

# **ALTERNATIVE FINANCING OF PUBLIC SCHOOL FACILITIES**

## **ANNUAL REPORT ON THE STATUS OF ALTERNATIVE FINANCING FOR MARYLAND PUBLIC SCHOOL CONSTRUCTION**

**SUBMITTED TO THE BOARD OF PUBLIC WORKS  
Governor Robert L. Ehrlich  
Comptroller William Donald Schaefer  
Treasurer Nancy K. Kopp**

**September 1, 2005**

The Interagency Committee on School Construction

Dr. Nancy S. Grasmick, State Superintendent of Schools, Chair  
Ms. Audrey E. Scott, Secretary, Maryland Department of Planning  
Ms. Boyd K. Rutherford, Secretary, Department of General Services  
Mr. Timothy Maloney, Appointee, President of the Senate  
Mr. Fred Puddester, Appointee, Speaker of the House  
Dr. David Lever, Executive Director

(MSAR # 2498)

## **TABLE OF CONTENTS**

Background	1
Status of Procedures and Regulations	1
Status of School District Initiatives in Alternative Financing, Project Procurement, and Project Delivery	
Alternative Financing	3
Project Procurement	8
Project Delivery	8
Conclusion	9

### **Appendices**

- A. Alternative Financing Subcommittee, Task Force to Study Public School Facilities
- B. Senate Bill 787 / House Bill 1230: Public School Facilities Act of 2004  
(Provisions on Alternative Financing and Project Delivery)
- C. Workgroup on Project Procurement, Delivery, and Alternative Financing
- D. Regulations Workgroup

**ALTERNATIVE FINANCING OF PUBLIC SCHOOL FACILITIES  
ANNUAL REPORT ON THE STATUS OF ALTERNATIVE FINANCING FOR MARYLAND  
PUBLIC SCHOOL CONSTRUCTION**

**SUBMITTED TO THE BOARD OF PUBLIC WORKS**

Governor Robert L. Ehrlich  
Comptroller William Donald Schaefer  
Treasurer Nancy K. Kopp

The Interagency Committee on School Construction  
September 1, 2005

**BACKGROUND**

In 2002, the Task Force to Study Public School Facilities was formed under the leadership of Treasurer Nancy K. Kopp to determine if Maryland's public school facilities were adequate to support the educational programs that will be funded through the Bridge to Excellence in Education Act of 2002. The purview of the Task Force was broad, including not only the adequacy of public schools but also the procedures and practices that govern their procurement, delivery, and financing. A subcommittee of the Task Force, chaired by Dr. David Lever, Executive Director of the Public School Construction Program, investigated the feasibility of using alternative financing mechanisms to assist in the task of building and renovating Maryland's public schools (Appendix A). This subcommittee studied the experience of school districts in the United States and Canada that have used alternative financing to build public schools, and developed recommendations for the Task Force. The Final Report of the Task Force, issued in February 2004, included a number of these recommendations.

During the 2004 session of the General Assembly, school construction received a great deal of attention. Senate Bill 787 / House Bill 1230 (Chapters 306 and 307, Laws of Maryland), entitled the Public School Facilities Act of 2004, was an omnibus bill that addressed many facets of school construction procedure and funding, included a section on alternative financing (Appendix B). This statute contains provisions that enabled the LEAs and local governments to use alternative financing arrangements: lease-leaseback, sale-leaseback, public-private partnerships, and performance based contracting mechanisms. The statute allows the use of finance-design-build, a variant on traditional design-build (DB) in which the DB entity also provides financing for the project. Besides design-build, the statute addresses another method of project delivery, construction management at risk (CMR), that has proven successful in the private sector but was not undertaken in public school construction in Maryland because it did not work well in an environment that was restricted to competitive sealed bidding. Finally, the statute enables the local jurisdictions to use methods of project procurement - competitive negotiation, unsolicited proposal, and quality based selection (QBS) - that were previously proscribed for public school construction.

