

MMCD
REQUEST FOR PROPOSAL

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Request for Proposals

Sunshine Coast Regional District

(NAME OF OWNER)

Contract: Contact Water Pond Relocation at the Sechelt Landfill

(TITLE OF CONTRACT)

Reference No. 2435204

(OWNER'S CONTRACT REFERENCE NO.)

1 INTRODUCTION

1.1 Background and Purpose

This RFP applies to and governs the preparation of Proposals for the Contract listed above. The Contract is generally for the following work:

Construction of a new contact water retention and infiltration pond at the Sechelt Landfill at 4901 Dusty Road, complete with ancillary work, decommissioning of the existing contact water pond, and installation of new monitoring wells and landfill gas probes.

The Regional District has applied for an amendment to our Sechelt Landfill Operational Certificate. It is anticipated that the ministry will finalize and approve the permit in October of 2024, no work can commence prior to the ministry's approval.

(BRIEF DESCRIPTION OF THE WORK)

1.2 Enquiries – Contract Person

The following person is the "Contact Person" for this RFP:

Name: Vanessa Schilling, SCMP

Title: Purchasing & Risk Officer

Email: purchasing@scrd.ca

1.3 Submission of Proposals: Closing Time

Proposals must be received at the Delivery Address (either electronically or by hand as applicable) no later than:

October 10, 2024 at 3:00 pm local time (the "Closing Time"). Late Proposals will not be accepted or considered and will be returned unopened.

1.4 Eligible Parties



Any interested party (each, a "**Proponent**") may submit a proposal (a "**Proposal**") in response to this RFP.



The Owner previously conducted a Request for Qualification (RFQ) process relating to work, and under the RFQ the following entities were shortlisted. Only these three entities are invited to respond to this RFP. No other entity is invited to participate as a Proponent under this RFP.

1.5 Definitions

In this RFP, unless the context requires otherwise:

"Addendum" has the meaning set out in Section 2.6;

"Claim" has the meaning set out in Section 9.4(a);

"Closing Time" has the meaning set out in Section 1.3;

"Contact Person" has the meaning set out in Section 1.2;

"Contract" means the contract to be awarded pursuant to this RFP;

"Contract Documents" means the Agreement as included with this RFP plus the documents listed in Section 2.2 of the Agreement;

"Delivery Address" has the meaning set out in Section 2.1;

"Evaluation Committee" has the meaning set out in Section 7.1;

"FOIPPA" means the *Freedom of Information and Protection of Privacy Act* of British Columbia;

"Form of Proposal" has the meaning set out in Section 4.1;

"On-Line Information Address" has the meaning set out in Section 3.2;

"Preferred Proponent" means the Proponent recommended by the Evaluation Committee under Section 7.6;

"Proponent" has the meaning set out in Section 1.4;

"Proposal" has the meaning set out in Section 1.4;

"Proposal Price" has the meaning set out in Section 6.1;

"Q&As" has the meaning set out in Section 2.4(b)(i);

"Reference Information" has the meaning set out in Section 2.7;

"RFP" means this Request for Proposals;

"RFP Documents" has the meaning set out in Section 3.1. and

"Restricted Party" has the meaning set out in Section 9.5.

Any words or phrases defined elsewhere in this RFP will have the particular meaning assigned to such words or phrases.

1.6 Interpretation

In this RFP:

- (a) words importing the singular include the plural, and vice versa;
- (b) the word “including” is deemed to be followed by “without limitation
- (c) capitalized terms used but not defined in this RFP, but are defined in other RFP Documents, have the meanings assigned to such terms in the applicable RFP Document, unless the context requires otherwise: and
- (d) notwithstanding any other provision in the RFP Documents, no term or condition will be implied into this RFP based on any practice or custom, including any practice or custom in the construction industry.

2 SUBMISSION OF INSTRUCTIONS

2.1 Delivery of Proposals

Proposals must be delivered to one of the following addresses (the “**Delivery Address**”):

- (a) if delivered electronically, utilizing BC Bid e-submissions at :

<https://new.bcbid.gov.bc.ca/>

- (b) if delivered by hand, to
1975 Field Road, Sechelt, BC V7Z 0A8

Proposals delivered to any other address, or by any other method (such as fax), will not be considered or accepted.

2.2 Number of Copies If Delivery by Hand

If the Proponent elects to deliver its Proposal by hand then a Proponent should submit either:

- (a) one hard copy and
- (b) one electronic copy (“pdf” on a USB flash drive)

at the Proponent’s election, of its Proposal in a sealed envelope clearly marked on the outside with the RFP Title and RFP Number (as shown in Section 1.1).

If a Proponent submits both a hard and an electronic copy of its Proposal, then the Owner may refer to either or both of the electronic and hard copy for the purposes of evaluation, except if for any reason, the electronic copy is in whole or in part unreadable, or if for any reason there is a conflict between the electronic and hard copies, then the hard copy will be deemed to be the correct copy.

2.3 Date and Time of Delivery

The Owner will date and time record all Proposals, amendments or withdrawals delivered under this RFP and the clock used by the Owner for that purpose will be deemed conclusively to be correct as to the date and time of receipt.

2.4 Enquiries and Responses

All enquiries regarding this RFP must be directed to the Contact Person at the address as specified in this RFP, and the following will apply to any enquiry:

- (a) The Owner reserves the right to decline to provide a response to an enquiry, considering fairness to all Proponents and the integrity of this competitive procurement process. (If the Owner elects not to give an answer it will, without compromising fairness to all Proponents and the integrity of this competitive procurement process, use reasonable efforts to provide the reason for not answering);
- (b) subject to Section 2.4(c), any reply from the Contact Person to an enquiry will be posted to the On-Line Information Address as either:
 - (i) a question and answer as part of a question and answer series for this RFP ("**Q&As**"); or
 - (ii) an Addendum;
- (c) a Proponent may request that an enquiry and the response be kept confidential if the Proponent considers the enquiry is commercially confidential to the Proponent, and the following will apply:
 - (i) if the Owner determines that, considering fairness to all Proponents and the integrity of this competitive procurement process, the enquiry and response does not need to be distributed to all Proponents, then the Owner will keep the enquiry and response confidential;
 - (ii) if the Owner determines that, considering fairness to all Proponents and the integrity of this competitive procurement process, any response given must be distributed to all Proponents, then, subject to Section 2.4(d), the Contact Person will permit the enquirer to withdraw the enquiry rather than receive a response; and
- (d) subject to Section 2.4(a) and notwithstanding Section 2.4(c), considering fairness to all Proponents and the integrity of this competitive procurement process, any enquiry and its response may, in the Owner's sole and absolute discretion, be distributed to all Proponents.

