



District School Board of Niagara

191 Carlton Street St. Catharines ON L2R 7P4

<http://www.dsbn.org/Purchasing>

Contract 18091

SALE OF PROPERTY

**Bertie Public School Property
3770 Hazel Street
Ridgeway, Ontario
L0S 1N0**

Submission Deadline

May 11, 2018

2:00:00 p.m. Local Time

Questions regarding this tender call should be directed to:

Glen MacMillan, Purchasing Manager

905-641-2929 Ext: 54240

glen.macmillan@dsbn.org

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GENERAL INSTRUCTIONS

The District School Board of Niagara (hereinafter called the Vendor or the Board or the DSBN) is the owner in fee simple of the lands and buildings known municipally as 3770 Hazel Street, Ridgeway, Province of Ontario, L0S 1N0.

The subject property is rectangular in shape with a “pan handle” sector in the southeast corner, a total site area of 2.717 hectares (6.715 acres), a southern boundary of 216 metres (708.69 feet) along the north side of Hazel Street, a westerly boundary of 180.09 meters (590.85 feet) along the east side of Bellevue Boulevard, a two part northern boundary of 142.51 metres (467.55 feet) and 76.2 metres (250 feet), and a two part easterly boundary of 166.75 metres (547.07 feet) plus 18.44 metres (60.5 feet), as shown as Lot 42, Plan 500 and Part of Lot 23, Concession 2, Lake Erie Bertie, being Part 1 Plan 59R-15291, Town of Fort Erie; PIN 64193-0045 (LT), and a vacant one level brick facility with total floor area of 3,078.56 square meters (33,137 square feet), defined as “Property” of this Agreement, and known as Bertie Public School. A Property Information package is attached with additional details.

1. TENDER SUBMISSION

- 1.1 Tender submissions must be received no later than 2:00:00 p.m. local time on May 11, 2018.
- 1.2 **The Tender Package (pages 1-19) shall be submitted in a sealed envelope, marked with the Contract Number and the title of the Tender, and addressed and delivered to the District School Board of Niagara, Purchasing Services, 191 Carlton Street, St. Catharines, Ontario, L2R 7P4.**
- 1.3 Tender submissions sent by fax, e-mail, or other telegraphic means **will not be accepted.**
- 1.4 It is the sole responsibility of each proponent submitting a Tender (hereinafter called the Purchaser) to make sure that the Tender package is delivered and accepted at the correct address no later than the closing date and time for the Tender submission. Tenders shall be deemed to have been submitted only when actually marked as received at the Board offices. Tenders received after the specified closing date and time will not be opened.
- 1.5 The opening of Tenders will be conducted at the Board's offices, 191 Carlton Street, St. Catharines, Ontario solely in the presence of representatives of the Board on May 11, 2018, at approximately 2:05 p.m., and information concerning all of the offers received will not be published by the Board.

2. TENDER SUBMISSION REQUIREMENTS

- 2.1 Every Tender submission must indicate the Purchase Offer Price for the entire Property, and be submitted on the enclosed Form of Tender, and shall be completed without interlineations, alteration or erasure of or with respect to any pre-printed text provided by the Board. The Board reserves the right to reject any Tender where the pre-printed text has been altered.

- 2.2 Potential purchasers are advised that a lawyer should be retained prior to the submission of the Tender in order to ensure that his/her interests are protected.
- 2.3 The Form of Tender shall bear the original signature of the prospective Purchaser (or, in the case of an offer submitted by a corporation, an authorized signing officer of the corporation), inscribed in the space provided.
- 2.4 Tender submissions shall include a deposit (the Deposit) of Fifty Thousand Dollars (\$50,000.00) in the form of a certified cheque or bank draft drawn on a financial institution in Canada satisfactory to the Board.
- 2.5 It is to be noted that no interest will be paid by the Board on Deposits.
- 2.6 After evaluation of all Tenders, the Board will retain the Deposit of the three (3) highest Tenders deemed compliant and all other Deposits will be returned, without interest. If the Board of Trustees accepts a Tender, the Deposit of the unsuccessful Purchasers will be returned, without interest. The Deposit of the successful Purchaser will be retained by the Board and credited as part of the purchase price on the date of closing. The Purchaser shall pay the balance of the purchase price by certified cheque or bank draft drawn on a financial institution in Canada satisfactory to the Board.

3. CONFIDENTIALITY

- 3.1 The Board shall make every effort to safeguard the confidentiality or other information included in each tender submission, and shall only provide such information to its employees, Board of Trustees, legal counsel or agents. All submissions are subject to the provisions of the Municipal Freedom of Information and Privacy Act and the Personal Information Protection and Electronic Documents Act. The Board may, at its discretion, disclose the successful purchaser of the property following acceptance of the Offer.

4. CONFLICT OF INTEREST

- 4.1 An employee of the Board or a Trustee of the Board shall not have a direct or an indirect interest in a company or own a company bidding on the purchase of property from the Board.

