

ALTERNATIVE APPROACHES TO THE CONSTRUCTION OF PUBLIC SCHOOL FACILITIES

**ANNUAL REPORT ON THE STATUS OF ALTERNATIVE PROCUREMENT, PROJECT
DELIVERY AND FINANCING FOR MARYLAND PUBLIC SCHOOL CONSTRUCTION**

**SUBMITTED TO THE BOARD OF PUBLIC WORKS
Governor Martin O'Malley
Comptroller Peter Franchot
Treasurer Nancy K. Kopp**

September 17, 2007

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The Interagency Committee on School Construction

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(MSAR # 2498)

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- E. Workgroup on Regulations for Procurement, Delivery and Alternate Financing
of Public School Construction Projects
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Construction Program

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BACKGROUND

In 2002, the Task Force to Study Public School Facilities was formed under the leadership of Treasurer Nancy K. Kopp to determine if public school facilities in Maryland were adequate to support the educational programs that were to be funded through the Bridge to Excellence in Education Act of 2002. The Task Force investigation 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 building and renovating Maryland's public schools (Appendix C). Based on the experience of school districts in the United States and Canada that have used alternative financing to build public schools, the subcommittee developed recommendations that were included in the Final Report of the Task Force, issued in February 2004.

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 2004), titled the Public School Facilities Act of 2004, was omnibus legislation that addressed many aspects of school construction procedure and funding, included a section on alternative financing (Appendix A). The statute contains provisions that enabled the LEAs and local governments to use several alternative financing arrangements: lease-leaseback, sale-leaseback, public-private partnerships, and performance based contracting. The statute allows the use of finance-design-build, a variant on the traditional design-build (DB) project delivery methodology in which the DB entity also provides financing for the project. It also addresses construction management at risk (CMR), a method of project delivery that has proven successful in the private sector but was not used for public schools in Maryland because it is best suited to a procurement environment that permits competitive negotiation. To further these progressive financing and delivery approaches, the statute enables the local jurisdictions, when appropriate justification is present, to use methods of project procurement - competitive negotiation, unsolicited proposal, and quality based selection (QBS) – in place of competitive bidding, the sole previous option.

While the enabling legislation has opened a vigorous discussion about alternative financing since its passage in 2004, and has permitted several local educational agencies (LEAs) to consider and use alternative procurement and project delivery methods, it is only now that an alternative financing arrangement for a school facility is approaching execution. *Washington County Public Schools*, in collaboration with the City of Hagerstown and an established

community development non-profit organization, and with the input of a private consultant, private counsel and the Public School Construction Program, has developed a leaseback structure for the renovation of a historic building in downtown Hagerstown as a visual and performing arts high school. This project, described more fully below, will utilize Maryland historic tax credits as a significant component of the financing arrangement. Although access to the historic tax credits presents WCPS with a unique advantage, in other respects the proposed financing structure may provide a valid model for more conventional school construction projects in the state.

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. In drafting the procedure on alternative financing in the summer of 2004, staff found that wholesale revisions were also needed to the PSCP procedures that governed project procurement and delivery, which no longer reflected contemporary practice nor aligned with the 2004 legislation. 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 D). Deliberations were open to the public and were attended by several interested private sector financial and construction groups. Subgroups within the larger workgroup addressed the three chapters on project procurement, delivery, and alternative financing. The final draft of the revised procedures was released in May 2005 for general comment 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.

Concurrent with the review period and continuing until November 2005, a group consisting of attorneys from the Office of the Attorney General and the Board of Public Works met regularly with Dr. Lever to convert the three procedural sections into regulation (Appendix E). This group assimilated the comments that were submitted in response to the procedure documents issued in May 2005. To align the complexities of contemporary school design and construction with the requirements of regulation proved 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. On January 4, 2006, the draft regulations were released for comment to local educational agency and local government officials as well as State agencies. Their comments were assimilated and the revised regulations were reviewed again by the small regulatory workgroup. The draft regulations were sent to the members of the Interagency Committee on School Construction (the IAC) on June 21, 2006. Following receipt of comments, final changes were made to the regulations, and a briefing with the liaisons for the Board of Public Works members was held on September 11, 2006.

Concurrent with the development of the regulations on project procurement, delivery, and alternative financing, regulations to govern the Public School Construction Program, also required by the Public School Facilities Act of 2004, were developed under the leadership of Mr. Allen Abend, at that time Deputy Director of the Public School Construction Program (Appendix F). These regulations underwent a thorough review process in the summer of 2006, and on

November 9, 2006, the IAC approved the regulations to be presented to the Board of Public Works for permission to publish. Given the concurrent development of the two sets of regulations, it was decided to consolidate them into a single set, to be presented for approval as a single action by the BPW. The package was approved by the BPW for publication on December 6, 2006, and following regulatory review, became effective on May 21, 2007 (Appendix B).