Information obtained from any source other than the Contact Person will not form part of this RFP and may not be used or relied on by a Proponent for the purpose of preparing its Proposal.

In preparing a response to any enquiry, the Contact Person may consult with other persons, including other Owner employees or the Owner's consultants and advisors.

2.5 Electronic Transmission

The Owner does not assume any risk, responsibility or liability whatsoever, including in contract or tort (including negligence), to any person that an electronic transmission or communication is received by the Owner in its entirety or within any time limit specified by this RFP.

2.6 Addenda

The Owner may, in its sole and absolute discretion, through the Contact Person;

- (a) amend this RFP at any time by issuing a written addendum (an “**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 or Q&As as provided by Section 2.4, 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. It is the responsibility of each Proponent to ensure that it has received all issued Addenda; and
- (b) include information that is in the form of a response to an enquiry or a Q&A as part of an Addendum, in which event such information will be considered as part of the Addendum and not Reference Information.

2.7 Reference Information Including Q&As

Any:

- (a) information included in Q&As issued by the Contact Person under Section 2.4(b) which has not been expressly included in an Addendum as provided by Section 2.6(b); and
- (b) additional information made available to Proponents prior to the Closing Time by the Owner or representatives of the Owner (such as, for illustration purposes only, Site information, geotechnical or subsurface reports or record drawings), including the information, if any, included or described in Attachment B to this RFP, which is not expressly included in the Contract Documents

(collectively, “**Reference Information**”) is provided and made available only for the reference and assistance of Proponents who must make their own judgment about its reliability, accuracy, completeness and relevance to the Contract, and nothing will be interpreted as meaning that the Owner or any representative of the Owner gives any guarantee or representation that the Reference Information is reliable, accurate, complete or relevant.

2.8 Revisions Prior to Closing Time

A Proponent may amend or withdraw a delivered Proposal, provided the amendment or withdrawal is received by the Owner at the Delivery Address prior to, but not after, the Closing Time.

2.9 Language

All Proposals should be in English.

3 RFP DOCUMENTS

3.1 RFP Documents

The “**RFP Documents**” are as follows:

- (a) this Request for Proposals;
- (b) the Form of Proposal, including the schedules listed in Section 2 of the Form of Proposal;
- (c) the Contract Documents;
- (d) issued Addenda, if any;
- (e) issued Reference Information (including Q&As), if any
- (f) _____

3.2 Availability of RFP Documents

Subject to Section 9.13, all RFP Documents, including issued Addenda and Reference Information, if any, relating to this RFP will be available at:

On BC Bid at <https://www.bcbid.gov.bc.ca/> or on our website at <https://www.scrd.ca/bid/>

(the “**On-Line Information Address**”). It is the sole responsibility of a Proponent to ensure it has received all RFP Documents before submitting a Proposal.

3.3 Completeness of RFP Documents

Proponents are responsible to review the RFP Documents to verify they are complete and should immediately notify the Contact Person, in writing, if the RFP Documents appear to be incomplete or contain any discrepancies, inconsistencies, ambiguities, errors or omissions, or if conditions at the Site differ from those described in the RFP Documents.

4 FORM OF PROPOSAL

4.1 Form of Proposal

Proposals should be submitted on the Form of Proposal as included with this RFP (the “**Form of Proposal**”), which should be completed to provide all the information as requested on the Form of Proposal or as otherwise required by this RFP. The Owner invites Proposals that are responsive to requests for information in the Form of Proposal, and is not inviting lengthy generalized submissions with respect to any issue referred to in the Form of Proposal.

4.2 Proposed Amendments to Commercial Terms

The Contract Documents describe the proposed commercial terms for the final Contract. If any such terms are unacceptable to a Proponent, then the Proponent may include proposed amendments to the commercial terms with its Proposal. If a Proponent elects to include a proposed amendment, then for each proposed amendment the Proponent should also include in its Proposal the rationale and the benefit to the Owner (such as the amount of cost-savings), if any, for the proposed amendment. By submitting a Proposal a Proponent will be deemed to fully accept and agree to all the commercial terms for the final Contract as described by the Contract Documents, except as may be expressly described otherwise in a proposed amendment(s) that is included in the Proponent’s Proposal.

4.3 Proposed Amendment of Schedule Dates

The Contract Documents may describe the date for Substantial Performance of the work, and other milestone dates. Except if this RFP expressly provides that the Owner will not accept any variation in the dates, Proponents may provide Proposals that, in addition to, or in substitution for, such specified dates describe other dates, including the rationale and the benefit to the Owner (such as the amount of cost-savings or superior performance), if any, for each date variation.

4.4 Proposed Alternatives to Designs and Specifications

The Contract Documents may include specifications for the performance of the work and may include drawings for the design of the work. Proponents may provide Proposals based on such specifications and drawings or may, in addition to, or in substitution for any element of the specifications or design or both as described in the Contract Documents, propose specification or design alterations, modifications or amendments. A Proponent should clearly identify in its Proposal any proposed specification or design alteration, modification or amendment, including the rationale and the benefit to the Owner (such as the amount of cost-savings or superior performance), if any, for each alteration, modification or amendment. By submitting a Proposal a Proponent will be deemed to fully accept and to agree to fully comply with the specifications and design as described in the Contract Documents, except as may be expressly described otherwise in a proposed amendment(s) that is included in the Proponent's Proposal.

4.5 Signature

A Proponent's Form of Proposal should be signed by a person authorized to sign on behalf of the Proponent and bind the Proponent to statements made in the Proposal and the following will apply:

- (a) if the Proponent is a corporation then the full name of the corporation should be included, together with the name, title and signature of an authorized signatory;
- (b) if the Proponent is a partnership or a joint venture, then the name of the partnership or joint venture and the name of each partner or joint venturer should be included and an authorized signatory of each partner or joint venturer should sign; or
- (c) if a partner or joint venturer is a corporation then such corporation should sign as indicated in Section 4.5(a).