5. WITHDRAWAL OF BIDS BY PURCHASER

- 5.1 A Purchaser may withdraw their Tender at any time prior to the closing date and time for the Tender, but no such request received after that closing date and time shall be effective. A withdrawal request will be accepted only where made in writing and where its authenticity appears genuine in the absolute discretion of the Purchasing Manager. A Purchaser who withdraws a Tender prior to the closing time and date for the submission of tenders may submit a revised Tender at any time prior to that closing date and time.

- 5.2 No amendment may be made to a Tender after it has been submitted, and in particular no amendment may be made to a Tender orally, or by fax, e-mail, or otherwise than by a sealed document.
- 5.3 If a Purchaser has submitted more than one Tender prior to the official closing date and time, the last submission received shall supersede and invalidate all those previously submitted by that Purchaser.

6. INTERPRETATION, CLARIFICATION AND ADDENDA

- 6.1 The Board reserves the right at any time prior to the closing time,
- to withdraw or cancel the Sale by Tender;
 - to extend the time for the submission of Tenders; or
 - to modify these Instructions, the Form of Tender or other documents by the publication of an Addendum or other notice, and the Board shall not be liable for any expense, cost, loss or damage incurred or suffered by any Purchaser (or any other person) as a result of its so doing.
- 6.2 All addenda will be posted on the DSBN Purchasing and Property websites at www.dsbn.org/purchasing and www.dsbn.org/property as well as on the Biddingo website at www.biddingo.com. It is the responsibility of the Purchaser to check the web site often for Addenda.
- 6.3 All addenda issued shall become part of the Tender package and subsequent Agreement of Purchase and should be considered by the Purchaser in determining the offered price.
- 6.4 Where a Tender has been received by the Board prior to the publication of an Addendum or notice, the Board shall notify the Purchaser and allow the Purchaser concerned to submit a revised Tender prior to the closing date and time or to send a written acknowledgement (which may be faxed) that the original Tender shall stand.
- 6.5 It is the responsibility of the Purchaser to seek clarification of any matter that they consider unclear before submitting a Tender. All communication between a Purchaser and the Board shall be in writing and be directed to the Purchasing Manager listed on Page 1 (including requests for information, instructions or clarification). Written answers or clarifications shall be shared with all Purchasers and issued in the form of an addendum. The Board shall not be bound by any oral instruction, amendment, clarification, information, advice or suggestion from any member of the Board's staff or Consultant to the Board.

7. GUIDELINES REGARDING IRREGULARITIES

- 7.1 Late Tender submissions will not be accepted.
- 7.2 Tenders that are not accompanied by the required offer deposit as specified in Section 2.4 will be rejected.

- 7.3 Tenders where the Form of Tender is not completed in full, or are not typewritten, printed or in legible writing (in ink) may be rejected.
- 7.4 Tenders that appear to adversely affect the best interests of the Board, may be rejected at the sole discretion of the Board.
- 7.5 The Board reserves the right to reject qualified or conditional Tenders, i.e. Tenders that are submitted subject to a caveat added to the Form of Tender or under a covering letter or alterations to the Form of Tender.
- 7.6 Unsigned Tenders will be rejected.
- 7.7 Tenders not completed on the proper form or received on a document other than the original document supplied by the Board may be rejected by the Board at its discretion.
- 7.8 The Board may at its discretion reject any Tender where the Form of Tender or related document contains any erasure, change, over-writing, white-out, cross-out or strike out, where the same has not been initialed by the Purchaser, or where (in the absolute discretion of Board staff) the effect of that amendment is ambiguous or otherwise unclear.
- 7.9 Where an Addendum is not acknowledged on the Form of Tender, the Board may reject the Tender where the Addendum has financial implications, unless it is clearly evident, in the absolute discretion of Board staff, that the Addendum has been factored into the price offered.

8. PROPOSAL EVALUATION

- 8.1 Tenders are not subject to a reserve minimum bid and the highest or any bid may not necessarily be accepted.
- 8.2 The Purchaser acknowledges and agrees that nothing contained herein, in the proposal documents or elsewhere, no act done or expense incurred by it in the preparation and submission of this proposal, no trade or industry custom or practice, and no representation or assurance that may have been made or given to it by or on behalf of the Board, shall in any manner legally bind the Board, in any circumstances, to accept any tender or the highest bid, or only a tender submitted in compliance with the requirements of the proposal documents, or any tender at all. The Purchaser further acknowledges and agrees that the Board shall have complete and unrestricted liberty in this regard and may reject any or all tenders or may accept any tender whatever manner, at whatever proposed price, on whatever terms and for whatever reasons as the Board, in its absolute discretion, considers to be in its own best interests, all without liability or obligation of any kind to the Purchaser.
- 8.3 Where the Board for any reason in its sole discretion decides that an insufficient number of Tenders have been received or that all Tenders received were unsatisfactory, then the Board reserves the absolute right, as it sees fit:

- a. to withdraw or cancel the Sale of Property by Tender;
 - b. re-issue the Sale of Property by Tender (on the same or revised terms from the original tender call), and the Board shall not be liable for any expense, cost, loss or damage incurred or suffered by any Purchaser (or any other person) as a result of its so doing.
- 8.4 In the event that two or more similar tenders are received, the Board will proceed to obtain “best and final offers” from those Purchasers involved in order to determine a final “best price”.