It was the understanding of the staff of the Public School Construction Program, some of whom were involved in drafting the 2004 legislation, that the General Assembly intended the provisions of the Act that concern project procurement, delivery, and alternative financing to become effective on July 1, 2004 in order to address 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 lie 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 in developing the regulations and procedures, 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:

- Procurement must be open and fair, so that all eligible vendors are provided with an opportunity to participate if they qualify;
- The process of procurement should result in the best value for the taxpayers of Maryland;
- The process should deliver public school facilities that meet the educational and building performance standards that are expected of all Maryland public school buildings, irrespective of how they are procured, delivered, or financed;
- State requirements for minority business participation and for use of prevailing wage rates must be incorporated into projects procured and financed 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 regulations therefore represented a balance between the need to protect the public interest and the desire to involve the private sector in this large task.

SCOPE OF THE LEGISLATION

The first project to be reviewed by the Office of the Attorney General for conformance with the alternative financing provisions of the Public Schools Facility Act of 2004 was the central administration building for *Harford County Public Schools* (HCPS). A description of the building and its financing structure is provided below on page 9.

In a letter dated September 21, 2004, the Office of the Attorney General indicated that projects of the type then proposed by HCPS fall under the authority of the Public School Facilities Act of 2004. Consequently, such projects would need to be procured and reviewed in accordance with the requirements of the legislation and of regulations that had not, at that time, been drafted. However, because the HCPS project pre-dated passage of the Public School Facilities Act, the OAG also excused it from compliance with review by the IAC and from the competitive procurement methods outlined in the legislation.

Subsequently, discussion between the OAG and the PSCP has led to a reappraisal of the scope of the legislation. In brief, the position of the PSCP and of the OAG is that neither the intention of the original legislation nor the traditional review and approval functions of the IAC and its designees warrant an extension of these activities into the arena of central administration buildings. The legislation was focused on the capacity of school facilities to support educational programs, not on the other functions of public school systems. As administration buildings are not funded by the State under the Capital Improvement Program or the four other programs that the PSCP manages, they have traditionally not been subject to the review and approval of the IAC. Nor do they contain the educational purpose that warrants review and approval of locally funded projects by the State Superintendent.

As a result of this deliberation, COMAR 23.03.05.01.B explicitly excludes from the requirements of the regulation "a building that is not used primarily for the instruction of students, including an office building, warehouse, or vehicle maintenance or repair building." Clarification of the scope of the Public School Facilities Act of 2004 with respect to central administration buildings not only preserves the traditional focus of the Public School Construction program on the facilities that support educational programs, but also provides greater latitude to the LEAs to explore innovative approaches to their facility concerns. Currently, some of the most important and interesting alternative financing projects concern central administration facilities (see below, page 9). It is anticipated that lessons learned in these projects will have implications for the eventual application of alternative financing to school facilities.

SCHOOL DISTRICT INITIATIVES IN ALTERNATIVE FINANCING, PROJECT PROCUREMENT, AND PROJECT DELIVERY

Alternative Financing

As we reported in September 2006, interest in the use of alternative financing methods to build schools remains extremely hesitant. In previous reports, we have noted the risk-aversion that is inherent in the construction of public schools and that restrains the adoption of innovative techniques, encompassing alternative procurement, delivery, or financing methods as well as innovative construction technologies. The LEAs continue to indicate that alternative financing offers no apparent financial advantage over conventional financing using general obligation bond revenues. In 2005, *Charles County Public Schools* and *Harford County Public Schools* both explored alternative financing for a new middle school and the replacement of an existing high school, respectively, and both concluded that their projects could be carried out at lower cost and with less risk using conventional bond financing. Neither school system found in the alternative financing proposals schedule advantages that might have warranted the higher costs. *Cecil County Public Schools* also reported that it has abandoned study of alternative financing for the construction of a new technology high school. *Montgomery County Public Schools* reports that because of its AAA bond rating, it does not consider alternative financing to be effective (however, the school system remains receptive to its use under appropriate circumstances).

The general hesitancy of the LEAs to use alternative financing for school construction corroborates the findings of the alternative financing subcommittee of the Task Force to Study Public School Facilities. In 2003, the members of the subcommittee recognized that there was no evidence, all other things being equal, that a project can be delivered through alternative financing at lower cost than through the use of conventional general obligation bonds. The private sector does not have access to funds at the same favorable interest rates as do 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. Only two circumstances appear to warrant these additional costs: when alternate financing can accelerate a project sufficiently to address an urgent educational issue or to offset the increased finance cost by forestalling construction cost escalation; or when the LEA can leverage a valued but underutilized asset as a component of the financial transaction.

The fiscal conservatism of local governments, and the limitations of internal staff capacity, have also been cited as blockages to the use of alternative financing by smaller jurisdictions. While asserting that alternative financing may allow a school system to move forward with a project in the absence of State and local funding, *Washington County Public Schools* also writes “The coordination of multiple partners and potential donors can be cumbersome. Determining each party’s role and responsibility, and the scope of work outside of any donations, all while procuring the work within COMAR regulations can be daunting and time consuming.”¹ The fact that Washington County Public Schools has proceeded with a very complex financing arrangement for the Barbara Ingram School indicates that these barriers are not necessarily insuperable (see below).