Unsigned Proposals, in the Owner's sole and absolute discretion, may be rejected.

4.6 Numbers and Figures

If the Form of Proposal calls for numbers in both words and figures, then, in the event of a discrepancy, the words will govern.

5 SITE CONDITIONS, INFORMATIONAL MEETINGS AND SITE VISITS

5.1 Site Conditions

Proponents, either personally or through a representative, have the responsibility to be knowledgeable of the Site. In submitting a Proposal a Proponent will be deemed to have made allowance for all factors relating to the Site that might affect the performance of the work, that would be apparent to a knowledgeable and experienced contractor from a visual inspection of the Site and a review of available materials and information, including the location of the Site, local conditions related to the work, geotechnical and subsurface conditions, Site drainage, Site access, local weather, availability of labour, equipment and materials and any other relevant matters. (For clarity, except as may be expressly permitted in the Contract Documents, such required inspection will not include subsurface geotechnical

investigations.) By submitting a Proposal, a Proponent will be deemed to have undertaken any required inspection and to have taken account of all such factors in the preparation of its Proposal. No additional payments or time extensions shall be claimable or due because of difficulties relating to conditions at the Site or factors as described in this Section 5.1 which were reasonably foreseeable by a contractor qualified to undertake the work that was knowledgeable of, and had inspected, the Site and considered the factors listed in this Section 5.1.

5.2 Informational Meetings and Site Visits

An optional site meeting will be held on September 18, 2024 at 1:30 pm local time at 5901 Dusty Road, Sechelt BC. Proponents need to RSVP by September 17, 2024 to purchasing@scrd.ca if no RSVPs are received the site meeting may be cancelled.

Attendance at a meeting or visit will be at the discretion of the Proponents, but Proponents who do not attend will be deemed to have received all of the information made available to attendees.

If the Owner holds a Site visit, then as a condition of entering the Site the Proponent must agree to comply with, and cause all of its representatives, including its directors, officers, employees and agents, and its team members to comply with all Site rules and regulations, as may be established by the Owner.

6 PROPOSAL PRICE

6.1 Proposal Price

The price(s) set out in the completed Schedule of Quantities and Prices (attached to the Form of Proposal) will, applied in accordance with the terms of the Contract Documents, represent the entire cost to the Owner for the complete performance of the work, exclusive only of GST. The aggregate of such prices (based on applicable unit prices, lump sum prices and other forms of pricing as indicated on the Form of Proposal, and including options or alternates, if any, as may be included in the Schedule of Quantities and Prices) (collectively, the **"Proposal Price"**) will be the Proponent's total price for the complete performance of all the work. The Proposal Price will be deemed to include:

- (a) all costs for labour, equipment and materials included in or required for the completion of the work, including all items which, while not specifically listed, are included in the work specifically or by necessary inference from the Contract Documents; and
- (b) all overhead costs, including head office and on-site overhead costs, and all amounts for the Contractor's profit.

7 PROPOSAL EVALUATION

7.1 Evaluation Committee

The evaluation of Proposals to identify a Preferred Proponent will be carried out by a committee of one or more persons appointed by the Owner (the **"Evaluation Committee"**). The Evaluation Committee may be assisted by other persons as the Evaluation Committee in its sole discretion may decide it requires, including technical, financial, legal and other advisors or employees of the Owner.

7.2 Evaluation Criteria

The Evaluation Committee will compare and evaluate the Proposals to identify the Proposal which the Evaluation Committee, in its sole and absolute discretion, judges to be the most advantageous to the Owner by applying the evaluation criteria set out in Attachment A to this RFP.

7.3 Evaluation Process

To assist in evaluation of Proposals, the Evaluation Committee may, in its sole and absolute discretion, but is not required to:

- (a) conduct reference checks and background investigations of the Proponent, and any subcontractors proposed in the Proposal, with internal and/or external sources, and consider and rely on any relevant information received from the references and from any background investigations in the evaluation of Proposals;
- (b) seek clarification or additional information from any, some, or all Proponents with respect to their Proposal, and consider and rely on such supplementary information in the evaluation of a Proposal;
- (c) request interviews/presentations with any, some, or all Proponents to clarify any questions or considerations based on the information included in Proposals, and consider and rely on any supplementary information received from interviews/presentations in the evaluation of Proposals; and
- (d) seek confirmation that the inclusion of any Personal Information about an individual in a Proposal has been consented to by that individual.

7.4 Detailed Evaluations

In conducting an evaluation the Evaluation Committee will not be required to complete a detailed evaluation of all Proposals and may, after completing a preliminary review of all Proposals, identify and drop from any detailed evaluation any Proposal which the Evaluation Committee judges to not be in contention to be selected as the Proposal of the Preferred Proponent when compared to the other Proposals;

7.5 Reservation of Rights

The Owner reserves the right, in its sole and absolute discretion, to:

- (a) at any time, for any reason, reject any or all Proposals and terminate the process under this RFP, and proceed with the work in some other manner, including reissue a request for proposals or undertake another procurement process for the same or similar scope of work;
- (b) evaluate a Proposal that includes one or more alteration, modification or amendment as permitted by Sections 4.2, 4.3 and 4.4 by applying the evaluation criteria as set out in Section 7.2 to identify the alteration, modification or amendment that the Owner determines is most advantageous to itself, and for the purposes of comparison to other Proponent's Proposals, incorporate the identified advantageous alteration(s), modification(s) or amendment(s) into the Proposal together with the corresponding adjustment, if any, to the Proposal Price; and
- (c) accept the Proposal (including a Proposal modified as described in Section 7.5(b)) which, applying the evaluation criteria as set out in Section 7.2, the Owner determines is most advantageous to itself, and, without limitation, select a Proposal which does not have the lowest Proposal Price;
- (d) award separate Contracts for portions of the work, including with respect to one or more payment items; and

- (e) if only one Proposal is received, reject that Proposal and terminate the process under this RFP, and proceed with the work in some other manner, including entering into negotiations with that Proponent with respect to any matter, including price.