9. ACCEPTANCE and AWARD

- 9.1 If the Board accepts a Tender, then such acceptance shall be communicated to the successful Purchaser as soon as possible following the approval of the Tender by the Board of Trustees. The successful Purchaser will be notified in writing by the Board, with such notice sent to the Purchaser at the address set forth in the Form of Tender, such notice to be given by prepaid registered mail/courier or personal delivery.
- 9.2 The successful Purchaser shall close the Agreement of Purchase and Sale arising out of acceptance of the Tender and pay the balance of the purchase price by certified cheque or bank draft drawn on a financial institution in Canada satisfactory to the Board on the Closing Date.
- 9.3 The Board may at its discretion, waive any or all of the conditions contained herein.

10. TERMINATION OF AGREEMENT

- 10.1 This Agreement of Purchase and Sale created by the acceptance of the Tender may be terminated at any time at the sole option of the Board in any of the following events:
- (a) if the Board has not received the approval of the Minister of Education to dispose of the Property and Building on or before the Closing Date;
 - (b) if the Board is restrained or enjoined on either an interim or permanent basis from completing the transaction contemplated hereby by a Court of competent jurisdiction, or if proceedings in that regard have commenced, or if any legal action is anticipated or expected by the Board to be brought against it in respect of its sale of the Property, or if the Board is unable to complete the transaction because of the filing or registration of any documents.
 - (c) In the event the Board does terminate the Agreement of Purchase and Sale, same shall be deemed null and void and the deposit shall be returned to the Purchaser without interest or deduction. In no event shall the Board be responsible for any costs, expenses, loss or damages incurred or suffered by the Purchaser and in any way related to this agreement.

- 10.2 If any Purchaser, or its assigns, does not comply with the conditions as aforesaid, or any of them, or fails to execute the closing upon the agreed upon Closing Date, the Purchaser's deposit will be forfeited, as liquidated damages, in addition to any other right or remedy to which the Board may be entitled, including all losses, damages, claims and charges attending the same or occasioned by the defaulting Purchaser. Such liquidated damages to be paid by the defaulting Purchaser to the Board forthwith upon demand.

11. CONDITIONS OF SALE

The District School Board of Niagara (hereinafter called the Vendor or the Board) is the owner in fee simple of the lands and buildings known municipally as 3770 Hazel Street, Ridgeway, Province of Ontario, L0S 1N0.

The subject property is rectangular in shape with a "pan handle" sector in the southeast corner, a total site area of 2.717 hectares (6.715 acres), a southern boundary of 216 metres (708.69 feet) along the north side of Hazel Street, a westerly boundary of 180.09 metres (590.85 feet) along the east side of Belleview Boulevard, a two part northern boundary of 142.51 metres (467.55 feet) and 76.2 metres (250 feet), and a two part easterly boundary of 166.75 metres (547.07 feet) plus 18.44 metres (60.5 feet), as shown as Lot 42, Plan 500 and Part of Lot 23, Concession 2, Lake Erie Bertie, being Part 1 Plan 59R-15291, Town of Fort Erie; PIN 64193-0045 (LT), and a vacant one level brick facility with total floor area of 3,078.56 square meters (33,137 square feet), defined as "Property" of this Agreement, and known as Bertie Public School.

The party submitting the Form of Tender (hereafter called the Purchaser) has offered to purchase the Property from the Vendor on the terms and conditions hereinafter set forth.

NOW THEREFORE in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

- (a) "Agreement" means the advertisement, the For Sale by Tender document, the Form of Tender, and acceptance thereof by the Board, together with these Conditions of Sale and every properly executed instrument which by its terms amends, modifies or supplements this agreement, shall constitute the Agreement of Purchase and Sale.
- (b) "Authority" means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial or municipal, having jurisdiction over the Property, or the use thereof.
- (c) "Building" means the existing building consisting of a vacant one level brick facility located on the Lands, including all heating, ventilation, plumbing, electrical and mechanical systems and related components and equipment comprising a part thereof and any other improvements owned by the Vendor presently erected in or upon the Lands.