**STATUS OF PROCEDURES AND REGULATIONS**

The statute charged the Board of Public Works with developing regulations to govern the implementation of the alternative financing and other provisions of the Act. Draft procedures were developed in the summer of 2004 by the staff of the Public School Construction Program. In drafting the procedure on alternative financing, it was found that wholesale revisions were also needed to the PSCP procedures that governed project procurement and delivery but which

no longer reflected contemporary practice. Consequently, the draft included three highly interconnected chapters in order to capture the full scope of the problem.

In January 2005, a Workgroup on Project Procurement, Delivery, and Alternative Financing was established under the chairmanship of Dr. Lever. The membership included superintendents of Maryland school districts, facility planners from the school districts, representatives from local governments, and representatives of State agencies that have an interest in public school construction or experience with the types of problems that were under discussion (Appendix C). Deliberations were open to the public and were attended by several interested private sector financial and construction groups. Subgroups within the larger workgroup critiqued and refined the three chapters on project procurement, delivery, and alternative financing. The final draft of the revised procedures was released on May 2, 2005, for a 30-day general comment period by local school systems, local governments, and a broad array of private sector firms and individuals, including financiers, construction managers, and others with an interest in the subject (because of their length, the draft procedures are not included in this report, but may be obtained from the PSCP on request).

Concurrent with the review period and continuing into the present, a small group has met regularly to convert the three procedural sections into regulation (Appendix D). This group has assimilated the comments received following release of the May 2<sup>nd</sup> documents. To align the complexities of the world of design and construction with the requirements of regulation has proven to be a task requiring lengthy detailed discussions. Consequently, the procedures were not ready for promulgation on July 1, 2005, as required by the Act. The current schedule calls for the regulations to be submitted to the Interagency Committee on School Construction (IAC) in early fall 2005, to be followed by submission to the Board of Public Works for permission to publish as regulation in the fall. With this schedule, it is anticipated that the regulations will be completed in the early part of calendar 2006.

The section of the Public School Facilities Act of 2004 that concerns project procurement, delivery, and alternative financing became effective on July 1, 2004. It is the understanding of the Public School Construction Program, some of whose staff were involved in drafting the legislation, that the General Assembly intended the provisions of the act to take effect on that date in order to address what was recognized as an immediate crisis in public school construction. Consequently, the PSCP advised the local school systems that they could proceed with the new methodologies outlined in the legislation, using the statute for guidance, as well as prudent common sense and frequent communication with the Public School Construction Program to avoid actions that might be outside of the domain of the Act or other State laws and regulations. The PSCP and others recognized that the experience gained by the local entities in exploring these methodologies would be of great benefit to the writers of the procedures and regulations, since the consistent desire has been to provide realistic guidance to facilitate private sector participation in the construction of public schools while honoring fundamental principles of public school procurement. These principles can be summarized as:

- Requiring procurement to be open and fair, so that all eligible vendors are provided with an opportunity to participate if they qualify;
- Ensuring that the process of procurement will result in the best value for the taxpayers of Maryland,

- Ensuring that the process will deliver public school facilities that meet the educational and building performance standards that would apply to any public school building in Maryland;
- Ensuring that State requirements for minority business participation and for use of prevailing wage rates are incorporated into projects procured under alternative methods when applicable, as they would be for projects procured and financed through conventional methods.

At the same time, it was recognized that if the procedural and substantive requirements for alternative methods were too stringent, private sector vendors might lose interest in participating in public school construction. The final regulatory product will therefore represent a balance between the need to protect the public and the desire to involve the private sector in this large task.

## **STATUS OF SCHOOL DISTRICT INITIATIVES IN PROJECT PROCUREMENT, PROJECT DELIVERY AND ALTERNATIVE FINANCING**

### **Alternative Financing**

In the fourteen months since the Act became effective, the results in the alternative financing arena have been mixed. The majority of the LEAs express an interest in the new tools that the statute makes available, but a hesitation to embrace them. There is an inherent conservatism that governs the delivery of public schools: the schedule and cost risks of public school construction are so enormous, the consequences of delay or poor construction affect so many people and communities, that there is a built-in tendency on the part of those responsible for building schools to prefer those methods that have worked successfully in the past. Most LEAs require a high level of documented proof of success before they are willing to try a new method. This inherent conservatism covers all aspects of the field, from employing architects new to the arena of public school design, to the use of new construction technologies, new project delivery approaches, or alternative financing or funding mechanisms. Innovation thus happens slowly and typically originates with the large LEAs, which have many projects and can develop back-up plans if a project is delayed, e.g. temporary housing of students or delayed re-districting.<sup>1</sup> The larger LEAs also have county governments with the financial capacity to recover quickly if they need to terminate an alternative financing or delivery approach and return to a conventional method.

The most consistent reason given by the LEAs to explain their reluctance to engage in alternative financing is that these methods offer no financial advantage over conventional financing using general obligation bond revenues. In 2003, the alternative financing subcommittee of the Task Force to Study Public School Facilities recognized that there was no evidence, all other things being equal, that a project can be delivered through alternative

---

<sup>1</sup> An example of this process is the gradual introduction of geothermal ground source heating and cooling, a design approach to the building's mechanical system that has proven very successful for more than 25 years in other parts of the United States but has been embraced cautiously by the Maryland LEAs only within the last six or seven years (it is noteworthy that this technique was introduced to Maryland through one of the smallest school districts, Dorchester County Public Schools). Other examples include the construction management agency method of project delivery, introduced by Montgomery County Public Schools, and the multi-step sealed bidding process, introduced by Prince George's County Public Schools and Howard County Public Schools. It is worth noting that there have been some failed experiments, including use of non-conventional masonry products and alternative project delivery methods that did not succeed because of the previously restriction to competitive sealed bid.

financing at lower cost than through the use of conventional general obligation bonds. The reason is simply that the private sector does not have access to funds at the same favorable interest rates as local and State governments, which can pledge the full faith and credit of the public to support the bonds. This disadvantage is fully acknowledged by almost all private sector vendors of alternative financing methods. Consequently, it will only be under the most unusual circumstances, when all things are *not* equal, that a local government and school board would choose to use alternative financing for the delivery of a public school. Some of these circumstances might include:

- Acceleration of project bidding in order to avoid escalating construction costs. Facing overwhelming cost increases from construction escalation in the range of 12% or more per year, facility planners and local fiscal officers recognize that early delivery of a project can save very substantial costs. By bidding a project one year earlier than anticipated, the increased cost using alternative financing may be more than offset by the avoidance of construction escalation costs.
- Acceleration of school opening in order to allow development that had been blocked under a county's adequate public facility ordinance to proceed. Currently, 14 counties in Maryland have APFOs, all of which include school capacity as a criterion that can stop development. If building a school allows development to proceed, the county will realize early financial benefits, including property taxes, impact fees, and excise taxes, as well as the short-term benefits generated by construction-related jobs.
- Anticipation of the State's share when the local share is available. In some cases projects are crucial to address student enrollment increases, but the State's ability to provide its match may be limited. Local governments may want to "forward fund" through a finance arrangement the State's share of a project that has received State planning approval, or use financing to build a school that will be submitted at a later date for planning approval.<sup>2</sup>
- Moving debt "off-line". Under a leaseback arrangement, the lease may be construed as an operating lease rather than a capital lease. In this case, the revenues needed to repay the lease may not count against the local jurisdiction's indebtedness, thereby freeing up bond capacity for other capital projects. However, this remains an unresolved issue at this date.

In August 2005, the LEAs were asked to provide information on their current interest in or use of alternative financing arrangements. Sixteen LEAs responded to the query:

**Not Interested.** Six LEAs indicated that they are not now considering alternative financing for their projects. The most common reason given is the higher cost of financing the projects. It is also recognized that the development of an alternative financing arrangement requires levels of expertise and staffing that are simply not available in the smaller counties, where a single individual may have a portfolio of facility responsibilities that includes capital projects, maintenance, and daily operations, as well as food service and transportation in some cases.

---

<sup>2</sup> "Forward funding" is used in the State's Public School Construction Capital Improvement Program to signify that the local government has provided its own funds in substitution for State funds for a project that has been approved for planning by the State. The term does not apply when a county provides its funds earlier in the project than the State does, or when the county provides funds for a project that has not yet received State planning approval.

The six counties are Caroline, Dorchester, Saint Mary's, Somerset, Talbot, and Worcester. Presumably the nine districts that did not respond to the question are also not interested in using alternative financing approaches.

Considered, but Rejected. Two other school districts and counties, Calvert and Charles, have considered unsolicited proposals for alternative financing, but rejected them for different reasons:

- Calvert County Public Schools considered proposals to capitalize on a site that is well located for commercial development but is too small and badly located for the obsolete middle school that it currently houses. Under the proposed financing arrangement, the district would have received a replacement middle school on an appropriate site already owned by the board of education. The proposals were rejected because they did not render a financial advantage. Calvert County presently enjoys an excellent bond rating which makes a venture using private capital unattractive. The school system remains receptive to the idea of alternative financing and is interested in how these methods will be used by other counties.
- Charles County Public Schools received two unsolicited proposals for construction of a new middle school that is needed to address growing capacity problems in the county's northern Development District. After considerable deliberation, the proposals were rejected because they offered no schedule advantage over conventional delivery, and when the State approved a substantial allocation of funds for the project in FY 2006, the advantage of the alternative financing proposals to provide advance funding also disappeared. The ultimate cost to use either of the proposed alternative financing approaches for this project would be higher than the cost under conventional public debt. The project was subsequently conventionally bid and the bid results were below the project budget.

We understand that Calvert County Public Schools and the county government are receptive to alternative financing methods, because the rapid population growth in the northern part of the county mandates a school construction program that will likely exceed both the State and the County capacity to provide conventional funding.

Alternative Funding Approaches. Three school districts, all of which express no current interest in alternative financing, are using alternative *funding* mechanisms to build public school facilities. In alternative funding, construction monies are provided from a third source – private developer, private foundation, or non-profit organization – to replace part or all of the local obligation for a project. The county then uses conventional general obligation bond revenues for the balance of their obligation, and the project is procured and delivered through conventional means. This approach extends well beyond the three examples provided below:

- Anne Arundel County Public Schools and the county government investigated using a lease-back arrangement for the construction of a replacement elementary school, but then decided to build the school using conventional financing, but with substantial donations from two residential developers. The facility planner indicates that they are receptive to exploring alternative financing methods in the future.
- Frederick County Public Schools will not use any alternative financing approach in the foreseeable future: they write that "public financing is judged to be least expensive for

long term project financing.” Currently, the school system has three projects in development that are using alternative funding sources:

- A wing for a new high school is being funded entirely by a private developer to allow his housing projects to move forward against an APFO restriction. The project will be designed and procured according to FCPS standard methodologies;
  - An earth-space science laboratory is being partly funded through private donations; and
  - An addition to a middle school is receiving partial funding from a developer. To stay on schedule, the county funded and the school system built the addition even in the absence of State planning approval. The developer will pay the interest for up to seven years on the funds that the County borrowed to substitute for the State share it anticipates it will eventually receive. If State funds are not received at the end of seven years, the county will assume the interest payments.
- Garrett County Public Schools is contemplating construction of an addition to an elementary school using funds from a local non-profit corporation. This approach mirrors projects carried out elsewhere that used funds from public sector entities or non-profits, e.g. the Maryland-National Park and Planning Commission in Prince George’s County, to build facilities that provide services to the public in the same facility that houses the school.

Actively Involved: Three school districts are currently in the active process of investigating, using or developing alternative financing arrangements:

- Cecil County Public Schools is investigating use of a leaseback arrangement to finance construction of a proposed School of Technology. The School is needed for both workforce development and to provide relief from overcrowding in the county high schools. This investigation is at the earliest stages.
- Prince George’s County Public Schools proposes to procure the furnishings and equipment for a new high school that is under construction through a lease-purchase financing agreement. School board operating funds will be used to repay the five-year financing. Moving the cost of this equipment to the operating budget will release county debt to complete the construction of the school. A request for proposals for the financing will be advertised shortly.
- Harford County Public Schools has had the most extensive experience to date with carrying out large projects using alternative financing arrangements:
  - Administration Building. This structure, now under construction, is financed through a lease-leaseback arrangement. The ground is let for 40 years to a developer, who in turn will lease it back to the school system for 25 years. The ground lease will terminate in 25 years if all payments are made. Central office functions now housed in the existing administration building dating from 1872, and in four other leased offices in Bel Air, will be consolidated into the new facility. It is anticipated that over the 25 year fixed lease period for the new building, the savings generated through avoided lease costs will reach a break-even point at eight years. It is also expected

that the efficiency of the system will improve through centralization of central office functions.

- **Vehicle Storage/Maintenance Site.** The school system is considering proposals to exchange or lease a small board of education property that is inappropriate as a vehicle storage site but is crucial to commercial development in the Bel Air area. In exchange, the school system is considering offers for alternative sites for its vehicle maintenance functions, one of which carries with it a substantial cash consideration and site improvements.
- **Bel Air High School.** The school system has received proposals for consultant services to guide it through an alternative financing process for the replacement of this major high school facility.

#### Performance Based Contracting.

A number of LEAs have used performance based contracting, in which savings that accrue from energy-related improvements are used to finance the project or projects over an extended amortization period. Given the age of many facilities in Maryland, and the fact that they were built to low energy standards in the 1960s and 1970s, this approach will become increasingly attractive as energy costs continue to rise. In some cases the energy saving projects are combined with conventionally financed projects to achieve greater efficiency in procurement and better overall costs. Following are a few current instances of this approach:

- Carroll County Public Schools has entered into a large performance contract with an energy management company that includes new AC projects for three schools in addition to energy saving projects (lighting, bathroom fixtures, control upgrades, high efficiency HVAC equipment, billing evaluation services, etc). Providing AC in all CCPS schools is a high priority for the school system. As this fourth phase of energy performance service contracts has just begun, the savings have yet to be shown. However, the three previous phases met the stated goals in all but one instance and the energy management company paid the savings as agreed.
- Cecil County Public Schools recently approved a \$9.3 million dollar performance contract with an energy management company for energy related facility improvements to all 29 schools in the county as well as the central office. Projects range from boiler replacements to lighting upgrades, as well as a total wide area network (WAN) technology. These upgrades show a payback over a 15 year period of time with the energy management company guaranteeing the energy savings. The school system received a favorable opinion from the county's bond council on the issue of how bond ratings are affected when capital projects are funded through this method.
- Prince George's County Schools has piggybacked on the State Department of General Services' Indefinite Delivery Energy Performance Contract (EPC). The School Board has approved contracts with two energy management companies to conduct facility audits for 200 facilities. Upon completion of this Phase I work, a proposed project plan, scope of work, and cost avoidance/savings utilization schedule will be presented to the Board for approval and inclusion in the Phase II implementation plan. The school system expects that the EPC Program will guarantee future energy savings that will fund approximately \$30 million of facility improvements over a 15 year period.

## **Project Procurement**

The LEAs and county governments that have considered proposals for alternative financing have been very receptive to interim guidance from the State on procurement methods. They are as aware as is the State that a negotiated contract for a major project may be subject to intensive scrutiny by the public, the press, and competitors. All of the proposals for alternative financing received to date by LEAs have been unsolicited. In the absence of approved regulations and procedures, the PSCP has used the rule developed in Virginia as part of the Public Private Infrastructure and Education Act of 2002 (the PPEA) that requires a 45-day period of public notification following the point that the LEA and local government decide to give serious consideration to one or more unsolicited proposals. The only LEA that has carried a proposal to this point is Harford County, and they have abided by the PSCP's guidance on this issue.

Outside of the alternative financing arena, no LEA to date has solicited a proposal for school construction under a competitive negotiation or quality based selection format. The PSCP is actively involved in discussions with the LEAs about their project procurements, and will have adequate advance notice if and when any LEA decides to use alternative methods of procurement.

- Competitive negotiation is seen as unnecessary for conventionally financed projects, where the scope of work is well defined in advance and competitive sealed bidding is considered to be advantageous.
- Quality based selection is of great interest to the LEAs as a method that combines the virtues of a qualification-based selection process with the security of competitive sealed bid; however, since it is recognized that it is time consuming and difficult to develop a valid QBS procurement instrument, no LEA has pursued this approach to date.
- A number of jurisdictions are embracing the multi-step sealed bid process, which requires the bidders to pre-qualify for the specific project, often in addition to a general pre-qualification that applies to all projects. Short-listed constructors can then submit bids for the project. This approach typically results in a higher quality of bidder and consequently less risk to the owner.

## **Project Delivery**

General Contracting (GC) remains the preferred project delivery method for public school construction. It is appropriate for straightforward projects in which the design is at 100% completion on bid day and there are no unusual schedule, site logistic, or construction demands. The simplicity of having a single point of responsibility and of knowing all costs on bid day recommends this method.

Construction Management Agency (CMA), in which the LEA holds multiple trade contracts but engages a professional construction manager to provide pre-construction advice and management services during construction, has become in the last eight to ten years a conventional project delivery approach for Maryland public schools. Through LEA exchanges, a body of experience is developing on issues such as procuring CMA services, how to manage the construction manager, and when it is appropriate to use this technique in place of general contracting.

Construction Management At-Risk (CMR), in which a construction management entity offers a Guaranteed Maximum Price (GMP) before construction documents are complete, has been used successfully in the private sector where negotiated contracts are the rule. The method allows the owner to work with the constructor to arrive at a scope of work that meets both performance objectives and the owner's project budget. This approach works best if the GMP can be negotiated between the owner and the CM. A modified form of the approach, in which the LEA procures certain major trades independently and then assigns them to the CMR as part of the GMP, is now being used on selected projects by Montgomery County Public Schools.

Design-Build (DB), in which a single entity is responsible for both design and construction of the project, has been used for small projects, e.g. replacement of a portion of a mechanical system or a science classroom renovation. No large school construction project in Maryland has been carried out using DB. There are on-going concerns about releasing control of the design process to an entity other than the owner's architect, who serves as an independent check on the constructor. In a recent experience, the constructor wing of the DB entity refused to honor its initial cost estimate because of cost escalation, and withdrew from a project. Since a performance bond is not normally in effect for the pre-construction part of the DB process, the LEA in this situation had no recourse but to convert the project to a conventional general contracting approach. This failure of the DB to deliver as promised has had a considerable negative impact on the project schedule, and the experience stands as a warning about a potential vulnerability in the DB process.

Job Order Contracting (JOC), in which a constructor bids only on the overhead and profit associated with an extensive fixed-price list of construction items, has been used successfully for smaller projects by several LEAs.

## **CONCLUSION**

The private sector has been very active since enactment of the Public School Facilities Act of 2004 in soliciting the interest of school boards and county governments to use alternative financing arrangements. To date, the response of the LEAs has been largely tentative: many are interested, but they want to see a successful project completed in another jurisdiction before they are willing to engage in the complexity and risk of developing their own procurement.

On the other hand, the liberalized procurement methods made available by the Public School Facilities Act of 2004 appear to have considerable attraction for the LEAs. The ability to negotiate scope and price when justified by circumstances opens the field of public school to the design-build and construction management at-risk project delivery methods which have been used successfully in the private sector. Through these techniques and through access to potential private capital, the range of tools available to school districts and county governments to meet their school facility needs has been greatly expanded by enactment of the Public School Facilities Act of 2004.

## **APPENDICES**

### **A. Alternative Financing Subcommittee, Task Force to Study Public School Facilities**

- Dr. David Lever, Chair, Executive Director, Public School Construction Program
- Ms. Jan Gardner, County Commissioner Frederick County Board of County Commissioners
- Dr. Nancy Grasmick, State Superintendent of Schools
- Mr. David Harrington, Member, Prince George's County Council
- Senator Patrick J. Hogan
- Mr. Roy Kirby, President, Roy Kirby Construction, Inc.
- Mr. Brian Morris, Member, Board of School Commissioners, Baltimore City Public Schools
- Mr. Daniel Smith, private environmental consultant
- Dr. Yale Stenzler, former Executive Director, Public School Construction Program
- Mr. Konrad Wayson, Member, Board of Education, Anne Arundel County Public Schools
- Mr. Tim Woodring, Member, Board of Education, Allegany County Public Schools

## **B. Senate Bill / 787House Bill 1230: Public School Facilities Act of 2004**

### **Public School Facilities Act of 2004 Article - Education**

#### **Provisions on Alternative Financing and Project Delivery**

##### **4-114.**

(a) All property granted, conveyed, devised, or bequeathed for the use of a particular public school or school system:

- (1) Except as provided in subsection (c) of this section, shall be held in trust for the benefit of the school or school system by the appropriate county board; and
- (2) Is exempt from all state and local taxes.

Money invested in trust for the benefit of the public schools for any county or city is exempt from all state and local taxes.

(c) (1) A private entity may hold title to property used for a particular public school or local school system if the private entity is contractually obligated to transfer title to the appropriate county board on a specified date.

- (2) The conveyance of title of school property to a private entity for a specified term under this subsection may not be construed to prohibit the allocation of construction funds to an approved school construction project under the Public School Construction Program.
- (3) A county or county board may convey or dispose of surplus land under the jurisdiction of the county or county board in exchange for public school construction or development services.

##### **4-126.**

(a) In this section, "alternative financing methods" includes:

- (1) Sale-leaseback arrangements, in which a county board agrees to transfer title to a property, including improvements, to a private entity that simultaneously agrees to lease the property back to the county board and, on a specified date, transfer title back to the county board;
- (2) Lease-leaseback arrangements, in which a county board leases a property to a private entity that improves the property and leases the property, with the improvements, back to the county board;
- (3) Public-private partnership agreements, in which a county board contracts with a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and may include provisions for cooperative use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school;
- (4) Performance-based contracting, in which a county board enters into an energy performance contract to obtain funding for a project with guaranteed energy savings over a specified time period; and
- (5) Design-build arrangements, that permit a county board to contract with a design-build business entity for the combined design and construction of qualified education facilities,

including financing mechanisms where the business entity assists the local governing body in obtaining project financing.

(b) Except when prohibited by local law, in order to finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction, a county may:

- (1) Use alternative financing methods;
- (2) Engage in competitive negotiation, rather than competitive bidding, in limited circumstances, including construction management at-risk arrangements and other alternative project delivery arrangements, as provided in regulations adopted by the Board of Public Works;
- (3) Accept unsolicited proposals for the development of public schools in limited circumstances, as provided in regulations adopted by the Board of Public Works; and
- (4) Use quality-based selection, in which selection is based on a combination of qualifications and cost factors, to select developers and builders, as provided in regulations adopted by the Board of Public Works.

(c) The Board of Public Works shall adopt regulations requiring a project that qualifies for alternative financing methods under this section to meet requirements regarding the advantages of the project to the public that include provisions addressing:

- (1) The probable scope, complexity, or urgency of the project;
- (2) Any risk sharing, added value, education enhancements, increase in funding, or economic benefit from the project that would not otherwise be available;
- (3) The public need for the project; and
- (4) The estimated cost or timeliness of executing the project.