7.6 Recommendation of Preferred Proponent

After completion of the evaluation as set out in Section 7.0, the Evaluation Committee will recommend a Proponent to be selected by the Owner as the Preferred Proponent.

7.7 All Proposals Over Budget

Subject to any express provision of this RFP, if the Proposal Prices for all Proposals exceed the amount that the Owner has budgeted for the work, then the Owner may, at its election and in its sole and absolute discretion:

- (a) seek approval for an increase in the budget; or
- (b) terminate the process under this RFP and;
 - (i) enter into negotiations with the Proponent that but for its over-budget Proposal Price would have been recommended as the Preferred Proponent under Section 7.6 for the purpose of identifying scope or other amendments to the Contract Documents to achieve the budget, and if agreement is reached award a Contract to that Proponent; and
 - (ii) if for any reason agreement is not reached on the terms of the Contract with the Proponent identified under Section 7.7(b)(i), then enter into negotiations with the next most highly evaluated Proponent on the same basis as described in Section 7.7(b)(i), and continue in that manner until an agreement is reached with a Proponent on scope or other amendments to the Contract Documents required to achieve the budget.

8 SELECTION AND DEBRIEFING

8.1 Notice to Preferred Proponent

If the Owner accepts the recommendation of the Evaluation Committee under Section 7.6 for the Preferred Proponent, the Owner will issue a written notice to such Proponent stating that it is the Preferred Proponent. The Owner will not select a Proponent as Preferred Proponent that is not recommended by the Evaluation Committee under Section 7.6.

8.2 Negotiations of Contract and Award

The Owner may enter into negotiations with the Preferred Proponent after completion of the evaluation as set out in Section 7.0 and the selection of the Preferred Proponent under Section 8.1. The Preferred Proponent will use good faith commercial efforts to negotiate and enter into a Contract with the Owner.

During negotiations the Owner may:

- (a) negotiate any aspect of a Preferred Proponent's Proposal, including reductions in the prices as set out in the Preferred Proponent's Proposal;
- (b) negotiate the incorporation of the Preferred Proponent's suggested amendments to the Contract as may be included in its Proposal;
- (c) negotiate terms and conditions different than those contained in the RFP Documents, the Proposal or both; and

- (d) if at any time the Owner reasonably forms the opinion that a mutually acceptable Contract is not likely to be reached within a reasonable time, give the Preferred Proponent written notice to terminate discussions, in which event the Owner may then either open discussions with another Proponent or terminate this RFP in whole or in part and obtain the work in some other manner, or not at all.

8.3 Notification to Unsuccessful Proponents

After entering into the Contract with the Preferred Proponent, the Owner will notify unsuccessful Proponents that the Contract has been concluded by sending a written notice to the representatives of the unsuccessful Proponents.

8.4 Debriefing

After entering into the Contract with the Preferred Proponent, the Owner will conduct a debriefing, upon request, of an unsuccessful Proponent to discuss the relative strengths and weaknesses of that Proponent's Proposal, but the Owner will not disclose or discuss any confidential information of any other Proponent.

9 MISCELLANEOUS CONDITIONS

9.1 Ownership and Use of Proposals

Upon delivery to the Owner, a Proposal will become the property of the Owner and will not be returned to the Proponents except as the Owner, in its sole and absolute discretion, may determine. The Owner may make use of the contents of a Proposal submitted by an unsuccessful Proponent with the written approval of the unsuccessful Proponent, including payment of reasonable compensation as agreed to by the Owner and the unsuccessful Proponent.

9.2 No Obligation to Proceed

Nothing in this RFP will be interpreted as committing the Owner in any way to award a Contract.

9.3 Cost of Preparing a Proposal

Each Proponent is solely responsible for its own costs and expenses incurred in preparing and submitting its Proposal and for participating in this competitive procurement process, including for any meetings, due diligence, negotiations or discussions with the Owner or the Owner's representatives and consultants, relating to or arising from this RFP.

9.4 No Claims

Each Proponent, by submitting a Proposal, irrevocably:

- (a) agrees that it will not bring any claim, demand, action, cause of action, suit or proceeding, whether arising in contract, tort (including negligence) or otherwise (a "**Claim**") against the Owner or any of its employees, directors, officers, advisors or representatives, or any one of them, for any costs, damages or other compensation in excess of an amount equivalent to the actual and reasonable costs directly and demonstrably incurred by the Proponent in preparing its Proposal for any matter relating directly or indirectly to this RFP (including in the event that the Owner rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant Proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or any duties arising from this RFP), except that this Section 9.4(a) will not apply if the Owner or its representatives administers this RFP maliciously with deliberate disregard for the legal rights of a Proponent as provided by this RFP; and

- (b) waives any Claim against the Owner and its employees, directors, officers, advisors or representatives for any compensation of whatsoever nature or kind, including for loss of anticipated profits, loss of opportunity, indirect, incidental or consequential damages or losses if no contract is entered into for the work between the Proponent and the Owner for any reason whatsoever, including in the event that the Owner rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant Proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or any duties arising from this RFP.

9.5 Restricted Parties

A “**Restricted Party**” is a person, entity, firm or organization who the Owner has identified as being restricted from participating as a member of a Proponent team because such person, entity, firm or organization:

- (a) is participating or is involved in the RFP process or in the design, planning or implementation of the work or who has so participated or has been so involved; and
- (b) may provide a material unfair advantage or material confidential information to a Proponent team that it joined that is not, or would not reasonably be expected to be, available to other Proponents.

As of the date of this RFP, the Owner has identified the following persons, entities, firms or organizations as Restricted Parties:

The Restricted Parties are restricted from participating as a member of a Proponent’s team. The above may not be an exhaustive list of Restricted Parties. Additional persons, entities, firms or organizations may be added to the list at any stage of this RFP process by issuance by the Owner of an Addendum, as the Owner becomes aware of additional persons, entities, firms or organizations who should be restricted.