- (d) "Date of Closing" means a date within 30 days of acceptance of the purchaser's offer by the Board or on a date to be mutually agreed upon in writing by the parties or their respective solicitors.
- (e) "Deposit" means the deposit of **fifty thousand dollars (\$50,000.00)** submitted with the Form of Proposal as provided for in Clause 12.1(a) of this Tender.
- (f) "Irrevocable" means this offer is irrevocable by the Purchaser for a period of sixty (60) calendar days commencing from the closing date of the Tender call.
- (g) "Lands" mean Lot 42, Plan 500 and Part of Lot 23, Concession 2, Lake Erie Bertie, being Part 1, Plan 59R-15291, Town of Fort Erie; PIN 64193-0045 (LT) and subject to Clause 19 of this Agreement.

The description of the Property is believed by the Board to be correct but if any statement, error or omission shall be found in the particulars thereof, the same shall not annul the sale nor entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to either the Board or the Purchaser in respect thereof.

- (h) "Land Use Regulations" mean any land use policies, designations, regulations, by-laws, or plans of any Authority that apply to the use of the Property including the existing Official Plans and zoning by-laws.
- (i) "Property" means the Lands and the Building(s).
- (j) "Purchase Price" means the purchase offer arising out of acceptance of the submitted Form of Tender in lawful money of Canada, plus HST if applicable, subject to adjustments as set out in Clause 12 hereof.
- (k) "Vendor" means the District School Board of Niagara, also referred to as "the Board" or "the DSBN".

12. PAYMENT OF PURCHASE PRICE

12.1 Under this Agreement the Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor the Property for the Purchase Price payable by the Purchaser as set out below:

- (a) the sum of **fifty thousand dollars (\$50,000.00)**, by certified cheque or bank draft (in Canadian Funds), as a deposit upon submission of this Form of Tender payable to the District School Board of Niagara, and to be credited to the Purchase Price on the Date of Closing, and
- (b) the balance of the Purchase Price, subject to the adjustments as set out in Clause 25 of this Agreement, by certified cheque or bank draft (in Canadian Funds), on the Date of Closing payable to the Vendor.
- (c) The Purchase Price of the Property does not include Harmonized Sales Tax (the "HST") payable by the Purchaser in respect of the Purchase of the Property pursuant to the *Excise Tax Act* (Canada) (the "Act"). The Purchaser shall, on the Date of Closing, as a condition of completion of this

transaction of purchase and sale, remit to the Vendor, by certified cheque or bank draft, HST at the rate of 13% of the Purchase Price. However, if the Purchaser provides to the Vendor, prior to the Date of Closing, confirmation that the Purchaser is a registrant under the Act, including the Purchaser's registration number, together with an undertaking in a form reasonably acceptable to the Vendor to the effect that the Purchaser shall remit as required by the Act any HST payable in respect of the sale of the Property to the Purchaser and shall indemnify the Vendor in respect of any HST so payable, then the Purchaser shall not be required to remit to the Vendor HST on the Date of Closing as aforesaid.

- (d) The Board shall not supply any Warranty, Statutory Declaration or Certificate with respect to the subject property's status or as to whether this transaction is an exempt supply in accordance with the provisions of the *Excise Tax Act* (Canada).
- (e) The Purchaser and the Vendor agree that all existing fixtures are included in the Purchase Price.
- (f) The Purchaser and the Vendor agree that no chattels or equipment are included in the Purchase Price.

13. REAL ESTATE COMMISSION

- 13.1 No real estate commission will be payable by the Board. Realtors submitting Tenders on behalf of their clients should make arrangements for their compensation directly with their clients.

14. INSPECTION AND CONDITION OF PROPERTY

- 14.1 Site visits to visually inspect the Property will be held on April 17, 2018, and May 1, 2018, between 1:00 and 3:00 p.m.
- 14.2 The Purchaser acknowledges that the Board provided an opportunity to inspect the Property and every part thereof prior to executing and submitting this Tender to the Vendor and that no warranty or condition is expressed or can be implied as to title, description, use or proposed zoning, fitness or purpose, quantity or quality thereof. Without limiting the generality of the foregoing, the Board shall not be liable for any incorrect description, default, defect or condition of the Property or any part thereof or any errors in any surveys, engineering, drawings, etc. The Property being purchased is specifically offered as it exists on the Closing Date. The Board makes no representations or warranty with respect to any defects in workmanship, state of repair, location of structures, walls, retaining walls, or fences (free standing or otherwise). The Board shall have no responsibility whatsoever to remedy any defect, comply with any work orders, or complete any unfinished work. The Purchaser acknowledges that it has relied entirely upon its own inspections and investigations with respect to the quantity, quality, and value of the Property and Building.

