

SCHEDULE 5

DESIGN AND PLAN CERTIFICATION PROCESS AND REVIEW PROCEDURE

1. GENERAL

1.1 Capitalized Terms and Section References

Capitalized terms used in this Schedule have the definitions as set out in the Agreement to Design, Build, Finance and Maintain Five New High Schools in Alberta (the "**DBFM Agreement**") between Her Majesty the Queen in right of Alberta and the Contractor, or as set out in Schedule 18 (Technical Requirements) to the DBFM Agreement, as applicable, unless expressed otherwise. Unless otherwise provided, references to section numbers are references to sections in this Schedule.

1.2 Definitions and Interpretation

In this Schedule, the following expressions have the following meanings:

"Dispute Notice" means a notice from one party to the other party providing details of a Live Design/Build Dispute;

"Live Design/Build Dispute" means a Dispute (as defined in Schedule 7 (Dispute Resolution Procedure) in relation to live design or construction issues that requires expedited resolution;

"Project Adjudicator" means the person appointed pursuant to Section 2.4, which person will be impartial as between the parties, independent of the Province and the Contractor, and qualified and experienced in the design and construction of projects in the Province of Alberta similar to the Project, including without limitation qualified and experienced in interpreting specifications and standards in relation to the design and construction of projects in the Province of Alberta similar to the Project; and

"Project Adjudicator's Conclusion" has the meaning given in Section 4.3.

1.3 DBFM Agreement Reference

This Schedule is referenced in sections 1.3, 5.5, 5.9, 7.1(f), 11.7(f), 12.1(g) and 13.3(i) of the DBFM Agreement.

2. DESIGN AND PLAN CERTIFICATION PROCESS

2.1 Designs and Plans Submission Schedule and Compliance with Technical Requirements

Prior to the commencement of the design and plan certification process for the Project, the Contractor shall provide a design and plan submission schedule. This design and plan submission schedule shall take into account that more than one submission will likely be required for each design package. The schedule shall illustrate that the design and plan submissions are reasonably spread out over the entire design period and that the schedule is reasonable to achieve.

Subject to any Change Orders, the Contractor shall prepare all of the Detailed Designs and plans necessary for the construction of the Project or the performance of the M&R, or, if applicable, necessary in connection with any Modification, in accordance with the Technical Requirements.

2.2 Designer and Independent Reviewer Signatures

Without limitation, the Contractor shall arrange for an independent review of all Detailed Designs prior to submission of the Detailed Designs to the Province for the Province's review pursuant to Section 3 below. In addition to the relevant Detailed Design, the Contractor shall provide to the Province a certificate signed by both the designer and the independent reviewer certifying that the Detailed Design was prepared in accordance with the Project Requirements or the M&R Requirements, as the case may be, and is complete, internally consistent and was created using Good Industry Practice (as defined in the Technical Requirements). The independent reviewer referenced in this Section 2.2 shall be a qualified professional engineer or architect, as applicable in view of the Detailed Design in issue, and may be employed by the legal entity doing the design work.

2.3 Deviation from Designs and Plans Prohibited

Subject to any Change Order, designs and plans submitted to the Province in accordance with this Design and Plan Certification Process and Review Procedure shall not be departed from in the construction of the Project or the performance of the M&R. However, in the event that the Contractor proposes that a change to such designs and plans is required due to unforeseen circumstances beyond the Contractor's control or that meet the Technical Requirements, then the Contractor shall as soon as practicably possible, submit such changed designs and plans to the Province in accordance with this Design and Plan Certification Process and Review Procedure.

2.4 Appointment of Project Adjudicator

Within 120 days from signing of the DBFM Agreement, the Province and the Contractor will appoint and enter into a written agreement with a person acceptable to both as Project Adjudicator to whom Live Design/Build Disputes (and other matters that are expressly referable to the Project Adjudicator) may be referred for immediate interim

resolution. For greater certainty, unless expressly stated otherwise all Disputes (as defined in Schedule 7 to the DBFO Agreement) other than Live Design/Build Disputes, shall go before the Referee (as defined in Schedule 7 to the DBFO Agreement). Notwithstanding the 120 day deadline in the foregoing sentence, either party can shorten such deadline on written notice to the other party to a date that is at least 15 Business Days after delivery of such written notice.