9.6 Use or Inclusion of Restricted Parties

No Proponent nor any member of the Proponent’s team may use, consult or seek advice from any Restricted Party or include any Restricted Party in the Proponent’s team. The Owner may, in its sole and absolute discretion, disqualify a Proponent or impose such conditions on the Proponent’s continued participation in this RFP process as the Owner may consider to be appropriate, if the Proponent uses or includes a Restricted Party in the Proponent’s team:

- (a) to advise or otherwise assist the Proponent in connection with the Proponent’s participation in this RFP process, including in connection with the Proponent’s preparation of its Proposal; or
- (b) as an employee, advisor or consultant to the Proponent or a member of the Proponent’s team.

9.7 Relationship Disclosure

A Proponent should complete and submit a “Relationship Disclosure Statement: Conflict of Interest and Unfair Advantage” (attached to the Form of Proposal) that fully discloses the following relationships:

- (a) all members of the Proponent’s team who were employees of the Owner at any time during the two year period preceding the date of the disclosure; and
- (b) all known relationships the Proponent and each member of the Proponent’s team has, or has had, with the Owner, a Restricted Party (if any are listed in this RFP), or any other person providing

advice or services to the Owner with respect to this RFP or the design, planning or implementation of the Contract or any other matter that gives rise, or might give rise, to:

- (i) a conflict of interest; or
- (ii) an unfair advantage,

with the knowledge and intention that the Owner may rely on any such disclosure.

At the time of such disclosure, the Proponent should 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 may require in its discretion in connection with the Owner's consideration of the disclosed relationship and proposed measures.

If, at any time before award of the Contract, the Proponent becomes aware of any such relationship that was not disclosed in its Proposal, then the Proponent will, by written notice addressed to the Contact Person, promptly disclose such relationship.

9.8 Conflict of Interest and Unfair Advantage

The Owner reserves the right in its absolute and sole discretion to:

- (a) 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 actual, perceived, or likely to arise in the future; and
- (b) may permit a Proponent to continue in this competitive procurement process and impose such conditions as the Owner may consider to be in the public interest or otherwise required by the Owner with respect to an actual, potential or perceived conflict of interest.

9.9 Advanced Ruling

A Proponent that has any concerns regarding:

- (a) whether a current or prospective employee, advisor or member of the Proponent's team is or may be a Restricted Party (if such concept is included in this RFP); or
- (b) whether the Proponent or any member of the Proponent's team has a relationship that may give rise to a conflict of interest or unfair advantage,

is encouraged to request an advance ruling on the matter, by submitting to the Contact Person, not less than ten days prior to the Closing Time:

- (c) a description of the relevant relationship; and
- (d) the measures that have been, or will be, implemented to mitigate, minimize or eliminate any actual, perceived or potential conflict of interest or unfair advantage.

Subject to the terms of this RFP, all requests for advance rulings will be treated in confidence.

9.10 No Representation or Warranty

Each Proponent will investigate and satisfy itself of every condition that affects the preparation of its Proposal. Each Proponent acknowledges and represents that its investigations have been based on its own examination, knowledge, information and judgment, and not upon any statement, representation or information made or given by the Owner, the Contact Person or any advisor to the Owner, other than the information contained in this RFP. Submission of a Proposal is deemed to be conclusive evidence that the Proponent accepts the terms of this Section 9.10. The Owner accepts no responsibility for any Proponent lacking any information.

9.11 Use of RFP Documents

No person may, without the express prior written consent of the Owner, use, copy or disclose any information contained in the RFP Documents for any purpose other than for the purpose of preparing a Proposal.

9.12 FOIPPA (Freedom of Information and Protection of Privacy Act)

Proponents should be aware that the Owner is a “public body” defined by and subject to FOIPPA. Subject to FOIPPA and this RFP, the Owner will endeavour to keep all Proposals (and their contents) confidential.

Each Proponent is responsible for compliance with laws applicable to the collection, use and disclosure of Personal Information, including FOIPPA. If a Proponent includes Personal Information (including resumes) in a Proposal, then by submitting a Proposal a Proponent will be deemed to represent to the Owner that the Proponent has obtained written consent from the applicable individual(s), including the consent to the indirect collection of Personal Information by the Owner, and that the Personal Information may be forwarded to the Owner for the purposes of responding to this RFP and may be used by the Owner for the purposes set out in this RFP. The Owner reserves the right to require proof of such consent and to reject a Proposal if such consent is not provided as required by applicable law.

9.13 Proprietary or Confidential Documents

The Owner may elect to restrict access to RFP Documents which are proprietary or confidential to the Owner by not posting such RFP Documents to the On-Line Information Address and making such RFP Documents available in some other manner. As a condition of access the Owner may require a Proponent to sign a non-disclosure agreement in a form provided by the Owner.

9.14 No Collusion or Solicitation

By submitting a Proposal, the Proponent, for and on behalf of the Proponent and the Proponent’s team, represents and confirms to the Owner that the Proponent has prepared its Proposal without any connection, knowledge, comparison of figures, arrangement or collusion with any other person or persons submitting or participating in the preparation of a Proposal.

Each Proponent may not make any representations, solicitations or other communications to any elected or appointed official, director, officer or employee of the Owner or to a member of the Evaluation Committee with respect to its Proposal, either before or after submission of its Proposal, except as expressly provided in this RFP. If any representative of a Proponent communicates improperly contrary to this paragraph, then the Owner may, in its sole and absolute discretion, regardless of the nature of the communication, reject the Proposal submitted by the Proponent.

ATTACHMENT A EVALUATION CRITERIA**(Note – evaluation criteria and weighting may be amended for specific project)**

	Evaluation Criteria	Weighting	Score
1.	Experience and Expertise	25	
2.	Capacity, including available personnel, equipment and resources	15	
3.	Methodology and Construction Schedule	25	
4.	Value Add	5	
5.	Price, including costs to be incurred by the Owner	25	
6.	Sustainable Social Procurement	5	

It is anticipated that the Proponent that is evaluated to have the highest aggregate score will be selected as the Preferred Proponent, but the Owner reserves the right for the Evaluation Committee to decline to recommend any Proponent which the Evaluation Committee, acting reasonably and fairly, determines would, if selected, result in greater overall cost or greater material risk to the Owner as compared to another Proponent, considering any relevant factors, including a Proponent's financial resources, safety record, claims and litigation history, work history and environmental record.

