the Collaborative Meeting, and any positive or negative views, encouragement or endorsements expressed by or on behalf of the Owner during the Collaborative Meetings to anything said or provided by Proponents, will not in any way bind the Owner and will not be deemed or considered to be an indication of a preference by the Owner even if adopted by the Proponent;
- (g) if for the purposes of the preparation of its Proposal a Proponent wishes to rely upon anything said or indicated at a Collaborative Meeting, then the Proponent must submit an Enquiry describing the information it would like to have confirmed and request that the Owner provide that information to the Proponent in written form and, if such information relates to a clarification, explanation or change to a provision of this RFP or the Design-Build Agreement, request an Addendum to this RFP clarifying and amending the provision in question;
- (h) by participating in the Collaborative Meetings a Proponent confirms its agreement with these procedures and acknowledges that the meetings are an integral part of the procurement process as described in this RFP and are in the interests of all parties;
- (i) the Owner anticipates holding three Collaborative Meetings with each Proponent prior to the Submission Time for Financial Submissions. Following the release of the RFP, the Owner will consult with each Proponent to confirm specific dates for Collaborative Meetings. If the Owner considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, the Owner may, in its discretion, amend the anticipated schedule;
- (j) Proponents may request that the Owner schedule additional Collaborative Meetings on specific topics (each a “**Special Topic Meeting**”) by providing the request in writing to the Contact Person with proposed dates and details of the topic or topics to be discussed.

## 2.3 BUSINESS-TO-BUSINESS NETWORKING EVENT

The Owner also intends to coordinate a session with Proponent Teams and local contractors, suppliers and businesses (“**Business-to-Business Networking Session**”) to provide an opportunity for:

- (a) local contractors, suppliers, businesses and potential employees who might be interested in working with, or providing products and services to, the Preferred Proponent to meet the Proponent Teams; and

- (b) Proponent Teams to enhance their knowledge, understanding and awareness of local goods, labour pool and services, and to build relationships with local contractors, suppliers and businesses.

At this time it is anticipated that the session will likely be held via a virtual meeting platform.

## 2.4 COMMENTS ON THE DESIGN-BUILD AGREEMENT

Each Proponent should review the Initial Draft Design-Build Agreement for the purpose of identifying any issues or provisions that the Proponent would like to see clarified or amended. Following such review:

- (a) the Owner will invite Proponents as part of the Collaborative Meeting process to discuss possible clarifications or amendments to the Initial Draft Design-Build Agreement, including with respect to commercial, legal, and design and construction aspects of the Project;
- (b) each Proponent should, by the Submission Time for Collaborative Meeting 1, Submission Time for Collaborative Meeting 2, and Submission Time for Collaborative Meeting 3, provide the Owner with a prioritized list of requested changes, if any, to the Initial Draft Design-Build Agreement using the Proponent Comments Form attached as Appendix E, together with the agenda and issues list described in Appendix N; and
- (c) the Owner will consider all comments and requested clarifications or amendments received from the Proponents in the Collaborative Meetings and may respond to some or all of the comments received, and will amend the Initial Draft Design-Build Agreement as the Owner may determine in its discretion.

Prior to the Submission Time for Technical Submissions, the Owner intends to issue by Addendum one or more revised drafts of the Design-Build Agreement, including one that will be identified as the final draft design-build agreement (the “**Final Draft Design-Build Agreement**”). The Owner may further modify the Final Draft Design-Build Agreement by Addendum prior to the Submission Time for Financial Submissions. The Final Draft Design-Build Agreement will be the common basis for the preparation of all Proposals, and Proponents should not in their Proposal make any modifications, changes or additions to the Final Draft Design-Build Agreement except for modifications, changes or additions to the Statement of Requirements as provided for in Section 4.3 or modifications, changes or additions provided for in Section 8.2.

## 2.5 DATA ROOM

The Owner has established a website to be used as an electronic Data Room (the “**Data Room**”) in which it has placed documents in the possession of the Owner that the Owner has identified as relevant to the Project, and that may be useful to Proponents. The Owner does not make any representation as to the relevance, accuracy or completeness of any of the information available in the Data Room except as the

Owner may advise in writing with respect to a specific document. The Owner will grant Proponents access to the Data Room and will require Proponents to execute an agreement to keep information contained in the Data Room confidential.

The information in the Data Room may be supplemented or updated from time to time. While the Owner will attempt to notify Proponents of all updates, Proponents are solely responsible for ensuring they check the Data Room frequently for updates and to ensure the information used by the Proponents is the most current, updated information.

## 2.6 INTERIM FINANCIAL REVIEW SUBMISSION

It is in the interests of the Owner and all Proponents to identify at an early stage of the procurement whether the Project, as defined in this RFP, is affordable within the limits set out in Section 4. Accordingly, as part of the Collaborative Meetings, Proponents and the Owner will conduct two interim financial reviews as follows:

- (a) the purpose of the interim financial reviews is to give early warning of any difficulty in staying within the Design-Build Price Ceiling, and to permit the Owner and the Proponents to consider and implement steps so that the Competitive Selection Process can proceed with confidence that Proposals will be within the Design-Build Price Ceiling;
- (b) prior to the Submission Time for Interim Financial Review Submissions, each Proponent should submit to the Owner its best estimate of the anticipated Nominal Cost of the Proposal for the Proponent's Proposal. While not prescribing the form of the submission (the "**Interim Financial Review Submission**"), the Owner is expecting it to be no more than 10 pages in length and to include cost and input assumptions in sufficient detail to allow the Owner to understand the Proponent's cost base (with at least all major cost headings included);
- (c) the Owner will retain each of the Interim Financial Review Submissions as strictly confidential, and will invite each Proponent, as part of Collaborative Meeting 2 and Collaborative Meeting 3, to discuss any aspect of its Interim Financial Review Submissions, including any recommendations for amendment of the Project requirements if a Proponent determines that the Project as described will exceed the Design-Build Price Ceiling; and
- (d) unless expressly referred to or included by reference in its Proposal, a Proponent's Interim Financial Review Submission will not be considered part of its Proposal, and the Owner will not consider or evaluate it as to adequacy, quality, content or otherwise.

The Owner understands that the values indicated in a Proponent's Interim Financial Review Submissions are not a commitment and that all aspects could change in the final Proposal.

## 2.7 PROPONENT'S CONTACT REPRESENTATIVE

The Owner intends to communicate solely with the Proponent's Contact Representative and may disregard communications from other persons on behalf of the Proponent during the Competitive Selection Process.

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

### 3 KEY PROJECT ELEMENTS

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

#### 3.1 DESIGN-BUILDER

The Design-Builder will be responsible for all aspects of the Project in accordance with the Design-Build Agreement. This includes:

- (a) design and construction of the Facility including integration of the various building components with each other;
- (b) demolition and removal of the concession building;
- (c) provision of utilities and other site services required to support the Facility during construction; and
- (d) Substantial Completion and Facility access to the Owner by Spring 2024.

#### 3.2 MUNICIPAL APPROVALS

In accordance with the Design-Build Agreement, the Design-Builder will be responsible for obtaining all permits and approvals required for the design and construction of the Facility, and to ensure that its design for the Facility complies with the applicable zoning and related requirements of the District Municipality of North Cowichan (the “**Municipality**”).

The Owner has initiated preliminary discussions with respect to Municipality requirements for the Project and the Competitive Selection Process. The Statement of Requirements will directly incorporate Municipality requirements with respect to:

- (a) site access;
- (b) traffic requirements (e.g., parking, bicycle storage);
- (c) off-site servicing; and
- (d) design guidelines.

Pursuant to the Design-Build Agreement, the Design-Builder will have the responsibility to obtain the Municipality's approval for utility connections and other matters as required for the Design-Builder's design of the Facility. The zoning for the site is PU (Public Use).

Each Proponent will have the opportunity to meet separately and confidentially with the Municipality; these meetings will be coordinated by the Contact Person. Proponents may request meetings with the Municipality prior to the Submission Time for Technical Submissions to allow Proponents to obtain information they may require for the preparation of Proposals. All Proponent meetings with the Municipality will include Owner representatives.

### **3.3 GEOTECHNICAL AND ENVIRONMENTAL**

The following investigations and reports have been completed to date, and information is available to Proponents in the Data Room:

- (a) Phase 2 environmental site assessment;
- (b) hazardous materials assessment of the concession facility;
- (c) archaeological overview site assessment; and
- (d) a geotechnical site investigation.

The Design-Builder will be responsible for conducting its own analysis and review of the Project and to assess all risks related to the Project, including geotechnical and environmental risks. If the Design-Builder chooses to rely in any way on the investigations and reports outlined in this Section 3.3, the Design-Builder will be deemed to have assumed and accepted all risks that the information as disclosed in the investigation and reports may not accurately or completely describe actual site conditions including geotechnical, environmental, or soil conditions.

### **3.4 SPACE REQUIREMENTS AND INDICATIVE SITE DESIGN**

The Design-Builder will be required to design and construct the Facility to accommodate the spaces, activities, functions, design features and adjacencies described in the Design-Build Agreement.

The Owner has made available in the Data Room an indicative site design as a reference to demonstrate the functional and operational objectives for the Project. The indicative site design should not be relied on by Proponents. It is for illustrative and general guidance purposes only and does not relieve the Design-Builder in any way of all responsibility for the design and construction of the Facility. The Owner does not warrant or guarantee that the indicative site design fulfills the requirements of the Design-Build Agreement.



### 3.5 FURNITURE AND EQUIPMENT

The Design-Builder will complete the Facility to accommodate furniture and equipment, including all required data, electrical and plumbing connections, structural support, seismic restraints and space for efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or suppliers of the equipment, and in accordance with the Design-Build Agreement.

A list of furniture and equipment will be provided as Appendix 1F [Furniture, Fixtures & Equipment List ] of the Design-Build Agreement. The list will be made available by Addendum and will identify:

- (a) existing furniture and equipment of the Owner to be relocated by the Design-Builder and installed in the Facility by the Design-Builder;
- (b) new furniture and equipment to be procured and installed by the Design-Builder; and
- (c) new furniture and equipment to be procured and installed by the Owner after Substantial Completion.

The Design-Builder is required to coordinate furniture and equipment relocation, procurement, delivery and installation with the building construction schedule. All equipment that is Design-Builder installed is expected to be completed prior to Substantial Completion unless otherwise noted in Appendix 1F.

### 3.6 LEED®/ENERGY

The Design-Builder will be required to obtain LEED® Gold Certification for the Facility. The Facility will be registered with the Green Building Council under LEED BD+C V4 Leadership in Energy & Environmental Design (LEED) Building Design and Construction Green Building Rating System.

### 3.7 WOOD FIRST

The Design-Builder will comply with the requirements of the *Wood First Act* (British Columbia).