- 14.3 The Purchaser agrees to purchase the Property in an “**as is, where is**” condition and further agrees that the Vendor shall not be obligated to perform any work in respect of the Property in order to bring the Property, or any part thereof, into compliance with any applicable standards of any relevant Authority. The Purchaser also agrees not to make any claim against the Vendor in respect of any of such work that may be required in order to bring the Property or any part thereof into such compliance.
- 14.4 (a) The Purchaser acknowledges that it has satisfied itself and agrees to purchase the Property subject to all Land Use Regulations in effect at the date of closing.
- (b) The Purchaser agrees to accept title to the Property subject to municipal requirements, including building and zoning by-laws, easements for hydro, gas, telephone and municipal services to the Property or any part thereof and to restrictions and covenants that run with the Property or any part thereof, including but not limited to Clause 19.
- (c) The Purchaser agrees to accept the Property as it exists regardless of any order affecting the property regarding its conditional use, including deficiency or other notices, work or other orders.
- 14.5 (a) The Purchaser acknowledges and agrees that the Board makes no representations or warranties whatsoever, either expressed or implied, as to the existence or non-existence of any asbestos, PCBs, radioactive substances or any other substances, liquids or materials or contaminants which may be hazardous or toxic or require removal and disposal pursuant to the provisions of any applicable legislation (all of the foregoing being hereinafter called “Environmental Matters”) and that the Purchaser takes the Property “as is” and relies upon his own investigations, if any, in this regard. From and after the closing date of this transaction, the Property shall be the sole risk of the Purchaser, and the Board, its successors and assigns, will have no further liability in respect of any Environmental Matters and the Purchaser covenants and agrees, such covenant to survive closing and not to merge on closing of this transaction, to indemnify and save harmless the Board in respect of any claims, demands, losses, damages, in any way related directly or indirectly to any Environmental Matters and in respect of orders or claims, charges or requirements whatsoever of any Municipal, Provincial, Federal or other governmental body, board, commission, authority, department or Ministry, or employees, officials or representatives thereof.
- (b) As of and from the date of Closing, the Purchaser shall release the Vendor and its successors and assigns from and against all losses, damages, claims, fines liabilities, actions, suits, in any way arising, directly or indirectly by reason of the presence on the Property of any containment, pollutant, dangerous substance wastes (liquid or solid) or toxic substance or the escape thereof in the air or onto adjacent properties or lands including rivers, streams, and ground waters, (collectively the “Substances”), whether produced, created or generated before or after Closing and such indemnity shall include any order, decree, judgment or demand under law, regulation or order applicable thereto; and

- (c) The Purchaser, its successors and assigns, hereby agree to indemnify and hold harmless the Vendor, its affiliates, their successors and assigns from any and all costs, claims demands, liabilities and damages arising out or in any way connected with any state, quality or condition in, or of, the Property, including, but not limited to, the existence of any substances existing as of, or prior to the date of Closing and thereafter, whether environmental or otherwise, whether imposed by law, equity or any federal, provincial or municipal law, rules or regulations or by any regulatory authority. The provisions of this section shall survive Closing and any subsequent sale or transfer of the Purchaser's interest in the Property.

15. PROPERTY DAMAGE / INSURANCE

- 15.1 The Vendor covenants to maintain insurance for the full replacement value of the building(s) on the real property and for any chattels and fixtures in the building(s) which are the subject of this Agreement of Purchase and Sale. The insurance policy will not make provision for co-insurance. In the event of damage to the building(s) or any fixtures or chattels which are to be transferred pursuant to this Agreement of Purchase and Sale, the Purchaser may, at its option: (a) terminate this Agreement of Purchase and Sale and reclaim the deposit; (b) close the transaction at the full purchase price with an assignment from the Vendor of all proceeds of insurance pursuant to the insurance policy set out above; or (c) close the transaction with an abatement of the purchase price equivalent to the damage suffered by the building(s), chattels or fixtures as reasonably estimated by a qualified insurance adjuster, in which event, all insurance proceeds would remain payable to the Vendor.

16. VENDOR'S CONDITION

- 16.1 (a) This Agreement is subject to the Vendor's Condition set forth in this section for the sole benefit of the Vendor and may be waived by the Vendor in its sole discretion, or by its solicitors on its behalf.
- (b) The Vendor's Condition set out in this section is not a condition precedent to the existence or enforceability of this Agreement.
- (c) The said Vendor's Condition is as follows:

The Agreement is subject to and conditional upon the Vendor obtaining the Board of Trustees approval within sixty (60) calendar days of acceptance of the Form of Tender, failing which this Agreement shall become null and void and the Purchaser's deposit shall be returned in full, without deduction or interest.

- (d) If the condition is not fulfilled within the applicable time period, if any, and the Vendor fails to notify the Purchaser or the Purchaser's solicitor that such Vendor's Condition has been waived within the applicable time period allowed, if any, this Agreement shall be null and void, notwithstanding any intermediate act or negotiations, and, neither the Vendor or the Purchaser

shall be liable to the other for any loss, costs or damages, and the Deposit shall be returned to the Purchaser without interest or deduction.

- (e) The Vendor shall have the right without the Purchaser's consent by written notice to the Purchaser, prior to the date set for fulfillment of the condition, to extend from time to time the date allowed for the fulfillment of the Vendor's Condition provided that the aggregate of any such extensions for the Condition shall not exceed a total of ninety (90) days from the original date for the fulfillment of the Vendor's Condition.

17. VACANT POSSESSION

- 17.1 (a) The Purchaser shall have vacant possession of the Property on the Date of Closing.
- (b) The Property shall be, and remain, at the risk of the Board until the Closing Date.

18. REFERENCE PLAN / SURVEY / TITLE DOCUMENTS

- 18.1 The Board shall not be required to produce any survey, abstract of title, title deeds or documents or copies thereof or any evidence as to title, other than those in attachment one of this document. Should any other documents pertaining to the Property be required in order to provide a description acceptable to the Land Registrar, such documentation shall be obtained on or before closing by the Purchaser and at the Purchaser's expense.

19. TITLE

- 19.1 The Purchaser shall accept title to the Lands subject to:
 - (a) all registered and unregistered easements existing at the date of acceptance of this Proposal;
 - (b) all Land Use Regulations including but not limited to:
 - i) By-law 2308-69 registered on July 31, 1969, as Instrument Number RO106181 by The Corporation of the Township of Bertie to designate an area of subdivision control;
 - (c) other agreements and restrictions on title to the extent that they have been complied with;
 - (d) any encroachment or location of existing fencing, including but not limited to the acceptance of the location of fences as noted on Reference Plan 59R-15291; and
 - (e) any existing environmental conditions or contamination to the site.

20. INVESTIGATION OF TITLE

- 20.1 (a) The Purchaser shall examine title to the Property being purchased by it, at its own expense, and any objection thereto shall be made in writing to the in-house counsel for the Board, Jennifer Feren, District School Board of Niagara, 191 Carlton Street, St. Catharines, Ontario L2R 7P4, within **twenty-one (21) calendar days** after notification of acceptance has been forwarded by registered mail. Should no objection in writing be made within that time to the said in-house counsel, title shall be deemed to have been accepted.
- (b) Should any sufficient objection in writing be made within that time, the Board shall have reasonable time to rectify and comply with same, or if the Board is unable to or unwilling to waive the same, the Board shall be at liberty to rescind the sale (notwithstanding any intermediate negotiations with respect to such objection, or any attempt to remove or comply with same) by notice in writing served upon or mailed by registered mail, postage prepaid, addressed to the Purchaser at his/her/its address as designated in his/her/its Form of Tender, or addressed to his/her/its solicitor at his or her usual place of business, in which case such Purchaser shall be entitled to only a return of the Deposit, without interest, costs or compensation.
- (c) The Board shall remain in possession of the Property until the closing and completion of the Agreement of Purchase and Sale, and title to the Property shall not pass to the Purchaser thereof, nor shall the Purchaser be entitled to possession of the same until the purchase price and all other payments to be made by the Purchaser pursuant to this Tender and Agreement of Purchase and Sale have been made.

21. CLOSING DELIVERABLES

- 21.1 (a) The Vendor covenants that it will deliver to the Purchaser on or before the Date of Closing each of the following:
- i. keys and vacant possession of the Property in an **“as-is, where-is”** condition;
 - ii. an executed Transfer/Deed of the Lands in registerable form duly executed by the Vendor in favour of the Purchaser (save for any Land Transfer Tax Affidavits);
 - iii. Statement of Adjustments, which shall be delivered at least two (2) business days prior to the Closing Date;
 - iv. an undertaking to re-adjust the Statement of Adjustments, if necessary, upon written demand;
 - v. a Direction regarding payment of funds; and
 - vi. a Document Registration Agreement.

- (b) The Purchaser covenants that it will deliver to the Vendor on or before the Date of Closing:
- i. a certified cheque or bank draft (Canadian Funds) for the balance of the Purchase Price due on the Date of Closing;
 - ii. an undertaking to re-adjust the Statement of Adjustments, if necessary, upon written demand;
 - iii. a Direction as to Title, if necessary; and
 - iv. such other deeds, conveyances resolutions and other documents as the Vendor or its solicitors may reasonably require in order to implement the intent of this Agreement.

22. ASSIGNMENT OR REGISTRATION

- 22.1 The Purchaser shall not assign or register this Agreement or any assignment of this Agreement or any part thereof or register a caution in relation thereto without first obtaining the consent of the Vendor in writing, which consent the Vendor may arbitrarily withhold.
- 22.2 The Purchaser covenants and agrees that the Purchaser will in no way directly or indirectly assign, rent, lease, convey, list or in any way advertise for sale, sell, or otherwise transfer the Purchaser's rights under this Agreement prior to completion to any other person or entity without the express written consent of the Vendor. Such consent may be granted or withheld at the Vendor's sole option.

23. PREPARATION OF DOCUMENTS

- 23.1 The Transfer/Deed for the Lands will be prepared by the Vendor, except for the Affidavit of Residence and Value of the Consideration, which will be prepared by the Purchaser. Each party shall pay its own legal and registration costs in connection with the preparation and registration of such Transfer/Deed.

24. TENDER

- 24.1 Any tender of money or documents pursuant to this Agreement may be made on the Vendor or the Purchaser or their respective solicitors. Money must be tendered by bank draft or cheque certified by a Canadian chartered bank, trust company or Province of Ontario Savings Office, provided that any payments to be made by the Vendor under this Agreement may be made by an uncertified cheque or bank draft.

25. ADJUSTMENTS

- 25.1 (a) The transaction contemplated by this Agreement shall be completed on the Date of Closing from and after which date the Purchaser shall be entitled to receive all rents and profits, if any, and shall bear all expenses pertaining to the Property. Adjustment between the Vendor and the Purchaser shall be made on the Date of Closing for realty taxes, local improvement rates, utility costs, and payments under service contracts with the Vendor as a party thereto and other items which are ordinarily the subject of adjustment. All of the foregoing adjustments shall be made on the basis that the Date of Closing shall be for the Purchaser's account; and
- (b) Any adjustments that cannot be determined on the Date of Closing shall be determined by the parties as soon after the Date of Closing as is reasonably possible. Any amounts payable by one party to the other, as determined by the parties, acting reasonably, shall be paid within ten (10) days of the request for such payment. Upon completion, the Vendor and the Purchaser shall exchange undertakings to readjust the foregoing items, if necessary.

26. GENERAL

- 26.1 Time shall in all respects be of the essence of this Agreement, provided that the time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement, in writing, signed by the Vendor and the Purchaser or by an agreement between their respective solicitors who are hereby expressly authorized in this regard.
- 26.2 This Agreement shall be binding upon, and enure to the benefit of, the Vendor and the Purchaser and their respective successors and assigns. The Vendor and the Purchaser acknowledge and agree that the representations, covenants, agreements, rights and obligations of the Vendor and the Purchaser under this Agreement (collectively, the "Obligations") shall not merge on the completion of this transaction, but shall survive completion and remain in full force and effect and binding upon the parties subject to or entitled to the benefit of such Obligations, save and except as may be otherwise expressly provided for in this Agreement.
- 26.3 Whenever the singular is used in this Agreement, it shall mean and include the plural and whenever the masculine gender is used in this Agreement it shall mean and include the feminine gender if the context so requires.
- 26.4 This Agreement constitutes the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property other than expressed herein.
- 26.5 The validity and interpretation of this Tender and of each provision and part thereof, and any Agreement of Purchase and Sale as defined herein, shall be governed by the laws of Ontario, and any Agreement of Purchase and Sale entered into pursuant to these Conditions of Sale by Form of Tender shall enure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

- 26.6 The Board warrants that it is not a “non-resident Person” for the purposes of Section 116 of the Income Tax Act (Canada).
- 26.7 The Board represents and warrants to the Purchaser that it is and will be at the Closing Date a resident of Canada within the meaning of the Income Tax Act (Canada), and that this representation and warranty shall survive the closing of this transaction.
- 26.8 The Purchaser warrants that the Purchaser is not a non-resident of Canada pursuant to the Land Transfer Tax Act (Ontario).
- 26.9 The submission of a Tender by a resident of the Province of Quebec will be deemed to constitute the declaration and acknowledgment by the tenderer that he/she/it has requested the foregoing Conditions of Sale, the Tender and all the documentation relating to his/her/its Form of Tender and the acceptance thereof to be drawn in the English language.
- 26.10 Signature of the Form of Tender by the Purchaser and submission thereof to the Vendor constitutes an offer under seal. This Form of Tender when accepted constitutes a binding contract of Purchase and Sale.
- 26.11 The Purchaser agrees that, upon completion of this transaction, it shall not use the name “BERTIE SCHOOL” or “BERTIE PUBLIC SCHOOL” or “District School Board of Niagara” or “DSBN” to identify, advertise or represent the subject property, and any signage or reference to this name shall be removed from the subject property by the Purchaser immediately following the date of the closing of this transaction.



District School Board of Niagara
191 Carlton Street St. Catharines ON L2R 7P4
<http://www.dsbn.org/Purchasing/>

FORM OF TENDER 18091

Sale of Property Bertie Public School

By signing below, I/we acknowledge that I/we have read and accept the terms and conditions of this document and further that I/We have the authority to bind the organization.

I/We acknowledge that I/we have received addenda numbered _____ to _____ and the Purchase Offer quoted incorporates such addenda.

I/We herewith agree to purchase the Property known as **Bertie Public School, 3770 Hazel Street, Ridgeway, Ontario, L0S 1N0** at the following price:

PURCHASE OFFER \$ _____

AMOUNT IN WORDS _____

PLUS HST, IF APPLICABLE

In the event the Vendor accepts the Purchaser's offer, then the Purchaser understands this entire Agreement as submitted forms the Agreement of Purchase and Sale (see *Clause 26.10*).

Signature _____

Printed Name _____

Witness Signature _____

Printed Name _____

Company Name
(if applicable) _____

NOTE: This document must be completed in full including an authorized signature.

FORM OF TENDER – Sale of Property

Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or facsimile, to the Purchaser at:

Address _____

City _____ **Postal Code** _____

Telephone _____ **Facsimile** _____

eMail for Contact Purposes: _____

In anticipation of potentially being the successful bidder in this tender, it is important to complete your Solicitor's contact information below:

Solicitor's Name _____

Address _____

City _____ **Postal Code** _____

Telephone _____ **Facsimile** _____

eMail _____

and to the Vendor at:

District School Board of Niagara
191 Carlton Street
St. Catharines, Ontario L2R 7P4
Attention: Jennifer Feren, Board Lawyer
Telephone: (905) 641-1550, Ext. 54150
Facsimile: (905) 641-5060
eMail: Jennifer.Feren@dsbn.org

or at such other addresses as the Vendor and the Purchaser may designate from time to time. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or, if mailed, three (3) business days after the same is mailed. Any party may, at any time by notice given in writing to the other party, change the address for service of notice on it.

I, the undersigned Vendor, agree to the herein Purchase and Sale Agreement offered by the Purchaser.

DISTRICT SCHOOL BOARD OF NIAGARA

Witness Signature

Warren Hoshizaki
Director of Education & Secretary

Date

NOTE: This document must be completed in full including an authorized signature.



District School Board of Niagara

PROPERTY INFORMATION

BERTIE PUBLIC SCHOOL



3770 Hazel Street
Ridgeway, Ontario
L0S 1N0

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 - B. Site Plan
 - C. Aerial View of Property
 - D. Reference Plan

1. **BERTIE PUBLIC SCHOOL - OVERVIEW**

Bertie Public School is owned by the District School Board of Niagara and has served as an elementary school.

The facility, constructed in 1967, is a one level brick building with a gymnasium and stage, a library, seventeen classrooms and office space. The total floor area is 33,137 square feet.

The facility is situated on 6.715 acres of relatively flat land with a large open area at the rear of the property.

The Hazel Street entrance provides access to 18 parking spaces. The Bellevue Boulevard entrance provides access to asphalt areas to the west, north and east of the building.

2. **STATISTICAL DATA**

Official Address	3770 Hazel Street Ridgeway, Ontario L0S 1N0
Current Registered Owner	District School Board of Niagara
Legal Description	Lot 42 - Plan 500, Bertie; Part Lot 23, Concession 2, Lake Erie Bertie; Part 1 on Plan 59R-15291 Town of Fort Erie, PIN 64193-0045 (LT)
Zoning	Residential Multiple 1 (RM1-618)
Official Plan Designation	Special Policy Area 22 permitting use of the site for Urban Residential, Institutional and/or parkland purposes
Site Dimensions	The subject property is rectangular in shape with a 'panhandle' of property in the southeast corner. The total site area is approximately 6.7 acres with a frontage of 708.69 feet on the north side of Hazel Street, a westerly boundary of 590.85 feet along the east side of Bellevue Blvd, a two-part northerly boundary of 467.55 feet and 250 feet and a two-part easterly boundary of 547 feet and 60.5 feet. The boundary dimensions are approximate.
Site Area	6.715 Acres
Building Area	33,137 square feet
Date of Construction	1967

Utilities

Municipal Sewer
Municipal Water
Hydro
Natural Gas

Security System

Presently monitored by PasWord Security

3. OPERATIONAL COSTS

	<u>2015-16</u>	<u>2014-15</u>
	\$	\$
Maintenance Repairs	37,280	36,356
Property Services	11,321	8,283
Utilities:		
Electricity	58,749	39,128
Natural Gas	12,729	13,211
Water	<u>7,239</u>	<u>4,004</u>
TOTAL	<u>127,318</u>	<u>100,982</u>

4. CAPITAL IMPROVEMENTS

<u>YEAR</u>	<u>PROJECT</u>	<u>AMOUNT</u>
		\$
2007	Plumbing upgrade	75,617
2007-2009	Electrical upgrade	716,543
2010	Locker door replacement	36,661
2011	Exterior door replacement	31,792
2012	Video surveillance/electronic access controls	10,721
2015	Interior Upgrades	<u>50,000</u>
	TOTAL	<u>921,334</u>

5. AUDITS AND REPORTS

In 2016, a re-assessment was conducted to determine the condition of asbestos containing materials in the school.

The result of the report indicated that the asbestos containing materials are in good condition, and no remedial activities were required.

6. APPENDICES

- A. Floor Plan
- B. Site Plan
- C. Aerial View of Property
- D. Reference Plan