Notes on Evaluation Criteria:

- a. "Experience and Expertise" refers to the experience and expertise of the Proponent team (including the experience of any identified Subcontractors) and means the experience with work or services similar to the scope and nature of the work or services required under the Contract, and the relevant expertise to perform such work or services.
- b. "Capacity" refers to the personnel, equipment and resources that are available to perform the work or services required under the Contract.
- c. "Methodology" refers to the work plan and approach the Proponent intends to use in the performance of the work or services required under the Contract
- d. "Price" refers to the overall amount to be paid by the Owner for the performance of the Contract, including all costs that will be incurred by the Owner and risks to be assumed by the Owner. The lowest price proposal will receive full points for pricing. All other prices will be scored using the following formula: (lowest priced proposal / price of this proposal) X total points available for price.
- e. "Sustainable Social Procurement" refers to the process or the steps the Proponent takes to contribute to the following key social, employment goal that include but are not limited to:
 - Contribution to a stronger local economy by:
 - promoting and living wage,
 - using fair employment practices,
 - training and apprenticeship opportunities
 - Local expertise knowledge by
 - being local owned,

- utilization of local subcontractors.
- Environmental Cost of Ownership
- Energy Efficient Products,
- Minimal or environmentally friendly use of packaging materials, and
- Reducing hazardous materials (toxics and ozone depleting substances).

ATTACHMENT B REFERENCE INFORMATION*Drawings:*

Dwg. No.	Title	Status
G-01	COVER PAGE	Rev 5
C-01	EXISTING SITE CONDITIONS	Rev 5
C-02	PROPOSED SITE MODIFICATIONS	Rev 5
C-03	PROPOSED CONTACT WATER POND	Rev 5
C-04	PROPOSED MODIFICATIONS TO THE EXISTING CONTACT WATER POND	Rev 5
C-05	PROPOSED CONTACT WATER POND PROFILES	Rev 5
C-06	EXISTING AREAS OF POTENTIAL BURIED ASBESTOS	Rev 5
C-07	PROPOSED INFILL STAGES OF THE EXISTING CONTACT WATER POND	Rev 5
C-08	ENVIRONMENTAL MONITORING INFRASTRUCTURE	Rev 5
D-01	DETAILS I	Rev 5
D-02	DETAILS II	Rev 5
D-03	DETAILS III	Rev 5
D-04	DETAILS IV	Rev 5

Reports:

Report Title	Author	Date
Preliminary Geotechnical Report - Sechelt Landfill Sinkhole	Braun Geotechnical Ltd	February 20, 2020
Ground Penetrating Radar Survey SCRD Landfill, Public Area	Terraprobe Geoscience Corp.	March 13, 2020
Updated Hydrogeological Characterization and Impact Assessment	XCG Consulting Limited	August 28, 2020

FORM OF PROPOSAL

Contact Water Pond Relocation at the Sechelt Landfill 2435204

(RFP Title and RFP Number)

To: Sunshine Coast Regional District 1975 Field Road, Sechelt BC V7Z 0A8

[Owner's name and address]

Capitalized terms used but not defined in this Form of Proposal have the meanings assigned to such terms in the Request for Proposals applicable to this Form of Proposal (the "**RFP**"), unless the context requires otherwise.

1.0 PROPONENT INFORMATION

This Proposal is submitted by:

Legal Name of Proponent (the " Proponent "):	
Legal Structure of Proponent (if not incorporated):	
Date and Place of Formation (or incorporation):	
Address:	
Name of Representative:	
Representative's Telephone Number:	
Representative's Email Address:	
GST Registration Number (if no GST registration number is provided, the Proponent will be considered as not registered for GST):	
WorksafeBC Registration Number (if coverage for the Proponent's workers is provided by an insurance policy rather than under the <i>Workers Compensation Act</i> (British Columbia), attach particulars of such policy to this Form of Proposal):	

2.0 RFP DOCUMENTS

The RFP Documents include the following documents attached to this Form of Proposal:

<u>Schedule Title</u>	<u>Schedule Number</u>
RFP Submission Requirements	1
Schedule of Quantities and Prices	2
Proponent's References	3
Subcontractors	4
Sustainable Social Procurement	5
Proposed Amendments to Commercial Terms	6
Alternatives	7
Baseline Construction Schedule	9
Relationship Disclosure Statement: Conflict of Interest and Unfair Advantage	10

3.0 PROPONENT'S DECLARATIONS

The Proponent declares and confirms it:

- (a) received, has examined and understands the RFP Documents, including any issued Addenda;
- (b) agrees to all terms and conditions of the RFP;
- (c) has full knowledge of the Site and the work required to be performed by it in accordance with the Contract Documents;
- (d) complied with the RFP;
- (e) based its Proposal Price on the estimated quantities set out in the Schedule of Quantities and Prices, if any, and understands that actual quantities may vary; and
- (f) completed and includes with this Proposal all documents listed in Section 2 of this Form of Proposal.

4.0 PROPONENT'S OFFER

The Proponent offers to perform and complete all of the work and provide all the labour, equipment and material all as set out in the Contract Documents, in strict compliance with the Contract Documents and for the Proposal Price, subject to the provisions of the Proponent's Proposal.

This Proposal is executed by the undersigned as of the date noted below.

Authorized Signatory

Name and Title of Authorized Signatory

Date

SCHEDULE 1 – RFP SUBMISSION REQUIREMENTS

Provide a brief description of the Contractor Quality Assurance Plan that the Proponent will follow in performing the work (see GC.4.12).

Provide a brief description of the Safety Management Plan that the Proponent will follow in performing the work (see GC.4.2).

Provide a brief methodology of your approach you intend to utilize to perform the work.

Provide a brief description of your personal (including subtrades), equipment and resources that are available and will be used to complete the work.

Describe your experience completing services with a similar scope and nature to the work required under the contract, this needs to include dates on when the services commenced and were completed.

Confirm on your project team that you have met these requirements:

- A member of your team including subcontractor is qualified and experience in earth-moving operations and in the handling of ACMs and/or Waste Asbestos.
- HYDRAULIC SEEDING Installer specializing in planting and establishment of multiple acre grading and planting projects with 5 years' documented experience.
- CHAIN LINK FENCES AND GATE manufacturer specializes in manufacturing the products specified in Section 32 31 13 has a minimum 3 years' experience.
- EROSION AND SEDIMENT CONTROL the installer specializing in performing the work of this Section, with minimum 3 years documented experience and the manufacturer has a minimum 5 years documented experience.