In the event that the parties cannot agree upon an acceptable person as the Project Adjudicator within the time period provided, the Project Adjudicator shall be determined by a Court pursuant to section 2.5 of Schedule 7 (Dispute Resolution Procedure). The person appointed as Project Adjudicator must be impartial as between the parties, independent of the Province and the Contractor and have the qualifications provided for in the definition of “Project Adjudicator” in Section 1.2.

The appointment of the Project Adjudicator will be deemed to be a joint appointment and will be irrevocable by each party without the consent of the other. The appointment of the Project Adjudicator will continue until Total Availability. If the Project Adjudicator resigns, dies, or is unwilling or unable to continue to act as Project Adjudicator before Total Availability, the parties shall immediately appoint a replacement and in such case, the procedure provided for under this Section 2.4 shall apply.

The fees and expenses of the Project Adjudicator shall be set by the terms of the agreement between the parties and the Project Adjudicator. The Province and the Contractor will share the total costs of the Project Adjudicator equally. Each party shall bear its own costs and expenses in preparing submissions for and attending meetings with the Project Adjudicator. The Province and the Contractor will agree to release and indemnify the Project Adjudicator in respect of certain claims provided the Project Adjudicator has acted in good faith and in accordance with the agreement among the parties.

In the event that a disagreement requiring resolution by the Project Adjudicator arises prior to either the parties appointing a Project Adjudicator or the determination of the Project Adjudicator by a Court, neither party’s position nor access to either the Project Adjudicator’s Procedure specified in Section 4 or to a remedy will be prejudiced. Upon the Project Adjudicator being appointed or named, as the case may be, the disagreement requiring the Project Adjudicator’s participation, if still unresolved, will proceed in accordance with Section 4.

2.5 Design, Plan and Schedule Submission

The Contractor shall not commence or permit the commencement of construction of any part of the Project or the performance of any part of the M&R, or, if applicable, the commencement of construction in connection with any Modification, until 10 Business Days following the Province's receipt of all Detailed Designs, certificates, Contractor’s Management Systems and Plans, and the Contractor’s Construction Schedule, each as are relevant to and are required in respect of such part of the Project or the M&R, (the

“Required Submission”). If the Required Submission has an unreasonable number of deficiencies or defects, as determined by the Province acting reasonably and on notice to the Contractor, the 10 Business Days shall not start to run. Neither comment nor failure to provide comment by the Province shall relieve against or excuse any failure by the Contractor to carry out the Project or perform the M&R, or, if applicable, carry out any Modification, in accordance with the Project Requirements or the M&R Requirements, as applicable.

If any submitted element of the design and construction, including without limitation the Contractor’s Construction Schedule, does not comply with or satisfy the Technical Requirements or materially deviates from the subject matter of Schedules 2, 3, 4 or 16 to the DBFM Agreement, the Contractor shall notify the Province as soon as is reasonably practicable of any such failure to comply by making a written submission (the **"Non-Compliance Submission"**) through the Review Procedure in Section 3.

The Non-Compliance Submission shall contain the following information:

- (a) the circumstances in which such non-compliance with the Technical Requirements or the material deviation from the subject matter of Schedules 2, 3, 4 or 16 to the DBFM Agreement occurred;
- (b) explanation of the causes for such non-compliance and, where applicable, for any delay in providing notification; and
- (c) the measures, if any, that the Contractor proposes to adopt in order to rectify such non-compliance.

3. REVIEW PROCEDURE

3.1 Additional Documents Requiring Review

The Contractor shall provide to the Province all Detailed Designs, Contractor's Management Systems and Plans, and Contractor's Construction Schedule not submitted as part of, or amended since, the Contractor's Proposal, and the following procedure shall apply.

3.2 The Province’s Review Resources

The Province may, in reviewing any matter, refer such matter to other Alberta government departments, or any of the Province’s servants, agents, advisers, consultants, contractors or subcontractors, or to the School Jurisdictions or the Municipalities.

3.3 Province’s Responses to Contractor’s Submission

The Province shall, as soon as is practicable and in any event within 10 Business Days of receipt, return a response on the relevant submission endorsed “Received” or

“Comments” or “Observations”, as is appropriate.

3.4 Submission Endorsed “Received”

In the case of submission documents or proposed courses of action endorsed “Received” by the Province, the Contractor may proceed to commence or permit the commencement of such construction. A “Received” response (or a failure to provide comment or any response) by the Province shall not relieve the Contractor from exclusive responsibility for ensuring that the Project, or, if applicable, any Modification, complies with the Project Requirements or that the M&R Requirements are met or estop the Province from asserting any non-compliance with the Project Requirements or the M&R Requirements, as the case may be.

3.5 Submission Endorsed “Comments”

Subject to Section 3.11, the Contractor shall revise and resubmit any documents or proposed courses of action to which an endorsement of “Comments” has been attached by the Province taking into account the substance of the “Comments” and indicating either:

- (a) how the Technical Requirements were met or Schedules 2, 3, 4 or 16 to the DBFM Agreement were materially complied with in the original submission; or
- (b) how the revised submission now meets the Technical Requirements or materially complies with Schedules 2, 3, 4 or 16 to the DBFM Agreement.

A response endorsed with “Comments” (or a failure to provide comment or any response) by the Province shall not relieve against or excuse any failure by the Contractor to carry out the Project or perform the M&R, or, if applicable, carry out any Modification, in accordance with the Technical Requirements and Schedule 16 (Safety Requirements) to the DBFM Agreement or estop the Province from asserting any non-compliance with the Technical Requirements or Schedule 16 to the DBFM Agreement.

The Contractor shall not commence or permit the commencement of construction of that part of the Project or the performance of that portion of the M&R or, if applicable, the commencement of construction in connection with any Modification, until 10 Business Days following the Contractor’s resubmission of any documents or proposed courses of action to which an endorsement of “Comments” was originally attached by the Province (a “**Contractor’s Resubmission**”), except as may be agreed by the Province in writing.

Subject to the Province and the Contractor agreeing otherwise in writing, any construction commenced or permitted to be commenced by the Contractor in respect of that portion of the Project or performance of that portion of the M&R:

- (c) prior to the Province issuing a response of “Received” to a Contractor’s

Resubmission; or

- (d) in respect of a further response of “Comments” by the Province to a Contractor’s Resubmission, prior to the resolution of the issues raised in the Province’s further response of “Comments”,

is at the Contractor’s risk in that the Contractor shall not be relieved of the obligation to carry out the Project and to perform the M&R in accordance with the Technical Requirements and Schedule 16 to the DBFM Agreement and the Province shall not be estopped from asserting any non-compliance with the Technical Requirements or Schedule 16 of the DBFM Agreement.

3.6 Scope of the Province’s “Comments”

When the Province provides "Comments" regarding any document or course of action submitted by the Contractor, such "Comments" may relate to:

- (a) the Contractor's proposed designs, construction activities, construction materials, M&R activities or M&R materials, not likely achieving compliance with the Technical Requirements or Schedule 16 to the DBFM Agreement, or not likely to result in the Contractor achieving the estimated credits identified in the project checklist forming part of the LEED™ Certification Plan included at Schedule 4 (Contractor’s Management Systems and Plans), or, regarding construction schedule, not reasonable in view of the status of the Project, as applicable, and thus requiring the Contractor to revisit the document or course of action; or
- (b) on the face of the submission, it is not clear, as determined by the Province acting reasonably, that the Contractor’s proposed designs, construction activities, construction materials, M&R activities or M&R materials, will achieve compliance with the Technical Requirements or Schedule 16 to the DBFM Agreement, or are not likely to result in the Contractor achieving the estimated credits identified in the project checklist forming part of the LEED™ Certification Plan included at Schedule 4 (Contractor’s Management Systems and Plans), or, regarding construction schedule, are not likely reasonable in view of the status of the Project, as applicable, and thus requiring the Contractor to clarify the document or course of action.

3.7 Submission Endorsed “Observations”

Subject to Section 3.11, the Contractor shall revise and resubmit any documents or proposed courses of action or provide clarification or additional information to which an endorsement of “Observations” has been attached by the Province taking into account the substance of the “Observations” and confirming either:

- (a) how the Technical Requirements were met or Schedules 2, 3, 4 or 16 to the DBFM Agreement were materially complied with in the original

submission; or

- (b) how the revised submission now meets the Technical Requirements or materially complies with Schedules 2, 3, 4 or 16 to the DBFM Agreement.

A response endorsed “Observations” (or a failure to provide comment or any response) by the Province shall not relieve against or excuse any failure by the Contractor to carry out the Project or perform the M&R, or, if applicable, carry out any Modification, in accordance with the Technical Requirements and Schedule 16 to the DBFM Agreement or estop the Province from asserting any non-compliance with the Technical Requirements or Schedule 16 to the DBFM Agreement.

The Contractor shall be entitled to commence or permit the commencement of construction of that part of the Project or the performance of that portion of the M&R, or, if applicable, the commencement of construction in connection with any Modification, to which an endorsement of “Observations” has been attached by the Province.

3.8 Scope of the Province’s “Observations”

When the Province provides “Observations” regarding any document or course of action submitted by the Contractor, such “Observations” may relate to the Contractor’s proposed designs, construction activities, construction materials, M&R activities or M&R materials, likely achieving compliance with the Technical Requirements or Schedule 16 (Safety Requirements) to the DBFM Agreement, or likely to result in the Contractor achieving the estimated credits identified in the project checklist forming part of the LEED™ Certification Plan included at Schedule 4 (Contractor’s Management Systems and Plans), or, regarding construction schedule, are not likely reasonable in view of the status of the Project, as applicable, and thus requiring the Contractor to clarify the document or course of action.

3.9 No Response by the Province

If the Province does not return a Contractor’s submission document (including any re-submitted submission document) within 10 Business Days of that document’s delivery to the Province, then the Province shall be deemed to have returned that submission document to the Contractor marked “Received”. Neither comment by the Province nor failure by the Province to comment or otherwise participate in any manner in respect of the procedure prescribed by this Schedule shall relieve against or excuse any failure by the Contractor to carry out the Project or to perform the M&R, or, if applicable, to carry out any Modification, in accordance with the Technical Requirements and Schedule 16 to the DBFM Agreement or estop the Province from asserting any non-compliance with the Technical Requirements or Schedule 16 (Safety Requirements) to the DBFM Agreement.

3.10 Further Information Requested by the Province

If the Province so requires, the Contractor shall submit any further or other information,

data and documents (including without limitation, details of calculations and comments of the Contractor's design team members) that may be reasonably required for a full appreciation of any submission contemplated above and its implications. The Contractor shall take all such steps as may be reasonably required to satisfy the Province that the proposed document or proposed course of action complies with the DBFM Agreement or is appropriate in the circumstances.

3.11 Disagreement over Comments

Should the Contractor disagree with any such comment permitted by this Schedule, the Contractor shall issue a Dispute Notice and the parties shall first use reasonable commercial efforts to resolve their disagreement through negotiation, failing which either the Contractor or the Province may refer the matter to the Project Adjudicator pursuant to Section 4.

4. PROJECT ADJUDICATOR'S PROCEDURE

4.1 Engaging the Project Adjudicator

Within five Business Days of the Contractor becoming aware of the basis for a potential Live Design/Build Dispute, it shall give the Province notice of such basis for a potential Live Design/Build Dispute. Failure by the Contractor to provide such notice in such manner shall not thereafter disqualify the Contractor from providing a Dispute Notice, but the Province may in that event assert a claim for damages arising from such failure.

Pursuant to Section 2.4 or Section 3.11, after a Dispute Notice has been issued and failing the resolution by agreement of any Live Design/Build Dispute between the parties, that Live Design/Build Dispute shall in the first instance be referred to the Project Adjudicator for the Project Adjudicator's interpretations of the Project Requirements in relation to live design or construction issues for immediate interim resolution.

Pursuant to sections 7.1(f), 11.7(f), 12.1(g) or 13.3(i) of the DBFM Agreement, failing the resolution by agreement of any dispute between the parties relating to or arising out of the date that Total Availability would have been achieved or that a School would have achieved School Availability but for a Change Order, the occurrence of damage, a Relief Event or a Force Majeure Event, as applicable, and the revised date on which Total Availability should be scheduled to be achieved or on which a School should be scheduled to achieve School Availability following the occurrence of such event, that dispute shall in the first instance be referred to the Project Adjudicator for the Project Adjudicator's determination having regard to the status of the Project at the time that the event occurs, the nature of the event and the event's impact on the Project and the Contractor's Construction Schedule.

Failing a resolution by agreement, either party may request a meeting with the Project Adjudicator. As soon as is practicable after the Project Adjudicator receives a request for

such a meeting but in any event no later than three Business Days after receiving the request, the Project Adjudicator shall call the representatives of the parties together for a meeting at a School Site, a School or any other place the Project Adjudicator determines most appropriate.

At such meeting both parties will outline the issue or issues in dispute to the Project Adjudicator.

Should the Project Adjudicator fail to call such a meeting within the timeframes specified above, the party requesting the meeting, at its option and in accordance with section 2.5 of Schedule 7 (Dispute Resolution Procedure), may initiate Court proceedings regarding the issues in dispute.

4.2 Project Adjudicator’s Actions

Upon hearing the parties’ issues and reviewing any written materials either party may have presented to the Project Adjudicator in support of its position, the Project Adjudicator shall immediately proceed to investigate the subject of the dispute with a view toward its resolution. The Project Adjudicator shall be entitled to visit worksites, to call for any further documentation required from the parties and after consultation with the parties, and with their agreement, to consult with any experts, technical or otherwise, that the Project Adjudicator considers necessary to assist in the resolution of the dispute. The Project Adjudicator shall conduct all such investigations and enquiries as a matter of urgency.

4.3 The Project Adjudicator’s Conclusion

After giving due consideration to the points raised at the aforementioned meeting with the parties and to any additional investigations performed, and in any event no later than five Business Days after the date of the aforementioned meeting, the Project Adjudicator shall render a conclusion and shall deliver that conclusion to the parties (the “**Project Adjudicator’s Conclusion**”) verbally which shall specify:

- (a) the Project Adjudicator’s conclusion as to the proper interpretations of the Project Requirements in relation to a Live Design/Build Dispute;
- (b) the Project Adjudicator’s reasons for the conclusions drawn; and
- (c) the effect of the Project Adjudicator’s conclusions on the future work to be performed in the completion of the Project.

In making any such Project Adjudicator’s Conclusion, the Project Adjudicator shall be deemed to be an expert and not an arbitrator.

At either party’s request, the Project Adjudicator will provide duplicate copies of a written account of the Project Adjudicator’s Conclusion to the parties as soon as is

practicable after delivering the verbal Project Adjudicator's Conclusion.

Should the Project Adjudicator fail to render a Project Adjudicator's Conclusion within the timeframes specified above, the party requesting the meeting, at its option, in accordance with section 2.5 of Schedule 7 (Dispute Resolution Procedure), may initiate Court proceedings regarding the issues in dispute.

4.4 Project Adjudicator's Conclusion Disputed

If any Dispute which is the subject of a Project Adjudicator's Conclusion is not resolved by agreement between the parties within 10 Business Days after receipt of the Project Adjudicator's Conclusion, then either party may refer the Dispute to Court.

4.5 Project Adjudicator Not to Appear in Court

A Project Adjudicator who has issued a Project Adjudicator's Conclusion may not be retained by either party and may not be called by either party to give evidence with respect to the subject matter of the Project Adjudicator's Conclusion in any subsequent court proceeding to resolve the subject matter of the Project Adjudicator's Conclusion, nor will either party refer to or enter into evidence a Project Adjudicator's Conclusion in such proceeding, unless required by law or by a Court.

4.6 Performance of Obligations

Notwithstanding the existence of any dispute between the parties, the Province and the Contractor will, to the extent not precluded by the matter in dispute, continue with the Project and the performance of their respective obligations under the DBFM Agreement (including the Province's obligation to make Payments to the Contractor) without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the DBFM Agreement.