Interest on the part of financiers in alternative financing also appears to have diminished significantly since 2004/2005, and aside from administrative buildings, appears now to be focused on the use of alternative *funding* in order to provide capacity to remove Adequate Public Facility Ordinance (APFO) closures to housing construction. *Montgomery County Public Schools* states that developers have a strong interest in the parcels that the school system owns for its central administration buildings because of their location in high-use corridors, and a relatively weak interest in MCPS schools, because they are located in residential areas.

Current Projects Using Alternative Financing

- *Washington County Public Schools* will renovate a historic structure in downtown Hagerstown to house a visual and performing arts high school, the Barbara Ingram School for the Arts. This project is noteworthy not only for its innovative financing approach, but also because it is a component of the redevelopment of downtown Hagerstown as a cultural and arts center for Western Maryland. A variety of joint-use agreements are being developed so that students can use the nearby public library, a downtown theater, and other facilities to supplement the facility requirements of the program, with the historic building serving for core program offerings. While in many respects this educational program will be modeled on the very successful Baltimore School for the Fine Arts, its proposed use of public and private institutions in the urban surroundings to extend the educational opportunities available to the students is a genuine innovation.

¹ Boyd Michael, Assistant Superintendent for School Operations, Washington County Public Schools, email dated August 9, 2007.

The existing building, a three story iron-frame office structure dating from 1903, was donated to the City of Hagerstown specifically to house an arts high school. In turn, the City has given title to the building to a local non-profit corporation, the Hagerstown Neighborhood Development Partnership (HNDP). The proposed cost of this project is \$10.6 million and is being funded through various means. Washington County Public Schools (WCPS) will enter into a 20 year, triple-net operating lease with HNDP, taking ownership of the facility at the end of the lease term. A private consultant engaged jointly by WCPS and HNDP will competitively solicit financing for up to \$8.3 million to pay for the renovations and additions required to support the educational program. The proceeds will be placed in an escrow account under an Escrow Manager. Once a financing vendor is selected, HNDP will assign the lease to the vendor but will retain responsibilities as owner of the facility. HNDP and WCPS are jointly responsible for engaging the constructor; HNDP will hold the contract but WCPS will supervise it as agent to HNDP, drawing from the proceeds of the lease transaction as needed to provide payments. WCPS will be responsible for all costs that exceed the available financing.

As a private entity, HNDP is eligible for Historic Tax Credits from the State of Maryland, which will be equal to 20% of the eligible costs of construction, a credit estimated at \$1,400,000. Once secured at the completion of the renovation, the tax credit will be assigned to WCPS.² The balance of the funds needed (\$912,000) is being obtained through Legislative Bond Bills, a Maryland Department of Business and Economic Development (DBED) grant, and a Community Legacy Grant.

All parties in this arrangement have been eager to comply with the State regulations governing alternative financing of public school facilities, and have provided both the required preliminary determination of justification as well as drafts of the comprehensive agreement and other legal instruments for early review by the PSCP. We are currently in discussion with WCPS to clarify points within these documents. As a locally funded project that has not been submitted for State approval in the Capital Improvement Program, the agreement and the construction contract are subject to approval by the State Superintendent, not the IAC. However, in accordance with the spirit and letter of the regulations, the PSCP will advise the Superintendent on the viability of the arrangement, and in particular its conformance to State requirements regarding competitive solicitation of the financing, and will provide an informational report to the IAC on September 19, 2007. The separate construction contract, once submitted to MSDE for approval by the State Superintendent, will be reviewed as would any other construction contract. The architectural design has been fully reviewed by MSDE and has been approved to proceed to bid by the State Superintendent.

There has been ample discussion among the parties about how State CIP funds can be accessed to support the project. If the project is submitted for approval in the FY 2009 or subsequent CIP requests, it will be reviewed according to the same factors that govern any project, namely local priority, enrollment, educational program, schedule, cost, and availability of funds. Although highly unique, the Barbara Ingram project is not without precedent: in 2004 the Board of Public Works approved for planning and subsequently for funding the renovation and expansion of the Baltimore School for the

² The transfer of credits has been reviewed and approved by the Attorney General for the Maryland Historic Trust.

Fine Arts, a project now nearing completion. In that case, no alternative financing arrangement was involved, although a substantial amount of the funding was provided through private fund-raising as well as historic tax credits. Since the Barbara Ingram School does involve a long-term lease-purchase arrangement, the possibility exists that the State could use an investment approach to funding the project rather than the lump-sum grant approach that is typically applied to project funding. This arrangement, which could save the State a very substantial amount of funds, will be fully investigated if and when Washington County Public Schools submits the project for State approvals.