SCHEDULE 2 – SCHEDULE OF QUANTITIES AND PRICES

1. All prices unless expressly stated otherwise:
 - (a) will be deemed to be in Canadian dollars (and if any price is expressed in any other currency, then for the purposes of evaluation the Owner will convert such price to the Canadian dollar equivalent, calculated as of the Closing Time); and
 - (b) will be deemed to include all applicable duties and all costs of performing the work and all applicable taxes, except only GST.
2. The abbreviations in the Schedule of Quantities and Prices are defined as follows:

LS	lump sum
PS	provisional sum
m	linear metre
3. The Owner reserves the right to delete the requirement for bonds under the Contract. In such case, the Proposal Price will be reduced by the price for such bonds as entered in the Schedule of Quantities and Prices. If no price is entered for such bonds, then, pursuant to Section 7.3(b) of the RFP, and notwithstanding paragraph 4 of this Schedule 2, the Owner may request the Proponent to clarify the price for such bonds that was included in the Proposal Price.
4. Where the Proponent does not enter a price for a payment item in the Schedule of Quantities and Prices, then that payment item shall be deemed to have been included in the other prices the Proponent entered in the Schedule of Quantities and Prices and no separate payment will be owing for that payment item.
5. If there are any discrepancies in the Schedule of Quantities and Prices between the unit prices (if any) and the extended totals, then the unit prices will be deemed to be correct, and corresponding corrections will be made to the extended totals and the Proposal Price as may be required. If an extended total is given but the unit price has been omitted, then the corresponding unit price will be calculated from the extended total and the estimated quantity, and inserted. If there is a discrepancy between the aggregate of prices in the Schedule of Quantities and Prices and the Proposal Price, then the aggregate of prices will be deemed to be correct and the Proposal Price adjusted accordingly.
6. Terms of Payment are provided in GC.5 of Appendix A – General Conditions (Construction) and Appendix E – Schedule of Quantities and Prices, to the Contract Documents.
7. Proponents should not submit unbalanced Proposal prices.

Please provide the following pricing information:

Item	Specification	Description	Approx. Quantity (for Proposal Evaluation)	Unit	Unit Price	Amount
1	01 32 00 / 1	Administrative – Admin Requirements and Submittal Procedures	1	LS	\$	\$
2	01 73 03 / 1	Execution and Closeout Procedures – Demobilization and Closeout	1	LS		
3	02 42 00 / 1	Removal and Salvage of Construction Materials – Salvaging of Concrete Blocks	1	LS		
4	02 42 00 / 3	Removal and Salvage of Construction Materials – Transportation of Wheel Stops and Drainage Pipe Joints	1	LS		
5	02 42 00 / 3	Removal and Salvage of Construction Materials – Transportation of Large Heavy Equipment Tires	1	LS		
6	02 42 00 / 4	Removal and Salvage of Construction Materials – Removal and Salvage of Road Aggregate Material	400	m3		
7	03 41 00 / 1	Precast Structural Concrete - Triple 300mm Inlet Headwall	1	LS		
8	31 23 10 / 1	Excavation and Trenching - Municipal Solid Waste Management and Disposal	2500	m3		
9	31 23 10 / 2	Excavation and Trenching - Potential Asbestos Containing Material Management and Disposal	2500	m3		
10	31 23 10 / 3	Excavation and Trenching - On-Site Structural Fill	7500	m3		
11	31 23 11 / 1	Fill - Well Graded Base	75	m3		
12	31 23 11 / 2	Fill - Rip Rap	40	m3		
13	31 23 11 / 3	Fill - On-Site Structural Fill	2500	m3		
14	31 23 11 / 4	Fill - Imported Structural Fill	250	m3		
15	31 23 11 / 5	Fill - Compacted Clay Liner	1425	m3		
16	31 23 11 / 6	Fill - Topsoil	10	m3		
17	31 32 19.01 / 1	Geotextiles - Non-Woven Geotextile	850	m2		
18	31 32 19.01 / 2	Geotextiles - Anchor Trench	120	LM		
19	31 32 19.16 / 1	Hydraulic Seeding - Hydraulic Seeding	6000	m2		

20	32 35 44 / 1	Erosion and Sediment Control - Temporary Soil Erosion and Sediment Control	1	LS		
21	33 41 00 / 1	Storm Utility Drainage Piping - 300mm CSP Culvert	10	LM		
22	33 41 00 / 2	Storm Utility Drainage Piping - Road Culvert	95	LM		
23	32 31 13 / 1	Chain Link Fences and Gates - Installation of New Fencing	120	LM		
24	32 31 13 / 2	Chain Link Fences and Gates - Installation of Fence Double Swing Gate	1	LS		
25	33 51 39 / 1	General Utilities - Gas Probe Installation	3	each		
26	33 51 39 / 2	General Utilities - Monitoring Well Installation	4	each		
27	33 51 39 / 3	General Utilities - Monitoring Well MW- 2A Repair	1	each		
		SUBTOTAL PAYMENT ITEMS 1 TO 27				\$
		BONDING (provide separate price for bonding (for reference, see GC.8.1 and paragraph 3 above))				
28		Performance Bond	1	LS	-	\$
29		Labour and Materials Bond	1	LS	-	\$
		PROPOSAL PRICE				\$
		(aggregate of the above, including price of bonding)				
		GST (5 %)				\$
		Aggregate Total				\$

SCHEDULE 3 – PROPONENT'S REFERENCES

The Proponent should list at least three recent customer references where the Proponent has provided similar work to the work required by the Owner as described in the RFP. Include the name of the customer, a key contact person, a telephone number for that key contact person, and a brief description of the work provided to each of these customers. The Proponent agrees that the Owner may contact any reference. The Proponent should complete and provide a separate table (using the table below) for each of its references.