### 3.8 APPRENTICES ON PUBLIC PROJECTS IN BRITISH COLUMBIA

The Design-Builder will be required to comply with the Province's "Apprentices on Public Projects in British Columbia Policy and Procedures Guidelines" ("Apprenticeship Policy") in providing apprenticeships and skills training opportunities. The Apprenticeship Policy addresses use of registered apprentices and reporting on registered apprentices and trainees. The Apprenticeship Policy is available at [https://www2.gov.bc.ca/assets/gov/business/economic-development/assets/apprentices-on-public-projects/policy\\_and\\_procedure\\_guidelines.pdf](https://www2.gov.bc.ca/assets/gov/business/economic-development/assets/apprentices-on-public-projects/policy_and_procedure_guidelines.pdf)

### 3.9 INDIGENOUS PEOPLES PROCUREMENT AND EMPLOYMENT OPPORTUNITIES

The Design-Builder will be required to provide written notice of contracting and employment opportunities to the Cowichan Tribes, make reasonable commercial efforts to procure services from Cowichan Tribes' members or businesses where those services are available on a competitive basis, and explore ways to make apprenticeship programs available to the Cowichan Tribes and other indigenous peoples.

Proponents will have the opportunity to meet with the Cowichan Tribes as part of the Collaborative Meetings (as described further in Appendix N) and with Cowichan Tribes businesses at the Business-to-Business Networking Session. Due to the Competitive Selection Process, Proponents and Proponent Team Members are prohibited from entering into any exclusive agreements with Cowichan Tribes members or businesses during the RFP stage until a Preferred Proponent has been selected. Once a Preferred Proponent has been selected, the Preferred Proponent may enter into agreements with Cowichan Tribes members or businesses.

## 4 AFFORDABILITY

A key objective of the Competitive Selection Process is to achieve the Project scope while meeting the Project's Design-Build Price Ceiling requirements.

### 4.1 DESIGN-BUILD PRICE CEILING

The Owner has identified a mandatory price ceiling (the **Design-Build Price Ceiling**) of \$74 million for the Nominal Cost of the Proposal. Project approvals by the Owner have been based on this Design-Build Price Ceiling.

### 4.2 NOMINAL COST CALCULATION

Each Proponent should calculate the Nominal Cost of the Proposal and should use the Form A1 - Breakdown of Contract Price and Monthly Progress Payments provided in the Data Room. The completed Form A1 - Breakdown of Contract Price and Monthly Progress Payments should be submitted with the Proponent's Financial Submission. The Nominal Cost of the Proposal will be compared to the Design-Build Price Ceiling for evaluation purposes as described in Appendix A of this RFP.

### 4.3 SCOPE LADDER

If not all of the elements of the Statement of Requirements are achievable within the Design-Build Price Ceiling, a Proponent may propose to reduce the scope of the Project by one or more of the scope items set out in an approved list (the **"Scope Ladder"**). Proponents proposing reductions to the scope of the Project should limit their proposed reductions to items identified by the Owner in the Scope Ladder, and reductions should only be made in the order in which they are described below, starting with item (i).

The Scope Ladder is as follows:

Item	Summary Description	Changes to Statement of Requirements
(i)	Remove requirement for exterior security shutters.	In Section 8.5.28.1(b), remove Section (xii). In Section 8.5.28.3, remove Section (o). In Section 8.7.2.2, remove Section (d).
(ii)	Removal of flooring material requirement from the following rooms / spaces: 5.01 M Change Room; 5.02 F Change Room; 5.03 GN Change Room; 5.05 Team Storage; 5.07 Laundry; 5.08 GN Toilet Room; 5.09 GN Locker Space;	In the "Floor Finish" section of the Room Data Sheet for each of the spaces identified in the summary description column for this item, delete "Resilient Sheet" and replace with "Polished Concrete".

Item	Summary Description	Changes to Statement of Requirements
	6.04 Design Hub / Maker Space; 7.00 Multi-Purpose Space; 18.00 TED Space Robotics/Electronics & Design Hub; 21.01 Science Theory Studios; 21.02 Super Lab Physics / Chemistry / Biology; 22.03 Exploration Classroom; 24.01a Washrooms – Student and Staff; 24.01d Corridors & Locker Space; and 29.01d Corridors & Alcoves.	
(iii)	Remove AV sound reinforcement from ten Classrooms (Room 22.02).	Delete Section 8.6.14.3(f) and replace with the following:  “(f) Provide a minimum four ceiling mount speakers for video and AV presentations and speech reinforcement for the following: (i) all Flex Classrooms (Room 22.01); (ii) 5 Classrooms (Room 22.02); (iii) all Exploration Classrooms (Room 22.03); and (iv) all other learning spaces larger than 35m <sup>2</sup> (except for additional Classrooms). Exact quantity to be determined in consultation with the Owner to suit the room layout.”
(iv)	Reduce ceiling height requirement in specified rooms.	In the “Ceiling/Deck Above” section of the Room Data Sheet for each of the following spaces delete “Height: 4500” and replace with delete “Height: 4300”: 17.01; 17.02; 17.03; 19.01; 19.02; 19.03; 20.01; 20.02; 20.03; and 20.04;  In the “Ceiling/Deck Above” section of the Room Data Sheet for each of the following spaces delete “Height: 3000” and replace with delete “Height: 2590”: 17.05; 17.06; 17.07; 19.04; 19.05; 19.06; 19.07; 20.05; and 20.06
(v)	Remove AV sound reinforcement from five Classrooms (Room 22.02) and five Exploration Classrooms (Room 22.03).	Delete Section 8.6.14.3(f) and replace with the following:  “(f) Provide a minimum four ceiling mount speakers for video and AV presentations and speech reinforcement for the following: (i) all Flex Classrooms (Room 22.01); and (ii) all other learning spaces larger than 35m <sup>2</sup> (except for additional Classrooms).

Item	Summary Description	Changes to Statement of Requirements
		Exact quantity to be determined in consultation with the Owner to suit the room layout.”

## 5 PROPOSAL REQUIREMENTS

### 5.1 PARTICIPATION AGREEMENT

As a condition of participating in this RFP each Proponent must sign and deliver to the Contact Person a Participation Agreement, substantially in the form attached as Appendix F or otherwise acceptable to the Owner, in its discretion. Proponents will not be permitted to participate in Collaborative Meetings or participate further in the Competitive Selection Process unless and until they have signed and delivered a Participation Agreement as required by this Section.

### 5.2 PROPOSAL FORM AND CONTENT

Proposals should be in the form and include the content described in Appendix B. Each Proponent may only submit one Technical Submission and, if invited to do so, one Financial Submission.

## 6 SUBMISSION INSTRUCTIONS

### 6.1 SUBMISSION TIMES AND SUBMISSION LOCATION

With respect to the delivery of Proposals:

- (a) **Technical Submission:** Proponents must submit the Technical Submission to the Submission Location by the Submission Time for Technical Submissions. The Technical Submission should be made up of the following:
  - (1) the cover letter (and all attachments) to the Technical Submission as described in the Technical Submission section of Appendix B; and
  - (2) the portion of the Proposal Requirements described in the Technical Submission section of Appendix B.
- (b) **Financial Submission:** If invited to do so pursuant to Section 7.2, Proponents must submit the Financial Submission to the Submission Location by the Submission Time for Financial Submissions. The Financial Submission should be made up of the following:
  - (1) a completed Proposal Declaration Form in the form attached as Appendix C;
  - (2) the cover letter (and all attachments) to the Financial Submission as described in the Financial Submission Section of Appendix B;
  - (3) the portion of the Proposal Requirements described in the Financial Submission section of Appendix B;
  - (4) if and to the extent required in order to keep the Nominal Cost of the Proposal from exceeding the Design-Build Price Ceiling, written descriptions of:
    - i. proposed amendments to the scope of the Project, made in accordance with Section 4.3; and
    - ii. amendments to its Technical Submission if reasonably required as a direct result of such scope changes.

#### 6.1.1 Electronic Submission

For each of its Technical Submission and Financial Submission, the Proponent should submit one electronic copy of each file described in Section 6.2.1 (as applicable to each of the Technical Submission and Financial Submission) by upload to a secure web-based platform of the Proponent's choosing, and the Contact Person given access, as confirmed with the Contact Person in advance. Proponents are responsible to arrange a test of the secure web-based platform with the Contact Person at least five Business Days in advance of the Submission Time.

## **6.2 NUMBER OF COPIES**

### **6.2.1 Electronic Copies**

To facilitate the Owner's evaluation, Proponents should provide the electronic copies of their Technical Submission and Financial Submission in a number of separate files. As a minimum breakdown, and with reference to Appendix B, Proponents should provide individual files for the following Proposal Requirement sections:

- (a) entire Technical Submission
- (b) Package 1: Transmittal Package (Technical)
- (c) Package 2: Technical Submission
  - (1) Proponent Team
  - (2) Project Approach, Management and Construction
  - (3) Design and Construction
- (d) Package 3: Scored Elements
- (e) Package 4: Transmittal Package (Financial)
- (f) Package 5: Financial Submission

In addition, Proponents should provide individual files for each drawing or sketch logically organized in folders for each discipline with a reference to the specific Proposal Requirement section.

## **6.3 NO FAX OR EMAIL SUBMISSION**

Proposals submitted by fax or email will not be accepted, except as specifically permitted in this RFP.

## **6.4 LANGUAGE OF PROPOSALS**

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

## **6.5 RECEIPT OF COMPLETE RFP**

Proponents are responsible to ensure that they have received the complete RFP, as listed in the table of contents of this RFP, plus any Addenda. A submitted Proposal will be deemed to have been prepared on the basis of the entire RFP issued prior to the Submission Time for Technical Submissions. The Owner accepts no responsibility for any Proponent lacking any portion of this RFP.

## 6.6 ENQUIRIES

All enquiries regarding any aspect of this RFP should be directed to the Contact Person by email (each an “**Enquiry**”).

Proponents are encouraged to submit Enquiries using the Enquiry Form (Appendix J) at an early date to permit consideration by the Owner:

- (a) for Enquiries of a technical nature: prior to 14:00 Pacific Time on the day that is 10 Business Days before the Submission Time for Technical Submissions; and
- (b) for Enquiries of a financial nature: prior to 14:00 Pacific Time on the day that is 5 Business Days before the Submission Time for Financial Submissions.

The Owner may, in its discretion, decide not to respond to any Enquiry.

The following applies to any Enquiry:

- (c) responses to an Enquiry will be in writing;
- (d) all Enquiries, and all responses to Enquiries from the Contact Person, will be recorded by the Owner;
- (e) the Owner is not required to provide a response to any Enquiry;
- (f) a Proponent may request that a response to an Enquiry be kept confidential by clearly marking the Enquiry “Commercial in Confidence” if the Proponent considers that the Enquiry is commercially confidential to the Proponent;
- (g) if the Owner decides that an Enquiry marked “Commercial in Confidence”, or the Owner’s response to such an Enquiry, must be distributed to all Proponents, then the Owner will permit the enquirer to withdraw the Enquiry rather than receive a response and if the Proponent does not withdraw the Enquiry, then the Owner may provide its response to all Proponents;
- (h) notwithstanding Sections 6.6 (f) and (g):
  - (1) if one or more other Proponents submits an Enquiry on the same or similar topic to an Enquiry previously submitted by another Proponent as “Commercial in Confidence”, the Owner may provide a response to such Enquiry to all Proponents; and
  - (2) if the Owner determines there is any matter which should be brought to the attention of all Proponents, whether or not such matter was the subject of an Enquiry, including an Enquiry marked “Commercial in Confidence”, the Owner may, in its discretion, distribute the Enquiry, response or information with respect to such matter to all Proponents.



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

## **6.7 ELECTRONIC COMMUNICATIONS AND SUBMISSIONS**

Proponents should only communicate with the Contact Person by email. Other methods of communication, including telephone or fax, are discouraged. The Contact Person will not respond to any communications sent by fax.

The following provisions will apply to any email communications with the Contact Person, or the delivery of documents to the Contact Person by electronic means (including electronic submission of a Technical Submission or a Financial Submission as described in Section 6.1.1) where such email communications or electronic deliveries are permitted by the terms of this RFP:

- (a) the Owner does not assume any risk or responsibility or liability whatsoever to any Proponent:
  - (1) for ensuring that any electronic email system or computer system being operated for the Owner or Infrastructure BC (formerly named Partnerships BC) is in good working order, able to receive transmissions, or not engaged in receiving other transmissions such that a Proponent's transmission cannot be received; or
  - (2) if a permitted email communication or electronic submission (including electronic submission of a Technical Submission or a Financial Submission) is not received by the Owner or Infrastructure BC, or received in less than its entirety, within any time limit specified by this RFP; and
- (b) all permitted email communications with, or electronic submissions to, the Contact Person will be deemed as having been received by the Contact Person on the dates and times indicated on the Contact Person's electronic equipment.

## **6.8 ADDENDA**

The Owner may, in its discretion through the Contact Person, amend this RFP at any time by issuing a written Addendum. Written Addenda are the only means of amending or clarifying this RFP, and no other form of communication whether written or oral, including written responses to Enquiries as provided by Section 6.6, will be included in, or in any way amend, this RFP. Only the Contact Person is authorized to amend or clarify this RFP by issuing an Addendum. No other employee or agent of the Owner is authorized to amend or clarify this RFP. The Owner will provide a copy of all Addenda to all Proponents.

## **6.9 INTELLECTUAL PROPERTY RIGHTS**

- (a) Grant of Licence

Subject to Section 6.9 (b), by submitting a Proposal, each Proponent will, and will be deemed to have:

- (1) granted to the Owner a royalty-free licence without restriction to use for this Project any and all of the information, ideas, concepts, products, alternatives, processes, recommendations, suggestions and other intellectual property or trade secrets (collectively the “**Intellectual Property Rights**”) contained in the Proponent’s Proposal, or that are otherwise disclosed by the Proponent to the Owner; and
- (2) in favour of the Owner, waived or obtained, a waiver of all moral rights contained in the Proposal.

Proponents will not be responsible or liable for any use by the Owner or any sub-licensee or assignee of the Owner of any Intellectual Property Rights contained in a Proposal.

(b) Exceptions to Licence

The licence granted under Section 6.9 (a) does not extend to Third Party Intellectual Property Rights to non-specialized third-party technology and software that are generally commercially available. By submitting a Proposal, each Proponent represents to the Owner that it owns or has, and will continue to own or have at the Submission Time for Technical Submissions, all necessary rights to all Third Party Intellectual Property Rights contained in its Proposal or otherwise disclosed by the Proponent to the Owner and, subject to the foregoing exceptions, has the right to grant a licence of such Third Party Intellectual Property Rights in accordance with Section 6.9 (a).

## 6.10 DEFINITIVE RECORD

The electronic conformed version of the document in the custody and control of the Owner prevails.

## 6.11 AMENDMENTS TO PROPOSALS

A Proponent may:

- (a) amend any aspect of its Technical Submission by delivering written notice, or written amendments, to the Submission Location prior to the Submission Time for Technical Submissions;
- (b) amend any aspect of its Financial Submission by delivering written notice, or written amendments, to the Submission Location prior to the Submission Time for Financial Submissions; and
- (c) in its Financial Submission, amend its Technical Submission as contemplated in Section 6.1 (b).

A Proponent may not amend any aspect of its Proposal except as set out above.

## 6.12 CHANGES TO PROPONENT TEAMS

If for any reason a Proponent wishes or requires to add, remove or otherwise change a member of its Proponent Team after it was shortlisted by the Owner under the RFQ, or there is a material change in ownership or control (which includes the ability to direct or cause the direction of the management actions or policies of a member) of a member of the Proponent Team, or there is a change to the legal relationship among any or all of the Proponent and its Proponent Team members, then the Proponent must submit a written application to the Owner for approval, including supporting information that may assist the Owner in evaluating the change. The Owner, in its discretion, may grant or refuse an application under this Section, and in exercising its discretion the Owner will consider the objective of achieving a competitive procurement process that is not unfair to the other Proponents. For clarity:

- (a) the Owner may refuse to permit a change to the membership of a Proponent Team if the change would, in the Owner's judgement, result in a weaker team than was originally shortlisted; or
- (b) the Owner may, in the exercise of its discretion, permit any changes to a Proponent Team, including changes as may be requested arising from changes in ownership or control of a Proponent or a Proponent Team member, or changes to the legal relationship among the Proponent and/or Proponent Team members, such as the creation of a new joint venture or other legal entity or relationship in place of the Proponent Team originally shortlisted.

The Owner's approval may include such terms and conditions as the Owner may consider appropriate.

## 6.13 VALIDITY OF PROPOSALS

By submitting a Proposal, each Proponent agrees that:

- (a) its Proposal, including all prices and input costs, will remain fixed and irrevocable from the Submission Time for Financial Submissions until midnight at the end of the 120<sup>th</sup> day following the Submission Time for Financial Submissions (the "**Proposal Validity Period**"); and
- (b) after the expiry of the Proposal Validity Period, all prices and input costs in its Proposal may not be adjusted unless the Proponent provides notice to the Owner of any proposed adjustment and demonstrates to the satisfaction of the Owner that the Proponent has used its best efforts to continue to maintain the prices and input costs firm and valid, but that despite such best efforts, the specified adjustments to the prices and input costs are required solely as a direct result of one or more events that:
  - (1) are external to the Proponent and the Proponent Team members;

- (2) could not have been prevented by, and are beyond the control of, the Proponent and any of its Proponent Team members; and
- (3) constitute a material adverse change to the conditions underlying the prices and input costs that are subject to the adjustment.

A Proponent may indicate in its Proposal a Proposal Validity Period that exceeds 120 days.

#### **6.14 MATERIAL CHANGE AFTER SUBMISSION TIME FOR FINANCIAL SUBMISSIONS**

A Proponent will give immediate notice to the Owner of any material change that occurs to a Proponent after the Submission Time for Financial Submissions, including a change to its membership or a change to the Proponent's financial capability.

#### **6.15 ACCEPTABLE EQUIVALENTS**

The Statement of Requirements is intended to generally be performance-based, but includes in some instances specific requirements related to design and construction, such as room types and sizes, adjacencies, access requirements, products, materials, equipment and technical systems (including structural, foundation, mechanical (HVAC), information technology and electrical) that the Owner considers are important to meet the Owner's objectives. However, the Owner wishes to provide some flexibility for Proponents to propose equivalent alternatives that when considered by the Owner, in its discretion, continue to meet the Owner's objectives.

A Proponent may submit an Enquiry marked "Commercial in Confidence – Acceptable Equivalent" that identifies the applicable section(s) in the Statement of Requirements that contain the requirement(s) and the Proponent's proposed equivalent that it considers will be equal to or better than the specified requirement(s) and that will still meet the Owner's objectives, along with supporting materials. The Owner may, in its discretion, request clarification, further information or additional supporting materials for the proposed equivalent.

The Owner may, in its discretion:

- (a) respond to indicate that the proposed equivalent is acceptable;
- (b) respond to indicate that the proposed equivalent is acceptable subject to the Proponent's compliance with any conditions identified by the Owner;
- (c) respond to indicate that the Owner does not consider the proposed equivalent to be acceptable;
- (d) request clarification, further information or additional material;
- (e) not respond to the Enquiry; or

- (f) provide any other response in accordance with Section 6.6.

The provisions of Section 6.6 relating to “Commercial in Confidence” Enquiries will apply, including with respect to withdrawal of an Enquiry, Enquiries by more than one Proponent on the same or similar topics, or the Owner’s determination if there is a matter which should be brought to the attention of all Proponents.

If the Owner responds to a “Commercial in Confidence – Acceptable Equivalent” Enquiry, or responds to any Enquiry that is not “Commercial in Confidence”, regarding a proposed equivalent to indicate that the proposed equivalent is acceptable, then a Proponent may make its Technical Submission on the basis of the response, the proposed equivalent will be considered an “**Acceptable Equivalent**” and the use of the Acceptable Equivalent will not in and of itself be a failure to meet the requirements set out in Appendix A.

Unless the Owner responds to indicate that a proposed equivalent is acceptable, a Proponent is at risk that the use of a proposed equivalent will not substantially meet the requirements set out in Appendix A and that the Owner may not invite the Proponent to provide a Financial Submission.

The Owner will be under no obligation to provide the indication of acceptability of the proposed equivalent to the Proponent or to any other Proponent.

Despite any indication by the Owner of the acceptability of an equivalent, the Design-Builder remains responsible for fulfilling all of its obligations and responsibilities under the Design-Build Agreement.

Following selection of the Preferred Proponent, the Design-Build Agreement will, in accordance with Section 8.2, be amended to include all Acceptable Equivalents used by that Preferred Proponent, or negotiated by the Owner and the Preferred Proponent, whether or not proposed by any other Proponent.

## 7 EVALUATION

### 7.1 MANDATORY REQUIREMENTS

The Owner has determined that the following are the Mandatory Requirements:

- (a) the Proponent must have signed and delivered to the Contact Person the Participation Agreement in accordance with Section 5.1;
- (b) the Technical Submission must be received at the Submission Location before the Submission Time for Technical Submissions and the Financial Submission must be received at the Submission Location before the Submission Time for Financial Submissions;
- (c) the Nominal Cost of the Proposal as at the Submission Time for Financial Submissions must not exceed the Design-Build Price Ceiling; and
- (d) Proponents proposing reductions to the scope of the Statement of Requirements must do so in accordance with Section 4.3.

Subject to the following paragraph, the Owner will reject a Proposal that fails to meet the Mandatory Requirements.

Subject to Section 7.2, the Owner reserves the right to evaluate any Proposal where the Scope Ladder has been exhausted and the Design-Build Price Ceiling requirement has not been met, but will do so only in the event that the Proposals received from all the Proponents do not meet the Design-Build Price Ceiling requirement as per Section 7.1 (c) above.

### 7.2 EVALUATION OF PROPOSALS

The Owner will evaluate Proposals in the manner set out in Appendix A. The Owner will not evaluate a Proposal if it has been rejected, or if the applicable Proponent has been disqualified, in accordance with this RFP.

The Owner may, in its discretion, take any one or more of the following steps, at any time and from time to time, in connection with the review and evaluation, including ranking, of any aspect of a Proposal, including if the Owner considers that any Proposal, including the Technical Submission or the Financial Submission, or any part of a Proposal, requires clarification or more complete information, contains defects, ambiguities, alterations, qualifications, omissions, inaccuracies or misstatements, or does not for any reason whatsoever satisfy the Owner that the Proposal meets any requirements of this RFP at any time, or for any other reason the Owner, in its discretion, deems appropriate and in the interests of the Owner and this RFP, or either of them:

- (a) waive any such defect, ambiguity, alteration, qualification, omission, inaccuracy, misstatement or failure to satisfy, and any resulting ineligibility on the part of the Proponent, or any member of the Proponent Team;
- (b) independently consider, investigate, research, analyze, request or verify any information or documentation whether or not contained in any Proposal;
- (c) request interviews or presentations with any, all or none of the Proponents to clarify any questions or considerations based on the information included in Proposals during the evaluation process, with such interviews or presentations conducted at the discretion of the Owner, including the time, location, length and agenda for such interviews or presentations;
- (d) conduct reference checks relevant to the Project with any or all of the references cited in a Proposal and any other persons (including persons other than those listed by Proponents in any part of their Proposals) to verify any and all information regarding a Proponent, inclusive of its directors/officers and Key Individuals, and to conduct any background investigations that it considers necessary in the course of the Competitive Selection Process, and rely on and consider any relevant information from such cited references in the evaluation of Proposals;
- (e) conduct credit, criminal record, litigation, bankruptcy, taxpayer information and other checks;
- (f) not proceed to review and evaluate, or discontinue the evaluation of any Proposals, including any Technical Submission or Financial Submission, and disqualify the Proponent from this RFP; and
- (g) seek clarification or invite more complete, supplementary, replacement or additional information or documentation from any Proponent or in connection with any Proposal, including with any Technical Submission or Financial Submission or any part of their component packages.

Without limiting the foregoing or Appendix A, the Owner may, in its discretion (and without further consultation with the Proponent), reject any Proposal which in the opinion of the Owner: (i) is materially incomplete or irregular; (ii) contains omissions, exceptions or variations (including any modifications, changes or additions to the Final Draft Design-Build Agreement, other than as provided for in Sections 4.3 or 8.2, not acceptable to, or material to, the Owner; (iii) contains any false or misleading statement, claims or information; or (iv) contains any false statements, criminal affiliations or activities by a Proponent or Proponent Team member.

To enable the Owner to take any one or more of the above-listed steps, the Owner may enter into separate and confidential communications of any kind whatsoever, with any person, including any Proponent. The Owner has no obligation whatsoever to take the same steps, or to enter into the same or any communications in respect of all Proponents and Proposals, or in respect of any Proponent, including the Proponent whose Proposal is the subject of the review or evaluation, as the case may be.

The review and evaluation, including the scoring and ranking, of any Proposal may rely on, take into account and include any information and documentation, including any clarification, more complete, supplementary and additional or replacement information or documentation, including information and documentation obtained through any of the above-listed investigations, research, analyses, checks, and verifications.

Proponents may not submit any clarifications, information or documentation in respect of the Technical Submission after the Submission Time for Technical Submissions and in respect of the Financial Submission after the Submission Time for Financial Submissions, without the prior written approval of the Owner, or without an invitation or request by the Owner.

If any information, including information as to experience or capacity, contained in a Proposal is not verified to the Owner's satisfaction, the Owner may, in its discretion, not consider such cited experience, capacity or other information.

The Owner is not bound by industry custom or practice in taking any of the steps listed above, in exercising any of its discretions, in formulating its opinions and considerations, exercising its discretions in making any decisions and determinations, or in discharging its functions under or in connection with this RFP, or in connection with any Proponent, Proposal, or any part of any Proposal, including any Technical Submission or Financial Submission.

As part of the evaluation of a Technical Submission, the Owner may identify that the Owner is not satisfied that the Technical Submission meets one or more requirements of the Final Draft Design-Build Agreement. The Owner may, but is not required to, reject that Proposal in accordance with the terms of this RFP. If the Owner does not exercise its discretion to reject the Proposal, the Owner may provide to the Proponent a list of the items that the Owner is not satisfied meet the requirements of the Final Draft Design-Build Agreement. The Proponent will, if selected as Preferred Proponent, be required to comply with the requirements of the Final Draft Design-Build Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal. By submitting its Financial Submission, a Proponent that has received such a list will be deemed to have agreed to comply with the requirements of the Final Draft Design-Build Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal.

The Owner is not responsible for identifying all areas in which a Technical Submission does not meet the requirements of the Final Draft Design-Build Agreement. Irrespective of whether the Owner has identified or has failed to identify any such areas, a Proponent is not relieved in any way from meeting the requirements of this RFP, and if selected as Preferred Proponent will not be relieved from meeting all requirements of the Final Draft Design-Build Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal.



The Owner will, subject to the provisions of this RFP, invite each Proponent that has delivered a Technical Submission that has not been rejected to submit a Financial Submission.

## 8 SELECTION OF PREFERRED PROPONENT AND AWARD

### 8.1 SELECTION AND AWARD

If the Owner selects a Preferred Proponent, the Proponent with the highest ranked Proposal will be selected as the Preferred Proponent, and the Owner will invite the Preferred Proponent to enter into final discussions to settle all terms of the Design-Build Agreement, based on the Preferred Proponent's Proposal, including any clarifications that the Preferred Proponent may have provided during the evaluation of Proposals.

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

- (a) terminating the procurement process entirely and proceeding with some or all of the Project in some other manner, including using other contractors; or
- (b) inviting one of the other Proponents to enter into discussions to reach final agreement for completing the Project.

Any final approvals required by the Owner, such as from the Province, will be conditions precedent to the final execution or commencement of the Design-Build Agreement.

### 8.2 FINAL DRAFT DESIGN-BUILD AGREEMENT

It is the intention of the Owner that:

- (a) any issues with respect to the Initial Draft Design-Build Agreement will be discussed during the Collaborative Meetings and fully considered prior to issuance of the Final Draft Design-Build Agreement; and
- (b) once issued, the Final Draft Design-Build Agreement will not be further substantively modified and will be executed by the Preferred Proponent without further substantive amendment, except for changes, modifications and additions:
  - (1) relating to the determination by the Owner, in its discretion, of which:
    - i. parts, if any, of the Proposal are to be incorporated by reference or otherwise, into the Design-Build Agreement or otherwise pursuant to express provisions of the Design-Build Agreement; or
    - ii. modifications, changes or additions, if any, requested by a Proponent pursuant to Section 4.3 that are acceptable to the Owner;

- (2) to those provisions or parts of the Final Draft Design-Build Agreement that are indicated as being subject to completion or finalization, or which the Owner determines in its discretion require completion or finalization, including provisions that require:
  - i. modification or the insertion or addition of information relating to the Design-Builders formation (e.g., corporate, partnership or trust structure) and funding structure; and
  - ii. modification or the insertion or addition of information in order to reflect accurately the nature of the Design-Builder's relationships with its principal subcontractors (including each of the project contractors);
- (3) required by the Owner to complete, based on the Proposal, any provision of the Final Draft Design-Build Agreement, including changes, modifications and additions contemplated in or required under the terms of the Final Draft Design-Build Agreement;
- (4) that are necessary to create or provide for a legally complete, enforceable and binding agreement;
- (5) that enhance clarity in legal drafting; or
- (6) that reflect Acceptable Equivalents in accordance with Section 6.15.

The Owner also reserves the right, in its discretion, to negotiate changes to the Final Draft Design-Build Agreement and to the Preferred Proponent's Proposal.

Upon Contract Execution, the Design-Build Agreement, and the instruments and documents to be executed and delivered pursuant to it, supersede (except as expressly incorporated therein) the RFP and the Proposal submitted in respect of the Design-Builder.

### 8.3 PREFERRED PROPONENT SECURITY DEPOSIT

Subject to the terms of this RFP:

- (a) the Owner will invite the Preferred Proponent to deliver the Preferred Proponent Security Deposit on or before the date and time specified by the Owner, such date not to be earlier than 5 Business Days after notification of the appointment of the Preferred Proponent; and
- (b) the Preferred Proponent's eligibility to remain the Preferred Proponent is conditional upon the Preferred Proponent delivering the Preferred Proponent Security Deposit to the Owner on or before the date and time specified by the Owner.

### 8.4 RETURN OF SECURITY DEPOSIT

Subject to Section 8.5, the Owner will return the Preferred Proponent Security Deposit to the Preferred Proponent:

- (a) within 10 Business Days after receipt by the Owner of notice of demand from the Preferred Proponent, if:
  - (1) the Owner exercises its right under Section 10.1 to terminate this RFP prior to entering into the Design-Build Agreement for reasons unrelated to the Preferred Proponent or any member of the Preferred Proponent's Proponent Team; or
  - (2) the Owner fails, within the Proposal Validity Period, to execute and deliver an agreement substantially in the form of the Final Draft Design-Build Agreement finalized by the Owner in accordance with Section 8.2, provided that such failure is not the result of:
    - i. the failure of the Preferred Proponent to satisfy any conditions set out in the Final Draft Design-Build Agreement; or
    - ii. any extensions to the Proposal Validity Period arising from any agreement by the Owner to negotiate changes to the Final Draft Design-Build Agreement pursuant to Section 8.2; or
- (b) within 10 Business Days after Contract Execution with such Preferred Proponent.

## 8.5 RETENTION OF SECURITY DEPOSIT

Notwithstanding any receipt by the Owner of the notice described in Section 8.4, the Owner may, in its discretion, draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit for the Owner's own use as liquidated damages, if:

- (a) the Proponent or any Proponent Team member is in material breach of any term of this RFP or the Participation Agreement; or
- (b) after receipt of written notice from the Owner:
  - (1) the Preferred Proponent fails to execute and deliver an agreement substantially in the form of the Final Draft Design-Build Agreement finalized by the Owner in accordance with Section 8.2; or
  - (2) Contract Execution fails to occur within 30 days (or such longer period as the parties may agree) of receipt of such notice from the Owner,unless:
  - (3) any such failure was the result of a significant event which could not have been reasonably prevented by, or was beyond the reasonable control of, the Preferred Proponent; and
  - (4) the Preferred Proponent demonstrates to the Owner's satisfaction, acting reasonably, that the occurrence of such significant event would materially frustrate or render it impossible for the

Preferred Proponent to perform its obligations under the Design-Build Agreement for a continuous period of 180 days as if the Design-Build Agreement was in force and effect.

## **8.6 PARTIAL COMPENSATION FOR PARTICIPATION IN THIS RFP**

Upon execution of the Design-Build Agreement, the Owner will pay \$350,000.00 (inclusive of any GST payable) to each unsuccessful Proponent that:

- (a) complied with the Mandatory Requirements;
- (b) received an invitation to submit a Financial Submission;
- (c) has not withdrawn from the Competitive Selection Process or been disqualified by the Owner in accordance with the terms of this RFP; and
- (d) provides to the Owner written acknowledgment of:
  - (1) the disclaimers, limitations and waivers of liability and claims contained in this RFP, including Section 10.13; and
  - (2) the grant of Intellectual Property Rights to the Owner and waiver of moral rights pursuant to Section 6.9.

