



Cowichan Valley School District

**COWICHAN SECONDARY SCHOOL
REPLACEMENT PROJECT**

PROCUREMENT PROCESS

FAIRNESS REVIEWER

FINAL REPORT – RFP PHASE

August 24, 2021

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**TO: Project Executive Board,
Cowichan Secondary School Replacement Project**

This report covers the following:

The Project

Fairness Reviewer

Stipulated Procurement Process

Actual Procurement Process

Qualifications

Findings

Respectfully Submitted:



Owen Pawson
Fairness Reviewer

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THE PROJECT

The following background summary of the Project was previously described in the RFQ Final Report of the Fairness Reviewer submitted in October, 2020. That background is provided below for completeness.

Background

The Board of Education of School District No. 79 (Cowichan Valley) (the “School District”) is seeking to enter into a contract with a qualified entity to design and build a new school to replace the existing Cowichan Secondary School, on a site in Duncan, British Columbia (the “Project”). The Project is being procured using a design-build approach. The School District has engaged Infrastructure BC (formerly Partnerships BC) to lead and manage the Project’s competitive selection process.

The Cowichan Valley School District (SD 79) is located in the Cowichan Valley on Vancouver Island, British Columbia. The School District is responsible for 17 elementary and five secondary schools providing quality education to approximately 8,200 students in a predominantly rural area. The existing Cowichan Secondary School was built in 1950 and has had several additions, the latest occurring in 1998. The School District has secured the necessary funding to replace the existing school on a site formerly occupied by municipal baseball fields adjacent to the Cowichan Community Centre, Cowichan Aquatic Centre, and Vancouver Island University (collectively known as Cowichan Place) in Duncan.

The proposed facility is expected to include:

- a new school of approximately 12,200 m² (gross area) including capacity for 1,100 students, grades 10 – 12, with future expansion capability to 1,500 students; and
- a Neighbourhood Learning Centre (905 m²) comprised of:
 - an Innovation and Technology Centre;
 - a Health and Wellness Centre; and
 - an Indigenous Language and Cultural Centre.

The existing school will be retained by the School District to function as swing space for future seismic upgrade projects.

The School District, with the assistance of Infrastructure BC, issued a Request for Qualifications for the Project on July 7, 2020. At the conclusion of that Request for Qualifications phase of the procurement three Respondents were shortlisted to proceed to the Request for Proposals phase.

FAIRNESS REVIEWER

Owen D. Pawson Law Corporation was retained July 14, 2020 to act as Fairness Reviewer for the Project. The role of Owen Pawson, of Owen D. Pawson Law Corporation, is to observe and monitor the overall fairness of the competitive selection process.

As noted in the RFQ Final Report of the Fairness Reviewer, the general role of a Fairness Reviewer is to act as an independent observer and provide assurance that the processes described in the procurement documents are implemented in a fair manner. A Fairness Reviewer’s report is usually made available to the public subject to the applicable legislative

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requirements (including the Freedom of Information and Protection of Privacy Act and regulations).

The activities of a Fairness Reviewer are self-determined and typically include the following:

- provide advice to the project team on matters of fairness as may be requested by the project team from time to time;
- be available to proponents to answer queries relating to fairness;
- provide formal written reports as specific points during the competitive selection process;
- review procurement documentation and comment on whether, and the extent to which, the process described may potentially cause a fairness issue;
- observe and/or monitor that considerations, communications, and responses undertaken during the competitive selection process are undertaken in accordance with the terms of the procurement document;
- observe and/or monitor collaborative discussions and meetings;
- observe and/or monitor ad-hoc special topic meetings with proponents;
- observe and/or monitor the request for proposals evaluation processes; and
- observe and/or monitor relevant meetings where proponent comparisons are made and the criteria, weighting and rating systems are applied.

STIPULATED PROCUREMENT PROCESS

The Request for Proposals (“RFP”) for the Project was issued January 14, 2021. The Submission Time for electronic upload of Proposals to the Contact Person of Technical Submissions was June 23, 2021 and the Submission Time for Financial Submissions was August 10, 2021.