REFERENCE 1	Client Name	
	Address (City and Country)	
	Contact Name	
	Title of Contact	
	Telephone No.	
	Email Address	
	Length of Relationship	
	Type of work Provided to this Client	
	Original Contract Value	
	Final Contract Value	
REFERENCE 2	Client Name	
	Address (City and Country)	
	Contact Name	
	Title of Contact	
	Telephone No.	
	Email Address	
	Length of Relationship	
	Type of work Provided to this Client	
	Original Contract Value	
	Final Contract Value	
REFERENCE 3	Client Name	
	Address (City and Country)	
	Contact Name	
	Title of Contact	
	Telephone No.	
	Email Address	
	Length of Relationship	
	Type of work Provided to this Client	
	Original Contract Value	
	Final Contract Value	

SCHEDULE 4 – SUBCONTRACTORS

The Proponent should identify any scope of work that will be subcontracted and complete and provide a separate table (using the table below) for each of its subcontractors.

The Proponent agrees that the Owner may contact any proposed subcontractor and agrees, for and on behalf of any proposed subcontractor, that the Owner may contact any reference.

Subcontracted Scope		
Subcontractor		
Contact (name, title, email, telephone no.)		
Approximate Percent of the work to be Subcontracted		
The Subcontractor's Relevant Experience (identify at least three similar projects within the last five years, including the client)	1. Project Name:	
	Client:	
	Nature of work:	
	Value:	
	Client Contact:	
	2. Project Name:	
	Client:	
	Nature of work:	
	Value:	
	Client Contact:	
	3. Project Name:	
	Client:	
	Nature of work:	
	Value:	
	Client Contact:	

SCHEDULE 5 – SUSTAINABLE SOCIAL PROCUREMENT

The Proponent should identify any processes or the steps the Proponent takes to contribute to the following key social or employment goals that include but are not limited to:

Contribution to a stronger local economy by:	
promoting and living wage,	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details:
using fair employment practices,	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details:
training and apprenticeship opportunities.	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details:
Local expertise knowledge by:	
utilization of local subcontractors.	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details:
Environmental Cost of Ownership.	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details:

Energy Efficient Products.	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details:
Minimal or environmentally friendly use of packaging materials.	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details:
Reducing hazardous materials (toxics and ozone depleting substances)	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details:
Other, please provide details:	

SCHEDULE 6 – PROPOSED AMENDMENTS TO COMMERCIAL TERMS

The Proponent should list below any proposed amendments to the commercial terms for the final Contract as invited under Section 4.2 of the RFP (include the applicable section or GC reference and the rationale and the benefit to the Owner such as the amount of cost-savings), if any, for each proposed amendment). **Except as may be specifically listed below, the Proponent will be deemed to fully accept all the commercial terms for the final Contract as described by the Contract Documents.**

SECTION/GC	PROPOSED AMENDMENT	RATIONALE AND BENEFIT

SCHEDULE 7 – ALTERNATIVES

The Proponent should list below any proposed alternatives to the specifications or design or both as invited under Section 4.3 of the RFP (include the applicable specification or drawing reference and the rationale and the benefit to the Owner (such as the amount of cost-savings or superior performance), if any, for each proposed alternative). **Except as specifically listed below, the Proponent will be deemed to fully accept and to agree to fully comply with the specifications and design as described in the Contract Documents.**

SECTION/SP	PROPOSED ALTERNATIVE	RATIONALE AND BENEFIT

SCHEDULE 8 – ADDED VALUE

The Proponent should identify any added value services that they intend to provide as part of this contract, unless otherwise stated it is assumed that it will be at no additional costs. Added value could be suggestions related to site improvements or cost reductions or incentives.

SCHEDULE 9 – BASELINE CONSTRUCTION SCHEDULE

The Proponent should provide below a Baseline Construction Schedule having regard to GC.4.6.1 of Appendix A – General Conditions (Construction).

SCHEDULE 10 – RELATIONSHIP DISCLOSURE STATEMENT CONFLICT OF INTEREST AND UNFAIR ADVANTAGE

In accordance with Section 9.5 of the RFP, the Proponent declares on its own behalf and on behalf of each member of the Proponent's 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's team, to the best of the knowledge of that member;
- (b) the Proponent and the members of the Proponent's team have reviewed the definition of Restricted Parties (if included in the RFP) and the non-exhaustive list of Restricted Parties (if any are specifically referenced in the RFP); and
- (c) the following is:
 - (1) a full disclosure of all members of the Proponent's team who were employees of the Owner at any time during the previous two year period from the date of this disclosure;
 - (2) a full disclosure of all known relationships the Proponent and each member of the Proponent's team has, or has had, with:
 - i. the Owner;
 - ii. any listed Restricted Party;
 - iii. any current employees, shareholders, directors or officers, as applicable, of the Owner or any listed Restricted Party;
 - iv. any former shareholders, directors or officers, as applicable, of any listed Restricted Party, who ceased to hold such position within two years from the date of this disclosure; and
 - v. any other person who, on behalf of the Owner or a listed Restricted Party, has participated or been involved in this competitive procurement process or the design, planning or implementation of the Contract or has confidential information about the Contract or this competitive procurement process; and
 - (3) a full description of the actions that the Proponent has undertaken or offers to undertake to address any actual, perceived or potential conflict of interest or unfair advantage arising from the relationships disclosed pursuant to subsections (c)(1) and (c)(2) above; and
- (d) if no such relationships are disclosed by the Proponent, the Proponent is not aware of any former employees as described in subsection (c)(1) above nor any relationships between the Proponent or any member of the Proponent's team, and any of the persons described in subsection (c)(2) above, and the Proposal has not been prepared with any involvement from any of those persons.

Name of Member of Proponent's Team	Name of Party with Relationship (e.g., list the Owner or a Restricted Party name)	Details of the Nature of the Relationship with the Owner or the listed Restricted Party

For the purposes of this Schedule 10 – Relationship Disclosure Statement: Conflict of Interest and Unfair Advantage:

“Proponent’s team” means:

- (a) all persons who have been involved in the preparation of the Proponent’s Proposal; and
- (b) all persons who the Proponent proposes to perform work or services under any resulting Contract.

The Proponent has undertaken or offers to undertake the following actions to address any actual, perceived or potential conflict of interest or unfair advantage arising from the relationships disclosed pursuant to subsections (c)(1) and (c)(2) above: