

CANADIAN NATIONAL NEGOTIATION COMPETITION 2020

Confidential Information for the Institute's Representatives

The Institute is thrilled to be building a new, futuristic headquarters to house its collections and collaborative space for its ideationists. It is the result of a multi-year fundraising campaign to pay for the building's CAD \$390 million cost. The Institute has reported a surplus (revenues less expenses) in each of the last three years, as follows:

FY 2019: CAD \$4.2 million

FY 2018: CAD \$13.6 million

FY 2017: CAD \$12.2 million

The drop in last year's surplus is due primarily to a one-time charge resulting from the disposition of assets at less than their depreciated value.

The negotiation to secure a multi-media installation by Leonardo results from a conditional gift of CAD \$11 million by Vicki Patel to fund the construction of the wing that contains the donor's lounge and meeting rooms. Despite her controversial status as a supermodel and fashionista, the Institute plans to name the wing in her honour.



Donor's Meeting Room (Representation)

The only condition of Vicki's gift is that the Institute must secure one of Leonardo's multi-media "interventions" for the wing. Vicki loves Leonardo's work and owns some of it. The Institute was concerned that Leonardo is a bit idiosyncratic, but is willing to work with the donor's request. III looked into buying one of Leonardo's existing works, *Cerebrum*, to meet

Vicki's condition. It was valued at about CAD \$498,000. But the Institute envisions something even more sophisticated and complex, and Vicki thought that Ill needed a tailor-made work in any event. Ill doesn't really have much choice: it needs to commission a Leonardo work.

The Institute has provided the following information in relative order of importance for the negotiation.

1. Purchaser Satisfaction

Because of the work's prominent location, it must be of such a quality as to make it a showcase for the new wing and the building itself. The Institute therefore wants its director and board members to review and approve the project before Leonardo begins work. It also insists on being able to refuse to proceed if the work as presented in the formal proposal (see below) does not meet the Institute's subjective satisfaction. This is a deal-breaker for the Institute. But as long as the completed work objectively accords with the approved formal proposal, Ill has no problem with making the full and final payment (see below).

2. Illness, Death or Incapacity of the Artist

Ill is concerned about Leonardo's health and ability to complete the work on schedule. The staff are aware of his past depression and drug use. To the extent that artists ever "retire," Leonardo is approaching retirement age, and one never knows what might happen before the project is completed. The Institute thinks it would be reasonable for the agreement to provide that if Leonardo becomes too ill to work or is otherwise unable to complete the project by the agreed time, Ill would owe no additional payments to Leonardo beyond what has already been paid. In that situation, the work, to the extent completed, would be delivered to and be the property of Ill, and Ill would be free to have the work completed by another artist according to Leonardo's proposal. If Leonardo does not complete the work for any other reason, the Institute wants to be able to cancel the project, with Leonardo refunding all amounts paid to him.

3. Ownership Rights and Moral Rights

The Institute wants to be the absolute owner of all rights to the installation, including, to the extent permitted by law, a waiver of Leonardo's moral rights, if applicable. That is, despite any provision of the law, Ill wants to be able to destroy the work, to remove and store it, and to relocate it. Of course, it doesn't expect that anything will happen such as the recent attempt by two art provocateurs who wanted to cut up a painting and use the canvas to make faces for their designer watches.¹ If the integrity of the work is not preserved, the Institute is willing to agree that it will no longer describe the work as created by Leonardo. If

¹ See Richard Orange, "Danish court rules artist's work cannot be cut up to make watches" (2 December 2019) *The Guardian* online: <https://www.theguardian.com/world/2019/dec/02/danish-court-rules-artist-work-cannot-be-cut-up-to-make-watches-tal-r>.

it decides to deaccession the work, it would be willing to give Leonardo the right to buy it back. The rights transfers must take place by the time of receiving the final payment.

4. Purchase Price and Expenses

The Institute will pay pretty much what it takes to get Leonardo to create the work. It doesn't want to have to go back to Vicki and renegotiate her gift unless absolutely necessary. Of course, the cost should be kept as low as possible, consistent with the goals of having a showcase work. In addition to the purchase, III will pay all reasonable expenses incurred by Leonardo to research and plan the installation. In analogous circumstances, III's board has approved an overall expenditure cap—purchase price and expenses—amounting ten percent of a conditional gift. Applying such a cap in this case would translate to a total expenditure of CAD \$1.1 million, but the Institute would consider paying more if it had to.

5. Payment Schedule

The Institute's usual practice for commissioned works is to pay half the purchase price at the time of making the commitment (that is, after the formal proposal has been accepted) and the other half on delivery and installation. But if Leonardo is willing to agree to the terms most important to the Institute, III will compensate him in advance for such work as is necessary to research, plan and present his proposal. Ideally, this should not exceed 25% the agreed price, on the assumption that if the Institute decides not to go forward with the proposal, Leonardo will be able to keep the advance payment without any further obligations. But this amount is negotiable. If there is an advance payment as suggested here, the balance would likely be divided into two further payments: one when the Institute is satisfied with the formal proposal; the final one, after delivery and installation.

6. Other Terms

The Institute is flexible on other terms that Leonardo might propose, such as copyright, moral rights or liquidated damages for non-completion. Leonardo's representatives have full discretion to deal with any items that arise, consistent with III's overall interests and priorities. The Institute wants Leonardo to be enthusiastic about the project.

7. Additional Information

You may provide additional non-self-serving information and details consistent with the facts stated above and in the General Information for Both Parties.