Mandatory Requirements

There were very few mandatory requirements identified in the RFP. The mandatory requirements included the following:

- a Proponent must have signed and delivered a Participation Agreement;
- the Technical and Financial Submissions must have been received at the Submission Location before the stated Submission Times;
- the identified Nominal Cost in a Financial Submission must not exceed the Design-Build Price Ceiling; and,
- if a Proponent proposes any reduction in the scope, that reduction must be in accordance with s. 4.3 of the RFP (scope ladder).

Technical Submission Evaluation

The evaluation process for Technical Submissions is described in the RFP, Appendix A – Evaluation of Proposals. According to Appendix A, the “Owner” would evaluate each Technical Submission to determine if the Technical Submission:

- substantially met the requirements set out in Appendix B of the RFP and of the Final Draft Design-Build Agreement;
- demonstrated that the Proponent had a good understanding of the Project and the contractual obligations of the Design-Builder; and

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- demonstrated that the Proponent was capable of performing the contractual obligations and responsibilities of the Design-Builder and could deliver the Project in accordance with the Design-Build Agreement.

Provided the Owner determines that a Technical Submission substantially meets the above criteria, the Owner then evaluates and scores that Technical Submission against specific evaluation criteria identified in Table 1 of Appendix A of the RFP. Those criteria were described in detail along with the maximum points and weighting for each sub-criterion. Points were to be awarded based on how effectively each Proposal responded to design requirements identified in Schedule 1 [Statement of Requirements] of the Design-Build Agreement. Any Technical Submission that did not substantially meet the criteria above, was subject to rejection by the Owner.

Financial Submission Evaluation

If the Owner determines that a Technical Submission has substantially met the requirements set out in Appendix B of the RFP and of the Final Draft Design-Build Agreement as that process is described above, the Owner will invite that Proponent to submit a Financial Submission. The Owner will then evaluate Financial Submissions to determine if they substantially meet the following:

- the Nominal Cost identified in the Financial Submission does not exceed the Design-Build Price Ceiling (in accordance with Section 4.1 of the RFP);
- the Proponent has indicated whether any Scope Ladder items were used to ensure the Nominal Cost of the Proposal is below the Design-Build Price Ceiling (in accordance with Section 4.3 of the RFP);
- the Proponent has the financial capacity to meet the obligations of the Project;
- the Proponent has provided the identified insurance and bonding undertakings (Section 5.2 of Appendix B of the RFP); and
- the provisions of this RFP, including the requirements set out in:
 - Appendix B of this RFP; and
 - the Final Draft Design-Build Agreement.

Any Financial Submission that did not substantially meet the listed criteria was subject to rejection. Proposals that had not been rejected by the Owner were then to be ranked in accordance with steps outlined in Appendix A:

Highest on Scope Ladder

If Proposals used items on the Scope Ladder (s. 4.3 of the RFP) in order to achieve affordability requirements, the Owner would rank those Proposals such that the least number of items would rank the highest. The Owner would deem any Proposal that used items in the Scope Ladder out of order to have used all intervening items in ranking Proposals.

Lowest Nominal Cost

If two or more Proposals are ranked highest, then the Owner would adjust each Proponent's "Adjusted Nominal Cost" by:

- calculating the number of Scored Element points; then
- multiplying the Scored Element calculated points by \$70,000; then

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- subtracting that number from the Nominal Cost of the Proposal

The Proposal determined by the Owner to have the lowest Adjusted Nominal Cost would receive the highest ranking and would be designated the highest-ranked Proposal (subject to the last step described below).

Most Advantageous to the Owner

Notwithstanding the process above, if the Adjusted Nominal Cost of another Proposal is no more than \$100,000 higher than the highest-ranked Proposal then the Owner, if it concludes there are compelling advantages, would select the Proposal that the Owner determines is the most advantageous to the Owner and would designate that Proposal the highest-ranked Proposal.

The Proponent with the highest-ranked Proposal will be the Preferred Proponent and will enter into negotiations with the Owner to finalize the Design-Build Agreement.

ACTUAL PROCUREMENT PROCESS

The RFP was issued January 14, 2021. The Submission Time for Technical Submissions was 11:00 a.m., June 23, 2021 and August 10, 2021 for Financial Submissions. 12 Addenda were issued prior to RFP Submission Time.

Enquiry Process

During the RFP phase of the procurement process, Proponents were permitted to request further information through an “Enquiry” process outlined in s. 6.6 of the RFP by submitting an email enquiry to the Contact Person. There were 20 enquiries submitted by Proponents for which responses were issued.

Collaborative Meetings

In addition to the enquiry process, each of the three Proponents were invited to three Collaborative Meetings with the Owner during the RFP phase of the procurement process (see s. 2.2 of the RFP). These meetings were held via a virtual meeting platform. The intent of the Collaborative Meetings was for the Owner to assist each Proponent develop solutions for the Project that would be responsive to the Owner’s requirements. They also provided a forum in which each Proponent could seek comments and feedback from the Owner on its developing Proposal in terms of affordability or specifics of the requirements of the Initial Draft Design-Build Agreement. I attended and monitored those Collaborative Meetings.

Evaluation Manual

An Evaluation Manual was prepared for the personnel and advisors involved in the evaluation process. The Evaluation Manual provided direction and guidelines to all persons involved in the procurement during the RFP phase including specific guidance to the Evaluation Teams and Evaluation Committee during the evaluation of Proposals. I am satisfied that the Evaluation Manual properly set out guidelines and directions for the procurement and evaluation process during the RFP phase of the competitive selection process for the Project and that the Evaluation Manual was used as the basis for the evaluation of the Proposals.

Closing process/procedures for Technical Submissions

Three Technical Submissions were received before Submission Time. I reviewed procedures and processes with the Evaluation Manager assigned to deal with submission and completeness reviews of the Technical Submissions to ensure that RFP requirements were

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met. All Technical Submissions were found to be complete in accordance with RFP requirements. I am satisfied that there were satisfactory protocols in place for appropriate security and confidentiality of the Technical Submissions.

In order to evaluate the Technical Submissions, the Owner established three Evaluation Teams: a Design-Builder and Construction Evaluation Team; a Design Evaluation Team and a Scored Elements Evaluation Team. The three Evaluation Teams were comprised of School District, Infrastructure BC and representatives appointed by the School District.

All persons involved in the procurement and evaluation were required to sign a Confidentiality Agreement. They were also required to sign a Relationship Disclosure Declaration and Undertaking in which they disclosed any relationship they had with corporations and individuals identified in the Technical Submissions and identified in the completeness review conducted after Submission Time. The signed Relationship Disclosure Declaration and Undertaking forms were reviewed and vetted by a Relationship Review Committee. No conflicts of interest or unfair advantage were identified that precluded any member of the Evaluation Teams, the Evaluation Committee or advisors from participating in the evaluation of the Technical Submissions or the Financial Submissions.

Consensus Meetings of Teams

There were extensive interim and final deliberations undertaken by all three Technical Evaluation Teams. I attended interim and final consensus meetings of the Technical Evaluation Teams and observed that the discussions and review of the Technical Submissions were consistent with the evaluation criteria and the evaluation process described in the RFP. I found that all evaluators were well prepared and all contributed to the consensus deliberations. I observed no indication of partiality or bias during the consensus discussions during the interim or final meetings of any of the three Technical Evaluation Teams.

Lead Evaluators Meet with Evaluation Committee

Each of the leaders of the three Technical Evaluation Teams then presented his or her findings to the Evaluation Committee. The lead evaluators identified to the Evaluation Committee the areas of non-compliance of each of the Technical Submissions with the RFP or the Draft Design-Build Agreement or both.

Consensus Evaluation of Technical Submissions by Evaluation Committee

The Evaluation Committee considered the findings and conclusions presented by each of the Technical Evaluation Team leaders and discussed the non-compliances identified by the Evaluation Teams of each of the three Technical Submissions.

After full discussion of each of the Technical Submissions, the Evaluation Committee determined that, although each of the Technical Submissions contained a number of areas in which did not fully meet the RFP or the Statement of Requirements in the Draft Design-Build Agreement the Evaluation Committee reached consensus that each of the Technical Submissions substantially met the requirements outlined in Appendix A – Evaluation of Proposals. I attended that consensus meeting and observed that the conclusions of the Evaluation Committee was reached after full and comprehensive deliberations that were conducted in accordance with the evaluation process outlined in the RFP.