If the Owner exercises its right under Section 10.1 to terminate the RFP process prior to entering into the Design-Build Agreement with a Proponent, the Owner will pay to each Proponent that satisfies the requirements (to the extent applicable) set out in (a) – (d) above, the lesser of:

- (e) \$350,000.00 (inclusive of any taxes payable); and
- (f) the substantiated out-of-pocket costs reasonably incurred by the Proponent in preparing its Proposal,

provided that if the Owner exercises such rights after the selection of a Preferred Proponent, the Preferred Proponent must have delivered the Preferred Proponent Security Deposit in accordance with Section 8.3 to be entitled to receive any such payment.

In determining whether to make available the partial compensation described in this Section 8.6, the Owner will consider the potential value of obtaining the licence to the Owner of rights to the Intellectual Property Rights and the waiver of moral rights pursuant to Section 6.9. Accordingly, the Owner may, in its discretion, offer to pay up to \$350,000.00 (inclusive of any taxes payable) to a Proponent that is not otherwise entitled to payment under this Section 8.6 on conditions established by the Owner, in its discretion. The conditions may include the Owner reviewing the Intellectual Property Rights (such as for a Proposal that was returned) and being satisfied with the value of such rights and the Proponent entering

into an agreement with the Owner granting licence rights to the Owner. Such offer and resulting arrangements will not be governed by this RFP.

## **8.7 DEBRIEFS**

The Owner will, following Contract Execution, upon request from a Proponent within 60 days of Contract Execution, conduct a debriefing for that Proponent.

## **9 CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE**

### **9.1 RESERVATION OF RIGHTS TO DISQUALIFY**

The Owner reserves the right to disqualify any Proponent that in the Owner's opinion has a conflict of interest or an unfair advantage (including access to any confidential information not available to all Proponents), whether real, perceived, existing now or likely to arise in the future, or may permit the Proponent to continue and impose such conditions as the Owner may consider to be in the public interest or otherwise required by the Owner.

### **9.2 RELATIONSHIP DISCLOSURE**

Each Proponent, including each member of the Proponent Team, should fully disclose all relationships they may have with the Owner, any Restricted Party, or any other person providing advice or services to the Owner with respect to the Project or any other matter that gives rise, or might give rise, to a conflict of interest or an unfair advantage:

- (a) by submission of completed Relationship Disclosure Forms with its Proposal; and
- (b) at any time during the Competitive Selection Process by written notice addressed to the Contact Person promptly after becoming aware of any such relationship.

At the time of such disclosure, the Proponent will include sufficient information and documentation to demonstrate that appropriate measures have been, or will be, implemented to mitigate, minimize or eliminate the actual, perceived or potential conflict of interest or unfair advantage, as applicable. The Proponent will provide such additional information and documentation and implement such additional measures as the Owner or the Conflict of Interest Adjudicator may require in its discretion in connection with the consideration of the disclosed relationship and proposed measures.

### **9.3 USE OR INCLUSION OF RESTRICTED PARTIES**

The Owner may, in its discretion, disqualify a Proponent, or may permit a Proponent to continue and impose such conditions as the Owner may consider to be in the public interest or otherwise required by the Owner, if the Proponent is a Restricted Party, or if the Proponent uses a Restricted Party:

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

Each Proponent is responsible to ensure that neither the Proponent nor any Proponent Team member uses or seeks advice or assistance from any Restricted Party, or includes any Restricted Party in the Proponent Team.

#### 9.4 CURRENT RESTRICTED PARTIES

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

- (a) Capex Project Advisory Services Inc.;
- (b) Boughton Law Corporation;
- (c) Owen D Pawson Law Corporation;
- (d) Norton Rose Fulbright Canada LLP;
- (e) HDR Architecture Associates and their sub-consultants, including:
  - (1) Smith + Andersen;
  - (2) Footprint (a member of the Smith + Andersen Group of Companies);
  - (3) Herold Engineering Ltd; and
  - (4) LADR Landscape Architects Inc.;
- (f) Amvantage Consulting Inc.;
- (g) Health Care Relocations;
- (h) Madrone Environmental Services Ltd.;
- (i) PGL Environmental Consultants;
- (j) Ryzuk Geotechnical; and
- (k) the Owner and Infrastructure BC, including their former and current employees who fall within the definition of Restricted Party.

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

#### 9.5 CONFLICT OF INTEREST ADJUDICATOR

The Owner has appointed a conflict of interest adjudicator (the “**COI Adjudicator**”) to provide decisions on conflicts of interest, unfair advantage or exclusivity issues, including whether any person is a Restricted Party. The Owner may, at its discretion, refer matters to the COI Adjudicator.



## 9.6 REQUEST FOR ADVANCE DECISION

A Proponent or a prospective member or advisor of a Proponent who has any concerns regarding whether a current or prospective employee, advisor or member of that Proponent is, or may be, a Restricted Party, or has a concern about any conflict or unfair advantage it may have, is encouraged to request an advance decision by submitting to the Contact Person, not less than 10 Business Days prior to the Submission Time for Technical Submissions, by email, the following information:

- (a) names and contact information of the Proponent and the person for which the advance opinion 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, including the effect of confidential information; and
- (d) copies of any relevant documentation.

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

If a Proponent or prospective team member or advisor becomes a Restricted Party, it may be listed in an Addendum or in subsequent Competitive Selection Process documents as a Restricted Party.

## 9.7 THE OWNER MAY REQUEST ADVANCE DECISIONS

The Owner may also independently make advance decisions, or may seek an advance decision from the COI Adjudicator, where the Owner identifies a potential conflict, unfair advantage, or a person who may be a Restricted Party. The Owner will, if it seeks an advance decision from the COI Adjudicator, provide the COI Adjudicator with relevant information in its possession. If the Owner seeks an advance decision from the COI Adjudicator, the Owner will give notice to the Proponent, and may give notice to the possible Restricted Party so that it may make its own response to the COI Adjudicator.

The onus is on the Proponent to clear any potential conflict, unfair advantage, or Restricted Party, or to establish any conditions for continued participation, and the Owner may require that the Proponent make an application under Section 9.6.

## 9.8 DECISIONS FINAL AND BINDING

The decision of the Owner or the COI Adjudicator, as applicable, is final and binding on the persons requesting the ruling and all other parties including Proponents, Proponent Team members and the

Owner. The Owner or the COI Adjudicator, as applicable, has discretion to establish the relevant processes from time to time, including any circumstances in which a decision may be amended or supplemented.

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

## **9.9 SHARED USE**

A Shared Use Person is a person identified by the Owner as eligible to do work for more than one Proponent, including a person who has unique or specialized information or skills such that the Owner considers in its discretion their availability to all Proponents to be desirable in the interests of the Competitive Selection Process. Any Shared Use Person will be required to agree not to enter into exclusive arrangements with any Proponent.

No Shared Use Persons have been identified for this Project.

## **9.10 EXCLUSIVITY**

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

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

A Proponent or a prospective Proponent Team member who has any concerns regarding whether participation does or will contravene the foregoing is encouraged to request an advance decision in accordance with this Section through the following process:

- (a) to request an advance decision on matters related to exclusivity, the Proponent or prospective Proponent Team member should submit to the Contact Person, not less than 10 Business Days prior to the Submission Time for Technical Submissions by email, the following information:
  - (1) names and contact information of the Proponent or prospective Proponent Team member making the disclosure;
  - (2) a description of the relationship that raises the possibility of non-exclusivity;

- (3) a description of the steps taken to date, and future steps proposed to be taken, to mitigate any material adverse or potential material adverse effect of the non-exclusivity on the competitiveness or integrity of the Competitive Selection Process; and
- (4) copies of any relevant documentation.

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

#### 9.10.1 Exclusivity – the Owner May Request Advance Decisions

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

The onus is on the Proponent to clear any matter related to exclusivity or to establish any conditions for continued participation, and the Owner may require that the Proponent make an application under Section 9.10.

#### 9.10.2 Exclusivity – Decisions Final and Binding

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

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

## 10 RFP TERMS AND CONDITIONS

### 10.1 NO OBLIGATION TO PROCEED

This RFP does not commit the Owner to select a Preferred Proponent or enter into a Design-Build Agreement, and the Owner reserves the complete right to at any time reject all Proposals, and to terminate this RFP and the Competitive Selection Process and proceed with the Project in some other manner.

### 10.2 NO CONTRACT

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

### 10.3 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

All documents and other records in the custody of, or under the control of, the Owner are subject to the *Freedom of Information and Protection of Privacy Act* (“**FOIPPA**”) and other applicable legislation.

By submitting a Proposal, the Proponent represents and warrants to the Owner that the Proponent has complied with applicable Laws, including by obtaining from each person any required consents and authorizations to the collection of information relating to such individual and to the submission of such information to the Owner and the use, distribution and disclosure of such information as part of the Proposal for the purposes of, or in connection with, this RFP and the Competitive Selection Process.

### 10.4 COST OF PREPARING THE PROPOSAL

Subject to Section 8.6, each Proponent is solely responsible for all costs it incurs in the preparation of its Proposal, including all costs of providing information requested by the Owner, attending meetings and conducting due diligence.

### 10.5 CONFIDENTIALITY OF INFORMATION

Subject to the confidentiality conditions in Schedule 1 of the Participation Agreement, all information pertaining to the Project received by any Proponent or Proponent Team member through participation in this RFP is confidential and may not be disclosed without written authorization from the Contact Person, and in no event will a Proponent discuss the Project with any member of the public or the media without

the prior written approval of the Owner. Except as expressly stated in this RFP, and subject to 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.

The Owner has engaged Infrastructure BC. Infrastructure BC has been, and continues to be, involved in other projects, and the Owner may receive information in respect of other projects which may be relevant to the Project. Subject to the terms of this RFP, including limitations on “Commercial in Confidence” information under Sections 2.2 and 6.6, the Owner may, in its discretion, disclose information that is available from the Project to Infrastructure BC and other projects, and may obtain information from other projects.

## **10.6 GENERAL RESERVATION OF RIGHTS**

The Owner reserves the right, in its discretion, to:

- (a) amend the scope of the Project and/or modify, cancel or suspend the Competitive Selection Process at any time for any reason;
- (b) accept or reject any Proposal based on the Owner's evaluation of the Proposals in accordance with Appendix A, and in particular the Owner is not obliged to select the Proposal with the lowest Nominal Cost of the Proposal;
- (c) waive a defect, irregularity, non-conformity or non-compliance in or with respect to a Proposal or failure to comply with the requirements of this RFP except for Mandatory Requirements (but subject to the Owner's right with respect to the Design-Build Price Ceiling requirement as set out in Section 7.1), and accept that Proposal even if such a defect, irregularity, non-conformity or non-compliance or failure to comply with the requirements of this RFP would otherwise render the Proposal null and void;
- (d) reject, disqualify or not accept any or all Proposals without any obligation, compensation or reimbursement to any Proponent or any of its team members subject to any payment required pursuant to Section 8.6;
- (e) re-advertise for new Proposals to this or a modified RFP, call for quotes, proposals or tenders, or enter into negotiations for this Project or for work of a similar nature;
- (f) make any changes to the terms of the business opportunity described in this RFP;
- (g) negotiate any aspects of a Preferred Proponent's Proposal; and
- (h) amend, from time to time, any date, time period or deadline provided in this RFP, upon written notice to all Proponents.

## **10.7 NO COLLUSION**

Proponents and Proponent Team members, their employees and representatives involved with the Proposal, will not discuss or communicate, directly or indirectly, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent (including any Proponent Team member of such other Proponent) regarding the preparation, content or representation of their Proposals.

By submitting a Proposal, a Proponent, on its own behalf and as authorized agent of each firm, corporation or individual member of the Proponent and Proponent Team, represents and confirms to the Owner, with the knowledge and intention that the Owner may rely on such representation and confirmation, that its Proposal has been prepared without collusion or fraud, and in fair competition with Proposals from other Proponents.

## **10.8 NO LOBBYING**

Proponents, Proponent Team members, and their respective directors, officers, employees, consultants, agents, advisors and representatives will not engage in any form of political or other lobbying whatsoever in relation to the Project, this RFP, or the Competitive Selection Process, including for the purpose of influencing the outcome of the Competitive Selection Process. Further, no such person (other than as expressly contemplated by this RFP) will attempt to communicate in relation to the Project, this RFP, or the Competitive Selection Process, directly or indirectly, with any representative of the Owner, the Government of British Columbia (including any Minister or Deputy Minister, any member of the Executive Council, any Members of the Legislative Assembly), any Restricted Parties, or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever.

In the event of any lobbying or communication in contravention of this Section, the Owner in its discretion may at any time, but will not be required to, reject any and all Proposals submitted by that Proponent without further consideration and the Proponent will not be eligible for, or receive, the partial compensation as set out in Section 8.6.

## **10.9 OWNERSHIP OF PROPOSALS**

All Proposals submitted to the Owner become the property of the Owner and will be received and held in confidence by the Owner, subject to the provisions of FOIPPA and this RFP.

## 10.10 DISCLOSURE AND TRANSPARENCY

The Owner is committed to an open and transparent procurement process. To assist the Owner in meeting its commitment, Proponents will cooperate and extend all reasonable accommodation to this endeavour.

The Owner expects to publicly disclose the following information during this stage of the Competitive Selection Process:

- (a) the RFP;
- (b) the number of Proponents; and
- (c) the name of Proponents.

Following Contract Execution, the Owner expects to publicly disclose:

- (d) the Fairness Reviewer's report; and
- (e) the final Design-Build Agreement excluding those portions that may be redacted pursuant to the application of FOIPPA.

Each Proponent agrees that:

- (f) to ensure that all public information generated about the Project is fair and accurate and will not inadvertently or otherwise influence the RFP process, the disclosure of any public information generated in relation to the Project, including communications with the media and the public, must be coordinated with, and is subject to prior written approval of, the Owner;
- (g) it will notify the Owner of any and all requests for information or interviews received from the media; and
- (h) it will ensure that all of the Proponent Team members and others associated with the Proponent comply with the requirements of this RFP.

## 10.11 FAIRNESS REVIEWER

The Owner has appointed Owen D Pawson (the "**Fairness Reviewer**") to monitor the Competitive Selection Process. The Fairness Reviewer will act as an independent observer of the fairness of the implementation of the Competitive Selection Process, up to the selection of a Preferred Proponent. The Fairness Reviewer will provide a written report to the Owner that the Owner will make public.

The Fairness Reviewer will be:

- (a) provided with full access to all documents, meetings and information related to the evaluation processes under this RFP that the Fairness Reviewer, in its discretion, decides is required; and
- (b) kept fully informed by the Owner of all documents and activities associated with this RFP.

Proponents may contact the Fairness Reviewer directly with regard to concerns about the fairness of the Competitive Selection Process.

#### **10.12 LEGAL ADVISOR**

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

#### **10.13 LIMITATION OF DAMAGES**

Each Proponent on its own behalf and on behalf of the Proponent Team and any member of a Proponent Team:

- (a) agrees not to bring any Claim against the Owner or any of its employees, advisors or representatives for damages in excess of the amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal for any matter in respect of this RFP or Competitive Selection Process, including:
  - (1) if the Owner accepts a non-compliant proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or the Competitive Selection Process; or
  - (2) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the Owner exercises any rights under this RFP; and
- (b) waives any and all Claims against the Owner or any of its employees, advisors or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between the Owner and the Proponent for any reason, including:



- (1) if the Owner accepts a non-compliant proposal or otherwise breaches or fundamentally breaches the terms of this RFP or the Competitive Selection Process; or
- (2) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the Owner exercises any rights under this RFP.

This Section does not limit the Owner's obligation to make payment under Section 8.6, but in no event will the Owner's liability exceed the amount calculated pursuant to Section 8.6.

## 11 DEFINITIONS AND INTERPRETATION

### 11.1 DEFINITIONS

Capitalized terms in this RFP that are not defined in this Section have the meaning given in the Design-Build Agreement.

In this RFP:

**“Acceptable Equivalent”** has the meaning set out in Section 6.15.

**“Accommodation Schedule”** refers to the file named as such in the Data Room.

**“Addenda”** or **“Addendum”** means an addendum to this RFP issued by the Contact Person as described in Section 6.8.

**“Adjusted Nominal Cost”** has the meaning set out in Appendix A.

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

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

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

**“Business Day(s)”** means a standard day for conducting business, excluding government holidays and weekends.

**“Business-to-Business Networking Session”** has the meaning set out in Section 2.3.

**“Claim”** means any claim, demand, suit, action, or cause of action, whether arising in contract, tort or otherwise, and all costs and expenses relating thereto.

**“Collaborative Meetings”** has the meaning set out in Section 2.2.

**“Competitive Selection Process”** means the overall process for the selection of a Preferred Proponent for the Project including, but not limited to, this RFP stage.

**“Conflict of Interest Adjudicator”** or **“COI Adjudicator”** has the meaning set out in Section 9.5.

**“Contact Person”** means the person identified as such in the Summary of Key Information.

**“Contract Execution”** means the time when the Design-Build Agreement and all other agreements related to the Project have been executed and delivered and all conditions to the effectiveness of the Design-Build Agreement have been satisfied.

**“Data Room”** has the meaning set out in Section 2.5.

**“Design-Build Agreement”** has the meaning set out in Section 1.1.

**“Design-Build Construction Manager”** means the individual responsible for leading the construction of the Project, as identified in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

**“Design-Build Director”** means the individual who represents the Design-Builder and has overall responsibility to design and build the Project, as identified in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

**“Design-Build Price Ceiling”** has the meaning set out in Section 4.1.

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

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

**“Enquiry”** has the meaning set out in Section 6.6.

**“Fairness Reviewer”** has the meaning set out in Section 10.11.

**“Final Draft Design-Build Agreement”** has the meaning set out in Section 2.4.

**“Financial Submission”** has the meaning set out in Appendix B.

**“Form A1 - Breakdown of Contract Price and Monthly Progress Payments”** refers to the file named as such in the Data Room.

**“Freedom of Information and Protection of Privacy Act”** or **“FOIPPA”** has the meaning set out in Section 10.3.

**“GST”** means Goods and Services Tax.

**“Guarantor”** means an entity providing financial and/or performance support to the Design-Builder by way of a guarantee or a commitment to provide a parent company guarantee or other proposed credit support in relation to the Project, as identified in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

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

**“Initial Draft Design-Build Agreement”** means the draft Design-Build Agreement labeled “Initial Draft Design-Build Agreement” and posted in the Data Room.

**“Intellectual Property Rights”** has the meaning set out in Section 6.9.

**“Interim Financial Review Submission”** has the meaning set out in Section 2.6.

**“Key Individual(s)”** of a Proponent means the specific individuals, exclusive to the Proponent, filling the following roles (or equivalent), as identified in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP:

- (a) Design-Build Director;
- (b) Design-Build Construction Manager;
- (c) Lead Architect; and
- (d) Structural Lead.

Key Individuals may fill multiple roles provided they have the qualifications and experience for all the roles. A Key Individual role may only be filled by one individual.

**“Lead Architect”** means the individual responsible for leading the design of the Project, as identified in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

**“Mandatory Requirements”** means the proposal requirements described in Section 7.1.

**“Municipality”** has the meaning set out in Section 3.2.

**“Nominal Cost of the Proposal”** means the nominal sum of the values identified as such in Form A1 - Breakdown of Contract Price and Monthly Progress Payments.

**“Owner”** means the Board of Education of School District No. 79 (Cowichan Valley).

**“Owner Representatives”** has the meaning set out in Section 2.2.

**“Participation Agreement”** means an agreement substantially in the form attached as Appendix F.

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

**“Preferred Proponent Security Deposit”** means an irrevocable letter of credit in the amount of \$150,000 in the form set out in Appendix G or in such other form acceptable to the Owner in its discretion.

**“Project”** has the meaning set out in Section 1.1.

**“Proponent”** means one of the design-builders identified in Section 1.2.

**“Proponent Team”** means a Proponent, its Design Firms, its Key Individuals and Guarantors, as identified in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

**“Proponent’s Contact Representative”** means, for a Proponent, the person who under the RFQ for such Proponent was the “Respondent’s Representative” (as such term is used in the RFQ), as such person may be changed from time to time by the Proponent by written notice to the Owner, and who is fully authorized to represent the Proponent in any and all matters related to this RFP.

**“Proposal”** means a proposal submitted in response to this RFP.

**“Proposal Declaration Form”** means a form substantially as set out in Appendix C or as otherwise acceptable to the Owner.

**“Proposal Requirements”** means the requirements described in Appendix B.

**“Proposal Validity Period”** has the meaning set out in Section 6.13.

**“Relationship Disclosure Form”** means a form substantially as set out in Appendix D or as otherwise acceptable to the Owner.

**“Request for Proposals” or “RFP”** means this request for proposals including all appendices, as may be amended by Addenda.

**“Request for Qualifications” or “RFQ”** has the meaning set out in Section 1.2.

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

**“Scope Ladder”** has the meaning set out in Section 4.3.

**“Scored Elements”** means the scored elements described in Table 1 of Appendix A.

**“Shared Use Person”** has the meaning set out in Section 9.9.

**“Special Topic Meetings”** has the meaning set out in Section 2.2.

**“Statement of Requirements”** means the functional requirements and specifications for the design and construction of the Facility as set out in the Design-Build Agreement, including Schedule 1 [Statement of Requirements].

**“Structural Lead”** means the individual responsible for leading the structural design of the Project, as identified in the Proponent’s RFQ Response and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

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

**“Submission Time for Collaborative Meeting 1”** means the date and time identified as such in the Summary of Key Information.

**“Submission Time for Collaborative Meeting 2”** means the date and time identified as such in the Summary of Key Information.

**“Submission Time for Collaborative Meeting 3”** means the date and time identified as such in the Summary of Key Information.

**“Submission Time for Interim Financial Review Submissions 1”** means the date and time identified as such in the Summary of Key Information.

**“Submission Time for Financial Submissions”** means the date and time identified as such in the Summary of Key Information.

**“Submission Time for Technical Submissions”** means the date and time identified as such in the Summary of Key Information.

**“Summary of Key Information”** refers to the Section titled as such.

**“Technical Submission”** has the meaning set out in Appendix B.

**“Third Party Intellectual Property Rights”** means all Intellectual Property Rights of any person which is not a member of, or a related party to, a member of the Proponent Team.

## 11.2 INTERPRETATION

In this RFP:

- (a) any action, decision, determination, consent, approval or any other thing to be performed, made, or exercised by or on behalf of the Owner, including the exercise of “discretion” or words of like

effect, unless the context requires it, is at the sole, absolute and unfettered discretion of the Owner;

- (b) the use of headings is for convenience only and headings are not to be used in the interpretation of this RFP;
- (c) a reference to a Section or Appendix, unless otherwise indicated, is a reference to a Section of, or Appendix to, this RFP;
- (d) words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa;
- (e) the word “including” when used in this RFP is not to be read as limiting;
- (f) a reference to a “person” includes a reference to an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or government authority;
- (g) all time references are to the 24-hour time clock system unless otherwise indicated; and
- (h) each Appendix attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.

This RFP may be subject to the terms of one or more trade agreements.



## APPENDIX A EVALUATION OF PROPOSALS

Provided as a separate document.

## APPENDIX B PROPOSAL REQUIREMENTS

Provided as a separate document.

## APPENDIX C PROPOSAL DECLARATION FORM

By executing this Proposal Declaration, the Proponent agrees to the provisions of the RFP and this Proposal Declaration. Capitalized terms are defined in Section 11.1 of this RFP.

### [RFP Proponent's Letterhead]

To: [Insert Client and Address]

Attention: [Insert Contact Person]

In consideration of the Owner's agreement to consider our Proposal in accordance with the terms of the RFP, the Proponent hereby agrees, confirms and acknowledges on its own behalf and on behalf of each member of the Proponent Team, to the extent applicable to such Proponent Team member and within the reasonable knowledge of such Proponent Team member, that:

### 1. Proposal

- (a) this Proposal Declaration Form has been duly authorized and validly executed by the Proponent;
- (b) the Proponent is bound by all statements and representations in its Proposal;
- (c) its Proposal strictly conforms with the RFP and that any failure to strictly conform with the RFP may, in the discretion of the Owner, be cause for rejection of its Proposal;
- (d) its Proposal is made without collusion or fraud; and
- (e) the Owner reserves the right to verify information in its Proposal and conduct any background investigations including criminal record investigations, verification of the Proposal, credit enquiries, litigation searches, bankruptcy registrations and other investigations on all or any of the Proponent Team members, and by submitting a Proposal, the Proponent and each Proponent Team member agrees that they consent to the conduct of all or any of those investigations by the Owner.

### 2. Acknowledgements with Respect to the RFP

- (a) the Proponent and each Proponent Team member has received, read, examined and understood the entire RFP including all of the terms and conditions, all documents listed in the RFP Table of Contents, and any and all Addenda;

- (b) the Proponent has provided a Proposal that does not exceed the Design-Build Price Ceiling as defined in the RFP;
- (c) the Proponent and each Proponent Team member agrees to be bound by the entire RFP including all of the terms and conditions, all documents listed in the RFP Table of Contents, and any and all Addenda;
- (d) the Proponent's Contact Representative identified below is fully authorized to represent the Proponent and each Proponent Team member in any and all matters related to its Proposal, including but not limited to providing clarifications and additional information that may be requested in association with the RFP;
- (e) the Proponent has disclosed all relevant relationships of the Proponent and each Proponent Team member, in accordance with the instructions and format outlined in the Relationship Disclosure Form; and
- (f) the Final Draft Design-Build Agreement is in a form acceptable to the Proponent and the Proponent will comply with the requirements of the Final Draft Design-Build Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal.

### 3. Consent of Proponent Team

- (a) the Proponent has obtained the express written consent and agreement of each member of the Proponent Team, as listed below, to all terms of this Proposal Declaration Form to the extent applicable to such Proponent Team member, and within the reasonable knowledge of such Proponent Team member.

### 4. The Proponent Team consists of:

Name	Address	Key Individual

### PROPONENT'S CONTACT REPRESENTATIVE

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name of Employer

---

Address

---

Email Address

---

Name of Authorized Signatory

---

Telephone

---

Signature

If the Proponent is a joint venture or special purpose entity – this form is to be executed by each of its joint venture members, as applicable, as identified in the response to the RFQ (and as may have been changed pursuant to this RFP) as the Respondent or the Respondent Team lead(s), or as otherwise acceptable to the Owner.

## APPENDIX D RELATIONSHIP DISCLOSURE FORM

By executing this Relationship Disclosure Form, the Proponent is making the disclosure on its own behalf and on the behalf of each member of the Proponent Team.

The Proponent declares on its own behalf and on behalf of each member of the Proponent Team that:

- (a) this declaration is made to the best of the knowledge of the Proponent and, with respect to relationships of each member of the Proponent Team, to the best of the knowledge of that member;
- (b) the Proponent and the members of the Proponent Team have reviewed the definition of Restricted Parties and the non-exhaustive list of Restricted Parties;
- (c) the following is a full disclosure of all known relationships the Proponent and each member of the Proponent Team has, or has had, with:
  - (1) the Owner;
  - (2) any listed Restricted Party;
  - (3) any current employees, shareholders, directors or officers, as applicable, of the Owner or any listed Restricted Party;
  - (4) any former shareholders, directors or officers, as applicable, of the Owner or any listed Restricted Party, who ceased to hold such position within two calendar years prior to the Submission Time for Technical Submissions; and
  - (5) any other person who, on behalf of the Owner or a listed Restricted Party, has participated or been involved in the Competitive Selection Process or the design, planning or implementation of the Project or has confidential information about the Project or the Competitive Selection Process.

Name of Proponent Team Member	Name of Party with Relationship (e.g., list Owner, Restricted Party)	Details of the Nature of the Relationship with the listed Restricted Party/Person (e.g., Proponent Team member was an advisor to the Restricted Party from 2005-2006)
<i>e.g. Firm Name Ltd.</i>	<i>Infrastructure BC</i>	<i>Firm Name Ltd. is working with Infrastructure BC on Project X.</i>
<i>e.g. John Smith</i>	<i>Owner Name</i>	<i>Employee from 19XX – 20XX</i>

(The Proponent Team is to submit one Relationship Disclosure Form. Add additional pages as required.)

**NAME OF PROPONENT:**

---

Name of Firm – Proponent:

---

Address:

---

Email Address:

---

Telephone:

---

Name of Authorized Signatory for Proponent:

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Signature:

If the Proponent is a joint venture or special purpose entity – this form is to be executed by each of its joint venture members, as applicable, as identified in the response to the RFQ (and as may have been changed pursuant to this RFP) as the Respondent or the Respondent Team lead(s), or as otherwise acceptable to the Owner.

## APPENDIX E PROPONENT COMMENTS FORM

(Collaborative Meetings – s. 2. 5(b))

### Cowichan Secondary School Replacement Project

Section	Proposed Change (including detailed drafting)	Reasons for Proposed Change



## APPENDIX F PARTICIPATION AGREEMENT

[Insert Month, Day Year]

The Board of Education of School District No. 79 (Cowichan Valley)  
c/o Infrastructure BC  
300 – 707 Fort Street  
Victoria, BC V8W 3G3

Attention: Catherine Silman, Contact Person

Dear Sirs/Mesdames:

Re: Cowichan Secondary School Replacement Project – Participation Agreement in respect of the Request for Proposals issued by (the Owner) on [Insert Month, Day Year], as amended or otherwise clarified from time to time, including by all Addenda (the “RFP”)

This letter agreement sets out the terms and conditions of the Participation Agreement between [Insert Name of Proponent] (the “Proponent”) and the Owner, pursuant to which the Proponent agrees with the Owner as follows:

- (a) **Defined Terms.** Capitalized terms not otherwise defined in this Participation Agreement have the meanings given to them in the RFP
- (b) **Participation.** The Proponent agrees that as a condition of participating in the RFP, including the Competitive Selection Process, Collaborative Meetings and access to the Data Room, the Proponent will comply with the terms of this Participation Agreement and the terms of the RFP.
- (c) **Confidentiality.** The Proponent will comply with, and will ensure that all of the Proponent Team members and others associated with the Proponent also comply with, the confidentiality conditions attached as Schedule 1 to this Participation Agreement, all of which conditions are expressly included as part of this Participation Agreement.
- (d) **Terms of RFP.** The Proponent will comply with and be bound by, and will ensure that all of the Proponent Team members and others associated with the Proponent also comply with and are bound by, the provisions of the RFP, all of which are incorporated into this Participation Agreement by reference. Without limiting the foregoing the Proponent agrees:
  - (1) that the terms of this Participation Agreement do not limit the Proponent’s obligations and requirements under the RFP, any Data Room agreement, or any other document or requirement of the Owner;
  - (2) to be bound by the disclaimers, limitations and waivers of liability and claims and any indemnities contained in the RFP, including Section 10.13 (Limitation of Damages) of the

RFP. In no event will the liability of the Owner exceed the amount calculated pursuant to Section 8.6 (Partial Compensation for Participation in the RFP) of the RFP;

- (3) that the Owner's and the Proponent's obligations in respect of payments of partial compensation or other similar payment are as set out in Section 8.6 (Partial Compensation for Participation in the RFP) of the RFP; and
- (4) that the Owner's and the Proponent's obligations in respect of the Preferred Proponent Security Deposit are as set out in Sections 8.3, 8.4 and 8.5 of the RFP.

(e) **Amendments.** The Proponent acknowledges and agrees that:

- (1) the Owner may, in its sole and absolute discretion, amend the RFP at any time and from time to time; and
- (2) by submitting a Proposal the Proponent accepts, and agrees to comply with, all such amendments and, if the Proponent does not agree to any such amendment, the Proponent's sole recourse is not to submit a Proposal.

(f) **General.**

- (1) *Capacity to Enter Agreement.* The Proponent hereby represents and warrants that:
  - i. it has the requisite power, authority and capacity to execute and deliver this Participation Agreement;
  - ii. this Participation Agreement has been duly and validly executed by it, or on its behalf by the Proponent's duly authorized representatives; and
  - iii. this Participation Agreement constitutes a legal, valid and binding agreement enforceable against it in accordance with its terms.
- (2) *Survival following cancellation of the RFP.* Notwithstanding anything else in this Participation Agreement, if the Owner, for any reason, cancels the Competitive Selection Process or the RFP, the Proponent agrees that it continues to be bound by, and will continue to comply with, Section (c) of this Participation Agreement.
- (3) *Severability.* If any portion of this Participation Agreement is found to be invalid or unenforceable by law by a court of competent jurisdiction, then that portion will be severed and the remaining portion will remain in full force and effect.
- (4) *Enurement.* This Participation Agreement enures to the benefit of the Owner and binds the Proponent and its successors.

- (5) *Applicable Law*. This Participation Agreement is deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.
- (6) *Headings*. The use of headings is for convenience only and headings are not to be used in the interpretation of this Participation Agreement.
- (7) *Gender and Number*. In this Participation Agreement, words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa.
- (8) *Including*. The word including when used in this Participation Agreement is not to be read as limiting.

Yours truly,

---

(Name of Proponent)

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Authorized Signatory

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Name of Authorized Signatory  
(please print)

## SCHEDULE 1 – Confidentiality Conditions

(a) Definitions. In these confidentiality conditions:

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

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

adequately in damages. The Receiving Party further acknowledges and agrees that the Owner will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any provision of this Schedule 1 by the Receiving Party or any of its Representatives, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the Owner may be entitled at law or in equity.

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

## APPENDIX G PREFERRED PROPONENT SECURITY DEPOSIT

*[Note: The Preferred Proponent Security Deposit should be a Letter of Credit substantially in the following form, issued by, or confirmed by, a Canadian chartered bank acceptable to the Owner, in its discretion, and be callable at the bank's counters in Vancouver, British Columbia.]*

TO: The Board of Education of School District No. 79 (Cowichan Valley)  
(the "Beneficiary")

RE: PREFERRED PROPONENT SECURITY DEPOSIT

IRREVOCABLE LETTER OF CREDIT NO:\_\_\_

Dear Sirs:

At the request of our client, \_\_\_\_\_ (the Customer), we hereby issue in your favour our irrevocable letter of credit No. \_\_\_\_\_ (Letter of Credit) for a sum not exceeding in the aggregate one hundred and fifty thousand (CDN \$150,000) effective immediately.

This bank will immediately pay to you under this Letter of Credit any amount or amounts claimed, not exceeding in the aggregate the sum of CDN \$150,000 upon your written demand(s) for payment being made upon us at our counter during normal business hours, *[Note: insert address of Bank in Vancouver, British Columbia]*, Canada referencing this irrevocable Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_.

Partial drawings are permitted.

This Letter of Credit is issued subject to Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600.

Drawings up to the full amount of the Letter of Credit may be made where the drawing is accompanied by a certificate executed by an authorized signatory of the Beneficiary stating that:

- (a) the person signing the certificate is an authorized signatory of the Beneficiary; and
- (b) the Beneficiary is entitled to draw upon this Letter of Credit.

Any drawings made under this Letter of Credit must be accompanied by the original or certified copy of this Letter of Credit, together with an original certificate complying with the conditions set out above.

We will honour your written demand(s) for payment on presentation without enquiring whether you have a legitimate claim between yourself and our said Customer.

All banking charges are for the account of the Customer.

This Letter of Credit will remain in full force and effect and, unless renewed, will expire at the close of business on **[Insert Date]**.

Notice of non-renewal will be provided to the Beneficiary in writing by registered mail by not later than 20 Business Days before the expiry date.

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Authorized Signatory

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Authorized Signatory



## APPENDIX H CONSTRUCTION INSURANCE UNDERWRITING QUESTIONNAIRE

Posted in the Data Room.

## APPENDIX I INITIAL DRAFT DESIGN-BUILD AGREEMENT

Posted in the Data Room.

**APPENDIX J ENQUIRY FORM**

**ENQUIRIES**

**Cowichan Secondary School Replacement Project**

Request Number: \_\_\_\_\_

Proponent Team: \_\_\_\_\_

Date: \_\_\_\_\_

Do you request this query to be Commercial in Confidence?    ☐ Yes   ☐ No

This form may be used for single and multiple enquiries.

**Enquiry/Enquiries:**

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*Note: Letters of Undertaking must be on Broker letterhead.*

No. \_\_\_\_\_

Re: Request for Proposals

We \_\_\_\_\_ (name of Surety), a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, are the Surety for \_\_\_\_\_ (the Proponent). Our client has demonstrated to us in the past an ability to complete its projects in accordance with the conditions of its contracts and we have no hesitation in recommending its services to you.

(Name of Surety)

\_\_\_\_ (Seal)



**COWICHAN VALLEY**  
School District



## APPENDIX L INSURANCE UNDERTAKING – COMMERCIAL GENERAL LIABILITY

*PRINT ON LETTERHEAD OF DULY AUTHORIZED REPRESENTATIVE OF AGENT/BROKER/  
INSURANCE COMPANY*

### UNDERTAKING OF COMMERCIAL GENERAL LIABILITY INSURANCE

Name of Proponent submitting a Proposal in response to the Request for Proposals for the Cowichan Secondary School Replacement Project:

\_\_\_\_\_  
We, the undersigned, as authorized representatives on behalf of **[Insert name of Insurance Company\*]** do hereby undertake and agree to provide “Wrap-Up” Commercial General Liability insurance in the amount of TWENTY FIVE MILLION DOLLARS (\$25,000,000.00) inclusive per occurrence, TWENTY FIVE MILLION DOLLARS (\$25,000,000.00) general aggregate for bodily injury, death and damage to property including loss of use thereof, and product/completed operations liability with a limit of TWENTY FIVE MILLION DOLLARS (\$25,000,000.00) aggregate, for the Cowichan Secondary School Replacement Project, subject to underwriting.

If such a policy is written, a certified copy of the policy will be provided to Board of Education of School District No. 79 (Cowichan Valley).

Dated at \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

SIGNED:

\_\_\_\_\_  
Name and Title of Duly Authorized Agent/Broker/Insurance Company Representative  
(Please Print)

\_\_\_\_\_  
Signature of Duly Authorized Agent/Broker/Insurance Company Representative

\_\_\_\_\_  
Name of Firm (Name of Agency/Brokerage/Insurance Company)  
(Please Print)

**\*Insurance Company** refers to an Insurer that is federally or provincially regulated and authorized to provide the specified classes of insurance. Listings are available at the following links:

1. OSFI federal listing of Canadian Property and Casualty Insurance Companies:  
<https://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx?sc=2&gc=3&ic=1#WWRLink231>
2. OSFI federal listing of Foreign Property and Casualty Insurance Companies:  
<https://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx?sc=2&gc=3&ic=2#WWRLink232>
3. BC Financial Services Authority [https://www.bcfsa.ca/web\\_listings/AuthorizedInsuranceCompanies.aspx](https://www.bcfsa.ca/web_listings/AuthorizedInsuranceCompanies.aspx)

## APPENDIX M INSURANCE UNDERTAKING – PROFESSIONAL LIABILITY

*PRINT ON LETTERHEAD OF DULY AUTHORIZED REPRESENTATIVE OF AGENT/BROKER/  
INSURANCE COMPANY*

### UNDERTAKING OF PROFESSIONAL LIABILITY INSURANCE

Name of Proponent submitting a Proposal in response to the Request for Proposals for the Cowichan Secondary School Replacement Project:

\_\_\_\_\_

We, the undersigned, as authorized representatives on behalf of **[Insert name of Insurance Company\*]** do hereby undertake and agree to provide Professional Liability (Errors and Omissions) insurance in the amount of not less than of FIVE MILLION DOLLARS (\$5,000,000.00) inclusive of any one claim and in the aggregate, for the Cowichan Secondary School Replacement Project, subject to underwriting.

If such a policy is written, a certified copy of the policy will be provided to the Board of Education of School District No. 79 (Cowichan Valley).

Dated at \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

SIGNED:

\_\_\_\_\_  
Name and Title of Duly Authorized Agent/Broker/Insurance Company Representative  
(Please Print)

\_\_\_\_\_  
Signature of Duly Authorized Agent/Broker/Insurance Company Representative

\_\_\_\_\_  
Name of Firm (Name of Agency/Brokerage/Insurance Company)  
(Please Print)

\*Insurance Company refers to an Insurer that is federally or provincially regulated and authorized to provide the specified classes of insurance. Listings are available at the following links:

1. OSFI federal listing of Canadian Property and Casualty Insurance Companies:  
<https://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx?sc=2&gc=3&ic=1#WWRLink231>
2. OSFI federal listing of Foreign Property and Casualty Insurance Companies:  
<https://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx?sc=2&gc=3&ic=2#WWRLink232>
3. BC Financial Services Authority [https://www.bcfsa.ca/web\\_listings/AuthorizedInsuranceCompanies.aspx](https://www.bcfsa.ca/web_listings/AuthorizedInsuranceCompanies.aspx)

## APPENDIX N COLLABORATIVE MEETING STRUCTURE

A suggested approach for each of the Collaborative Meetings, including example agenda and submission items, is provided below:

(a) Collaborative Meeting 1:

- (1) architectural site plan option(s) with major blocking elements (e.g., learning spaces, teaching and administrative spaces, outdoor areas, parking) showing key circulation, access and adjacencies;
- (2) Project phasing;
- (3) any unique architectural features that might be equivalent to specified items but need approval;
- (4) high level engineering strategies (mechanical, electrical, structural, civil);
- (5) specific products, services, or areas of interest for the Business-to-Business networking session;
- (6) commentary on Initial Draft Design-Build Agreement;
- (7) commentary on schedule;
- (8) commentary on affordability or expensive/problematic specification items; and
- (9) opportunity to meet and speak with Cowichan Tribe members to:
  - i. enhance knowledge, understanding and awareness of the values, beliefs, heritage, history, designs, and materials that form the traditions and culture of the Cowichan Tribes; and
  - ii. begin developing a relationship with representatives from Cowichan Tribes.

(b) Collaborative Meeting 2:

- (1) resolution of any issues raised by the Owner in Collaborative Meeting 1;
- (2) Project phasing;
- (3) architectural floor plans to a concept plan level of completion sufficient to illustrate functionality of spaces and key adjacencies;
- (4) civil works;
- (5) any features or proposed Acceptable Equivalents needing advanced consideration or review including engineering issues (refer to Section 6.15 for further details);
- (6) commentary on Initial Draft Design-Build Agreement;

- (7) discussion of key elements of the Interim Financial Review Submission;
- (8) Proponent opinions on areas of the Statement of Requirements that may:
  - i. exceed typical industry specifications related to quality and performance for facilities of this type;
  - ii. exceed good industry practices and related standards in relation to redundancy and spare capacity;
  - iii. drive unexpected outcomes and/or costs; or
  - iv. be achieved in a more efficient manner; and
- (9) opportunity to meet and speak with Cowichan Tribe members to:
  - i. enhance knowledge, understanding and awareness of the values, beliefs, heritage, history, designs, and materials that form the traditions and culture of the Cowichan Tribes; and
  - ii. begin developing a relationship with representatives from Cowichan Tribes.

(c) Collaborative Meeting 3:

- (1) resolution of any issues raised by the Owner in Collaborative Meeting 2;
- (2) Project phasing;
- (3) architectural floor plans to a concept plan level of completion sufficient to illustrate functionality of spaces, travel flows and key adjacencies;
- (4) any features or proposed Acceptable Equivalents needing advanced consideration or review including engineering issues (refer to Section 6.15 for further details);
- (5) commentary on Initial Draft Design-Build Agreement; and
- (6) opportunity to meet and speak with Cowichan Tribe members to:
  - i. enhance knowledge, understanding and awareness of the values, beliefs, heritage, history, designs, and materials that form the traditions and culture of the Cowichan Tribes; and
  - ii. begin developing a relationship with representatives from Cowichan Tribes.

(d) Sample agenda below:

- (1) proposed design and functionality, including presentation of current design with changes from earlier submission(s) highlighted, and including any Owner feedback received;



- (2) discuss requirements of the Statement of Requirements, including any that may result in affordability concerns;
- (3) discuss any outstanding issues, or new issues, on any topic;
- (4) commentary on the Initial Draft Design-Build Agreement;
- (5) meet with Cowichan Tribe members and related topics; and
- (6) wrap up with Proponent replaying what they heard.