(d) Projects that qualify for alternative financing methods under this subsection:

- (1) Shall meet the educational standards, design standards, and procedural requirements under this article and under regulations adopted by the Board of Public Works; and
- (2) Consistent with the requirements of this article, shall be approved by:
  - (i) The county governing body;
  - (ii) The state Superintendent of Schools; or
  - (iii) The Interagency Committee on School Construction and the Board of Public Works.

(e) Use of alternative financing methods under this section may not be construed to prohibit the allocation of state funds for public school construction to a project under the Public School Construction Program.

(f) A county board may not use alternative financing methods under this section without the approval of the county governing body.

(g) The Board of Public Works shall adopt regulations recommended by the Interagency Committee on School Construction to implement the provisions of this section, including:

- (1) Guidelines for the content of proposals, for the acceptance and evaluation of unsolicited proposals, and for accepting competing unsolicited proposals;
- (2) Requirements for the content and execution of a comprehensive agreement governing an arrangement authorized under this section;
- (3) Guidelines for content and issuance of solicitations;
- (4) Requirements for the prequalification of bidders or offerors;
- (5) Requirements for public notice of solicited and unsolicited proposals and proposed execution of a comprehensive agreement;
- (6) Regulations that require compliance with requirements applicable to qualified projects that would otherwise be in effect under the state procurement law if the procurement were competitively bid; and
- (7) Regulations that require that contracts and subcontracts adhere to the requirements of title 17, subtitle 2 and title 14 of the State Finance and Procurement Article *if the requirements would otherwise be applicable.*

### **C. Workgroup on Project Procurement, Delivery, and Alternative Financing**

- Dr. David Lever, Chair, Executive Director, Public School Construction Program
- Mr. Adam Zimmerman, Vice-Chair, Program Manager, Public School Construction Program
- Mr. Donald Arnold, Member, Board of Education, Baltimore County Public Schools
- Dr. William AuMiller, Superintendent, Allegany County Public Schools
- Mr. Ray Barnes, Executive Director, Frederick County Public Schools
- Mary Jo Childs, Esq., Counsel, Board of Public Works
- Mr. Bernard Fox, Supervising Budget Examiner, Department of Management & Budget
- Ms. Jan Gardner, County Commissioner, Frederick County Commissioners
- Mr. Dick Hawes, Director, Facilities Management, Montgomery County Public Schools
- Mr. Carl LaVerghetta, Director of Procurement, Department of General Services
- Mr. Rupert McCave, Capital Improvement Program Officer, Prince George's County Public Schools
- Sheila McDonald, Esq., Executive Secretary, Board of Public Works / Treasurer
- Mr. Gary McGuigan, Project Director, Maryland Stadium Authority
- Mr. Mark Moran, Facilities Planner (retired), Anne Arundel County Public Schools
- Mr. John O'Neill, Director of Administration, Harford County Government
- Elizabeth Roese, Esq., Director, Public Finance, Office of the Attorney General
- Dr. Bernard Sadusky, Superintendent, Queen Anne's County Public Schools
- Elliott Schoen, Esq., Assistant Attorney General, Office of the Attorney General
- Dr. Beatrice Tignor, Chair Board of Education, Prince George's County Public Schools  
Director of Procurement, Montgomery County Government
- Dr. Jerry Weast, Superintendent, Montgomery County Public Schools

#### **D. Regulations Workgroup**

- Mary Jo Childs, Esq., Counsel, Board of Public Works
- Dr. David Lever, Executive Director, Public School Construction Program
- Sheila McDonald, Esq., Executive Secretary, Board of Public Works / Treasurer
- Elizabeth Roese, Esq., Director, Public Finance, Office of the Attorney General
- Elliott Schoen, Esq., Assistant Attorney General, Office of the Attorney General