Letters to Proponents Inviting Financial Submissions

The Evaluation Committee determined that, in order to address the non-compliances in the Technical Submissions, a letter to each of the three Proponents inviting them to submit

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Financial Submissions would include an itemized list of areas in which that Proponent was expected to address in its Financial Submission. Each letter also contained a clear statement that each Proponent was expected to meet all of the Draft Design-Build Agreement requirements if it was determined to be the Preferred Proponent whether or not included in the itemized list of non-compliances.

Financial Evaluation Team

A Financial Submission was received on August 10, 2021 from each of the three Proponents. There were no late submissions.

The Financial Evaluation Team then met to review and evaluate the Financial Submissions. One of the Financial Submissions was found to have a Nominal Cost that exceeded the Design-Build Price Ceiling. Not exceeding the Price Ceiling was a mandatory requirement (see s. 4.1 of the RFP). Based on the failure to meet the mandatory requirement, the Financial Evaluation Team set aside that Financial Submission and did not evaluate it further.

The Financial Evaluation Team evaluated the other two Financial Submissions. Upon review, the Financial Evaluation Team determined that one of the Financial Submissions contained a condition that the proposed Nominal Cost was based on a key design element that did not meet the requirements of the Final Draft Design-Build Agreement. That key design element had been clearly identified as one of the non-compliances to be addressed by the Proponent in the letter issued by the School District inviting the Proponent to submit a Financial Submission (see above). The Proponent clearly stated that its Nominal Cost was based on that non-compliant design element. I attended the meetings of the Financial Evaluation Team and observed no indication of partiality or bias during the consensus discussions during the interim or final meetings of the Financial Evaluation Team.

Evaluation Committee

On August 17, 2021, the lead of the Financial Evaluation Team advised the Evaluation Committee of the Financial Evaluation Team's deliberations on the three Financial Submissions and the conclusion that one Financial Submission was unconditional and within the Price Ceiling. The Evaluation Committee then met the following day to consider the findings and conclusion of the Financial Evaluation Team. After a fulsome discussion and after ensuring that the evaluation process identified in the RFP had been followed diligently and fairly, the Evaluation Committee determined that it would recommend that Proponent as the Preferred Proponent. That recommendation was a consensus decision.

I attended the Evaluation Committee meetings and monitored the discussions. It is my opinion that the evaluation by the Evaluation Committee of the Financial Submissions was properly and fairly conducted and that the consensus evaluation was consistent with the process identified in the RFP and the Evaluation Manual.

QUALIFICATIONS

My fairness review has been based on my observations and monitoring of: procurement documentation; Collaborative Meetings; discussions during the many interim meetings of the three Technical Evaluation teams and the final consensus meetings of the three Technical Evaluation Teams; the meeting of the Financial Evaluation Team; the consensus meetings of the Evaluation Committee where the conclusion of the Financial Evaluation Team was considered; the subsequent meetings of the Evaluation Committee for reaching consensus concerning the Financial Submissions determining the Preferred Proponent. I attended

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interim and final meetings of the Technical Evaluation Teams and the meetings of the Financial Evaluation Team in which evaluation of the Financial Submissions took place as well as the meetings of the Evaluation Committee. I did not review all documents created by every member of the Technical and Financial Evaluation Teams or of the Evaluation Committee.

FINDINGS

It is my opinion that the procurement process during the RFP phase of the Cowichan Secondary School Replacement Project was conducted in a fair manner.

Specifically, based on the Fairness Reviewer activities outlined above including my observations at the interim and final consensus meetings of the Technical Evaluation Teams, the Financial Evaluation Team and the Evaluation Committee, including the final consensus meeting of the Evaluation Committee as well as discussions with procurement staff of Infrastructure BC during and after Submission Time for the Technical and Financial Submissions identified in the RFP, it is my opinion that the entire competitive selection process was conducted fairly and in full accordance with the procurement process that was described in the RFP.

I am satisfied that:

- the members of all of the Technical and Financial Evaluation Teams and the Evaluation Committee followed the evaluation procedures described in the RFP and Evaluation Guide and fairly applied the evaluation process identified in the RFP; and
- where interpretation was allowed or required, the Evaluation Teams and the Evaluation Committee made interpretations in a fair, unbiased and impartial manner.

I am also satisfied that I have been provided with the appropriate access and information to render this fairness review opinion.

Respectfully submitted,



Owen D. Pawson
Fairness Reviewer

Dated this 24th day of August, 2021