- *Prince George's County Public Schools* procured the furnishings and equipment for the new Dr. Henry A. Wise, Jr., High School, which opened in August 2006, through a lease-purchase financing agreement. The lease-purchase agreement included \$6,500,000 for the purchase of moveable and infrastructure equipment. School board operating funds are being used to repay the five-year financing agreement. Redirecting the cost of this equipment to the operating budget released county debt to complete the construction of the school.

Although it is clear that many school districts are under intense pressure to build new schools and renovate existing schools, they generally do not believe that the urgency is sufficient to warrant the uncertainties or costs associated with alternative financing approaches. Two exceptions to this general observation are energy performance contracting and central administration buildings:

Energy Performance Contracting (also called Performance Based Contracting and Guaranteed Performance Contract)

A greater number of LEAs are now involved with energy performance contracting (EPC), in which savings that accrue from energy-related improvements are used to finance the improvements over an extended amortization period. As energy costs continue to rise, this approach has become increasingly attractive in order to improve the energy performance and the comfort of Maryland's many older facilities, which were frequently built to low energy standards in the 1960s and 1970s. In some cases, the energy savings scope for a school includes a capital improvement program project funded by the State, for example a roof replacement; in this way, greater efficiency in procurement and better overall costs are obtained. Since the energy service companies (ESCOs) that provide the improvements must guarantee savings for a number of years (typically 15), they are obligated to provide routine preventive maintenance on the equipment that they install. If the savings are not realized, the ESCO is obliged to reimburse the "lost" savings to the local board. Following are current instances of this approach:

- *Baltimore City Public Schools (BCPSS)* has entered into agreements with four ESCOs under the Department of General Services EPC program. Each ESCO has and will provide energy improvements to a number of schools, and each is in addition contracted to provide preventive maintenance (PM) for all mechanical systems in the schools that receive energy improvements as well as in other geographically related schools, irrespective of whether the HVAC equipment was installed by the ESCO or not. The energy improvements are often hybrid projects, that is, lump-sum funding through the State's Capital Improvement Program and Aging School Program is combined with financing secured by long-term energy savings and other local funds to execute the capital projects. As BCPSS closed three schools for the 2006-2007 school year, priority was given in the summer of 2006 to capital projects in the schools that were to receive

students from the schools scheduled to close; these schools also received other improvements unrelated to the EPCs, e.g painting and new ceilings. Reports in late summer 2006 indicated that the ESCOs performed above expectations and that the level of quality was high. This approach has been repeated for the schools that will receive students from the schools that were approved to be closed for the 2007-2008 school year. We understand that BCPSS is evaluating the costs and performance of the ESCOs to determine if they are comparable to conventionally procured projects of similar scope.

The HVAC preventive maintenance tasks that lie outside of the ESCO's normal obligations with respect to the equipment they install are funded through the school system's operating budget. All schools in the system have been included for HVAC PM in one of the four ESCO contracts. PM has been repeatedly highlighted by the IAC as one of three facility management factors that have a bearing on the IAC's recommendations for systemic renovation project approvals for BCPSS in the annual CIP process (the other two factors being school closures and progress on previously approved projects).

BCPSS has provided a model of how a school system with an aged and very deficient building inventory can accomplish significant upgrades, improve building performance, and concurrently implement a PM program for building components that have a considerable impact on occupant health and productivity.

- *Carroll County Public Schools* has entered into a fourth performance contract with an energy management company that includes new air conditioning (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 schools is a high priority for the school system. The three previous phases with the same contractor met the stated goals in all but one instance and the energy management company paid the savings as agreed. The contractor has now completed their phase-four installation work and the school system expects that this year will be the first for energy cost avoidance.
- *Cecil County Public Schools* approved in 2005 a \$9.3 million 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 complete wide area network (WAN) technology. These upgrades show a payback over a 15 year period 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. The performance contract is now 90% complete and some benefit in utility usage has already been experienced. The LEA reports that central office renovations are being completed somewhat slower than anticipated.
- *Howard County Public Schools* is in the third year of a multi-year energy performance project. To date, 13 schools have been contracted for conservation measures. An estimated \$600,000 in annual savings have been projected for the 13 schools. The system is in the process of validating these savings to determine whether it should proceed to a third phase involving a larger number of schools.

- *Prince George's County Public Schools (PGCPS)* is utilizing a Department of General Services' Energy Performance Contract (EPC) to upgrade, replace, and maintain building and energy components in schools and offices. PGCSP operating funds are used to service the debt on the financing agreement. Debt service and other costs of the projects will be fully recovered over a 15 year period through guaranteed lower energy and maintenance costs resulting from the improvements. Contracts totaling \$50.5 million are in place, funded from a combination of existing CIP systemic project resources (\$15.8 million) and lease-purchase financing (\$34.7 million). Implementation of the contract began in fiscal year 2007, with installation of the approved energy conservation measures scheduled over the next two years.

A second phase of the Energy Performance Management initiative is under consideration that will expand efforts by another \$100 million, to include additional schools and offices funded from a combination of existing CIP resources (approximately \$35 million) and future lease-purchase financing (approximately \$65 million). Prince George's County Public Schools writes that use "of alternative financing...provides a cost-effective vehicle (i.e., cost neutral over the financing term due to lower guaranteed energy and maintenance operating costs) for accelerating needed facilities improvements that would otherwise be deferred to future years based on available bond or pay-go funding."³

- *Somerset County Public Schools* is investigating use of energy performance contracting for work on an older high school. This school renovation will also be funded through Public School Construction Capital Improvement Program funds.

Central Administration Buildings

Aside from the two projects described above in Washington County and Prince George's County, activity in alternative financing of LEA facilities is currently focused on central administration functions, including not only central office facilities but also warehouses, garages, parking areas, and staff development buildings. Interest may have shifted to this type of facility for several reasons:

- A reluctance on the part of county governments to issue debt for administration facilities, in which the State does not participate through its capital funding programs.
- Anticipated improvement of administrative and operating efficiencies by consolidating functions previously housed in geographically separated and obsolete buildings into a single facility, sometimes using the avoided costs of rent payments or the sales of the former administration buildings to offset the costs of the new structure.
- The view of developers and financiers that administration buildings that are built to office standards offer more possibilities for re-use and marketability than do school buildings, and consequently offset the risks associated with potential non-appropriation of lease payments.

We are aware of the following central administration projects that are at various stages of development:

³ Eric Walker, Interim Chief Administrator for Supporting Services, Prince George's County Public Schools, letter dated August 10, 2007.

- *Harford County Public Schools (HCPS)*

- HCPS completed a 73,000 square foot central administration building in downtown Bel Air through a lease-leaseback financing arrangement. Central office functions previously housed in the existing administration building dating from 1872 and in four other leased offices have been consolidated into the new facility. Avoided rents on two of these administrative offices are used to partially fund the lease payments. It is expected that the administration of the school system will improve in efficiency through centralization of central office functions. Following competitive negotiation to procure a combined construction and finance package, the construction contract was awarded but it was decided to procure the financing separately through competitive negotiation with a number of banks. The term of the lease-leaseback finance agreement is 25 years, with a ground lease on the land only and assumption of title by the Board of Education after 25 years. There is no pre-payment penalty. Construction funds were placed in an escrow account through a Mutual Fund consisting of US Treasuries.

It is anticipated the savings generated through avoided lease costs will reach a break-even point at 7.5 years. In the analysis of the payback period, HCPS compared renting an equivalent amount of space vs. the lease-leaseback option. Remaining in the existing facilities was not an option due to their deteriorated condition. The new administration building was designed to achieve a LEED (Leadership in Energy and Environmental Design) silver certification.⁴

- In 2005, HCPS considered proposals to exchange or lease a small board of education property that is inappropriate as a vehicle storage and maintenance site but is well positioned for commercial development in the Bel Air area. In exchange, the school system was to receive an alternative site for its vehicle maintenance functions, possibly with a substantial cash consideration and site improvements. We understand that this project has not moved forward at this writing because of issues related to the design of stormwater management facilities.
- *Frederick County Public Schools (FCPS)* will not use any alternative financing approach in the foreseeable future to build a school facility: they wrote in August 2005 that “public financing is judged to be least expensive for long term project financing.” However, the school system is in the process of implementing an alternative financing arrangement for a proposed central administration office in the City of Frederick that will consolidate functions now housed in four inefficient buildings located several miles apart. Although Frederick County did not want to issue debt for the project, the County and Board agreed that the new administrative building could be funded through the Board’s operating budget.

An original concept, in which a developer would build and lease the facility to the Board, was rejected because the developer would not have access to tax-exempt debt and the property would be subject to real property taxation. Instead, the Board will execute a tax-exempt lease-purchase agreement that will fund land acquisition from the City of Frederick, construction of the project, contingencies, and costs of closing. The Board will ground-lease the land for 40 years to the selected lease provider, which will in turn leaseback the land and the building, once constructed, for 25 or 30 years to the Board.

⁴

A Powerpoint presentation on this project is available on request

The transaction will be structured as a conditional purchase agreement, whereby the Board will own the property at the end of the 25 or 30 years. Purchase installments, which will be considered a current expense of the Board subject to non-appropriation and not as debt, will have a principal and interest component. The interest will reflect tax-exempt rates that are approximately 30-40 basis points over general obligation debt, due to the non-appropriation risk and the illiquidity of the lease purchase agreement.

Advantages that FCPS sees in this arrangement are:

- The 40-year ground lease enables the lease provider to realize the economic value of the property in the event that the Board of Education does not appropriate funds to make the purchase installments.
- The arrangement overcomes several obstacles, including County constraints on issuance of debt for the administration building, the inability of the Board to issue debt on its own or secure real estate with a deed of trust, and the requirement of the Board and the County that payments fall within preconceived limits.
- While the interest component of the purchase installments is above what the County would have paid had it agreed to issue general obligation debt, issuance costs are lower. In addition, the occupancy cost will be significantly lower than if a developer had built and leased the building directly to the Board of Education.

In December 2006, FCPS issued a Request for Proposals (RFP) for design-build services for a new building, with alternates regarding the size of the building (75,000 or 90,000 square feet) and the extent to which it would be finished and furnished. Technical proposals from five entities were received, of which three were invited by the Evaluation Committee to submit cost proposals. One proposal submitted by a local team was approved by the Board of Education on June 27, 2007, conditional on the successful financing of the project. FCPS intends to award the contract in late August or early September, subject to 1) Subdivision of the lot that FCPS has contracted to purchase and acquisition of the lot in fee simple, and 2) Receipt and evaluation of bond financing proposals from banks and other institutions. FCPS had used an outside consultant, The Staubach Company, to gauge the interest of financing entities and to issue the solicitation for bond financing once a settlement date for the lot has been established.

- *Montgomery County Public Schools (MCPS)* investigated an arrangement with private developers to relocate an outdated and inadequate Central Warehouse Facility from a residentially zoned section of the Rockville Town Center to a new proposed industrial park. With appropriate density, the development value of the current warehouse site was estimated to be sufficient to offset the purchase for the new location as well as approximately 75% of the cost of the new facility. MCPS worked with the City of Rockville to increase the zoning density for the warehouse property to make the project cost neutral. However, since the City did not accept the proposed densities, MCPS reports that it is now studying other approaches to its warehouse relocation issue.

Alternative Funding

Three school districts, two of which express no current interest in alternative financing, are using or exploring alternative *funding* mechanisms to build public school facilities. In alternative funding, construction monies are provided from a third source – private developer, private foundation, non-profit organization, grants – to replace part or all of the local obligation for a project. The county may use conventional general obligation bond revenues for the balance of their obligation, and the project is procured and delivered through conventional means, with the addition of State funds if the project is approved through the CIP process. Three current examples are provided below:

- *Frederick County Public Schools* currently has three projects that have been or are using alternative funding sources:
 - A wing for a new high school is being funded entirely by a private developer to allow housing projects to move forward against an APFO restriction. The project, which has been designed and procured according to FCPS standard methodologies, will open in phases, with the first phase to be complete for the beginning of the 2007-08 school year and the second phase for the second half of the school year. Funds were accessed by FCPS through a line of credit.
 - An earth-space science laboratory is being partly funded through private donations. This highly popular program, which is attended by every elementary school child in the school system, has been housed in an obsolete wing of an existing school in Frederick City. The replacement structure will be co-located on the same site with the school, which is scheduled for renovation.
 - An addition to a middle school that opened in September 2006 received 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 agreed to pay the interest for up to seven years on the funds that the County borrowed to substitute for the State share it anticipated receiving through the CIP approval process. If State funds had not been received at the end of seven years, the county agreed to assume the interest payments from the developer. However, State funding for the project was completed in FY 2008, releasing the developer from the obligation.
- *Garrett County Public Schools* has received planning approval and construction funding for an addition to Grantsville Elementary School that will include spaces for both kindergarten and a Head Start program. The latter portion of the addition is funded by a federal Community Development Block Grant (CDBG) secured by Community Action, a local non-profit entity. This approach mirrors projects carried out elsewhere that used funds from public sector entities or non-profits, e.g. the Maryland-National Capital Park and Planning Commission in Prince George's County, to build facilities that provide services to the public in the same facility that houses a school. The approach reinforces the identity of the school as a community center.
- *Washington County Public Schools*. In 2002 a community group approached WCPS to build a stadium and track for North Hagerstown High, which did not have a stadium and shared facilities with South Hagerstown High School. The community group obtained \$3,500,000 in pledges and donations for design and construction

costs in the form of funds and in-kind donations from private and corporate donors, contractors and suppliers, the State's Program Open Space fund, the City of Hagerstown, and State general obligation bond proceeds (outside of the Public School Construction Program). On the basis of pledges for future and periodic donations secured by the community group, the County Commissioners have provided interim cash flow and financing for the project.

The project, now substantially complete, has been delivered through a Construction Management Agency method using competitive sealed bidding of trade contractors. Using this project as a model, the Board is encouraging other community groups to develop similar cooperative projects.

The use of historic tax credits can also be considered a form of alternative project funding. As described above, both the Baltimore School for the Fine Arts and the Barbara Ingram School for the Arts have used or propose to use historic tax credits for the renovation of facilities. Since these credits are only available to private entities, access to them requires establishing a third party, typically a non-profit 501(c)3 corporation, as intermediary. There are few school buildings in Maryland that are eligible for historic designation, but this source of funding can be considered in unique circumstances.

Project Procurement

Competitive sealed bidding remains the preferred procurement method among the LEAs for construction services. The method has the advantage of complete objectivity, since selection is based on a single factor, price. The simplicity and transparency of the method are also attractive. A major drawback, however, is the potential for costs submitted to be substantially higher than the budget allows, because estimates by the owner, architect, or even professional estimator may not reflect the precise bid climate that prevails on the bid day. If costs are high relative to budget, the owner has three options, all unattractive: seek additional funds from the local fiscal authority; re-bid the project with the same scope, with the risk that market conditions may be even worse on the new bid day; or re-scope the project, incurring substantial delays and again with no assurance about the condition of the bidding market on a now distant bid day.

A second drawback to this procurement method is that a bidder who has not adequately covered the project scope will have a strong incentive to reduce quality during construction. Both problems increase during a time of rapid construction escalation, since the bidder must shoulder enormous cost risks, particularly for items or systems that have volatile pricing, e.g. petroleum-based products, or that have very long lead times, e.g. mechanical equipment and windows. The adversarial relationship between owner and contractor can result in large change orders or lack of accountability for schedule delays. While payment and performance bonds, required of all general contractors and of major subcontractors in some jurisdictions, alleviate some of these risks, dissatisfaction with this form of security has increased due to the slowness of the cure process and, in a few instances, the refusal of sureties to cure the defaults of their bond holders. General experience indicates that institutionalized security can only supplement, not substitute for, the experience, integrity, and personal commitment provided by a good contractor.

As a result of the liabilities inherent in competitive sealed bidding, a number of jurisdictions have embraced the multi-step sealed bid process, which requires 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, particularly with respect to change orders, schedule adherence, and a general improvement in teamwork and professionalism. School systems that use this method report a high level of satisfaction with the results, and the PSCP actively promotes the use of the approach whenever it is realistic. However, in locations where the supply of contractors and subcontractors is thin, there is concern that use of a method of selection based on any factor other than cost will diminish future competition by shrinking “an already small pool of prospective bidders. If, for example, the same electrical contractor was selected based on quality of bid rather than price, other prospective electrical bidders may stop coming to the table.”⁵

Montgomery County Public Schools uses a variant of the multi-step sealed bid process in which contractors are pre-qualified for groups of projects based on their past experience with projects of similar size. MCPS typically has three categories of projects, those below \$3 million, those between \$3 million and \$15 million, and those over \$15 million. These amounts are adjusted for inflation each year. In addition, MCPS uses a project-specific pre-qualification process for the major bidders on trades that will be assigned to a Construction Manager At-Risk (CMR) for its major building projects (see below).

Competitive negotiation, in which a vendor is selected based initially on qualifications followed by negotiation over scope of services and cost, continues to be the preferred method of obtaining professional design and construction management agency (i.e., not at-risk) services. In these areas of professional practice, quality of service is a paramount concern and the measures of successful service are less objective than “bricks and mortar.” While there is still hesitation to pay more than the lowest price for hard construction costs, competitive negotiation substitutes the concept of “best value” for “best price,” under the argument that a well-constructed, professionally delivered facility will ultimately be of greater value, and potentially of less cost, to the public than one that is fraught with defects and has been built through a contentious and possibly litigious process. Competitive negotiation is the only procurement method that seems reasonable when the project is at less than 100% completion of design on the date of award, for example in the Design-Build or Construction Management At-Risk delivery methods, because it allows the owner to work with the constructor and others to arrive at the scope of services and project scope that fit the budget objectives.

To date, *Prince George’s County Public Schools* and *Dorchester County Public Schools* have considered the use of competitive negotiation for at-risk construction services, both in relation to the Construction Management At-Risk project delivery method. In a thorough and highly objective process, PGPCS used a team-evaluation approach and a point system to determine the rank of the offerors before consideration of their price offers for a major high school replacement project. The awarded scope of services includes pre-construction services and construction management activities. Since the project is in the design phase, the Guaranteed Maximum Price (GMP) has not been established. PGPCS intends for the individual trade packages, procured through a competitive sealed bid approach, to be assigned to the CMR, so that the entirety of the construction value will have been awarded either through competitive negotiation or through competitive sealed bid. Under the regulations that govern delivery of public school construction projects (COMAR 23.03.04), this approach avoids the necessity for the LEA to re-solicit the entire GMP, a procedure that could possibly result in engagement of a different CMR during the construction phase from the CM which provided services during pre-construction.

⁵ Joseph Price, Facility Planner, Worcester County Public Schools, email dated August 1, 2007.

Maryland has seen an increase in intergovernmental purchase agreements for school construction projects, a process in which an LEA procures construction services through another governmental agency's previously competed contract with a vendor. The method appears to work best for small projects that involve very uniform materials, standard construction details, and extensive, multi-project scopes, such as roofing and paving. *Baltimore County Public Schools* has procured roofing replacements through the Pennsylvania Education Joint Purchasing Council (PAEJPC), a member of the twenty-two state Association of Educational Purchasing Agencies (AEPA). The AEPA solicits bids for products and services through national advertisements and awards to the lowest, responsible, and responsive bidder. PAEJPC members who use the program benefit from the ability to pick from quality contractors at pre-established bid prices for any type of roofing system. Since members do not have to solicit their own bids, project approval times can be significantly reduced. All multi-state vendors are fully bonded and have met the bidding requirements for various states. BCPS reports that it has enjoyed guaranteed, quality workmanship overseen by the PAEJPC, and that the ability of the roofing services vendor to pick qualified roofing contractors has provided an almost risk-free roof replacement program. The services that are currently being provided include full time project management, saving roofing inspector man-hours for the school system.

Project Delivery

With the high level of State and local funding now dedicated to school construction, project procurement has become a lively arena for investigating new methods and discussing lessons learned. Project delivery affects every aspect of the project: the design approach, the schedule, the costs, the quality, and ultimately the satisfaction of the owner and the building's users. On September 11, 2007, the Public School Construction Program led a discussion among LEA facility planners to assess their current perceptions of the advantages and disadvantages of the various delivery methods described below. While experiences vary widely, there is a growing sense that the Construction Management At-Risk (CMR) delivery method offers schedule, cost, teamwork, and risk advantages that make it an attractive alternative to more traditional approaches. This trend, which has only been made possible because of the 2004 legislation that liberalized project procurement requirements, will be studied closely by the PSCP to see if the proposed advantages of the method indeed are achieved.

General Contracting (GC) remains the project delivery method used for the majority of public school construction projects. It is appropriate for straightforward projects in which the design is fully complete 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. Most school systems pre-qualify their bidders; however, since the capacity of most LEAs to conduct in-depth investigations into contractors' experience and qualifications is highly constrained by their limited staff and time, the ability of the contractors to obtain bonding stands as a substitute for other, more complex pre-qualification criteria. Unfortunately, experience shows that bonding can be easily obtained by contractors who later prove to be irresponsible, under-qualified, or unresponsive, and that bonding does not always provide sufficient protection to the owner in the event of contractor default. The result has been, in some cases, excessive change orders, poor coordination among subcontractors, and deficient quality requiring extensive close-out corrections and proceedings. In these circumstances, the architect as agent to the owner and author of the construction documents is frequently placed in an adversarial role against the contractor, a time-consuming situation that works at odds with the concept of a team approach. Consequently, some LEAs have moved toward other forms of project delivery, as well as to the use of the multi-step competitive sealed bid approach in order to pre-qualify general contractors for specific projects or types of projects.

Construction Management Agency (CMA), in which the LEA holds multiple trade contracts but engages a professional construction manager to provide pre-construction consultation as well as construction-phase management services, has in the last ten years joined general contracting as a conventional project delivery approach for Maryland public schools. The method continues to gain ground, even in remote parts of the state where the increased staff involvement that this method requires is not readily available, and some school systems, for example *Howard County Public Schools* and *Anne Arundel County Public Schools*, use it for all or almost all their major projects. The reason for this change lies, we believe, in the extraordinary number of bidding opportunities that have been available in recent years to general contractors in the private and federal sectors in the Washington-Baltimore region, often making it difficult for school projects in general, and school projects in remote areas in particular, to receive sufficient competition. Since CMA allows local trades to bid directly on projects, the owner and CM can reach out to smaller trade contractors who otherwise would only participate through a general contractor. Depending on the local capacity in a particular trade, the results have been very mixed, but the method allows the owner to re-bid specific trade packages when the initial solicitations do not deliver sufficient competition. The method also allows the owner to break up trade packages into smaller components, making them more accessible to firms with lower bonding capacity, increasing the participation of small and disadvantaged contractors.

CMA is also attractive because the constructor is not in an adversarial relation to the owner and therefore can act as an extension of staff, a point that is particularly important for large jurisdictions executing multiple projects, or for small jurisdictions with severe staff limitations. *Worcester County Public Schools* writes:

“WCBOE Facilities Department consists of one individual. This staffing makes the use of construction management (agency) delivery method invaluable. CM is responsible for execution of the work and management of the prime contractors reducing the amount of project oversight required of the Facilities Department as compared to general contractor method.”⁶

Experience indicates that the most important common factor in projects that have used CMA successfully is the experience and commitment of the construction management firm itself, implying that selection of the CM needs to be done carefully and using well-tested procurement instruments that fully define the scope of services that are expected to be provided. The negative aspect of CMA is that the construction manager, as agent to the owner but not holder of trade contracts, is not at risk for schedule, cost, or quality. LEAs that like this method have tended to use the same construction management firms for repeat projects, building up a solid client-consultant relationship and mitigating problematic projects with those that run smoothly and profitably. There have been instances, however, in which LEAs experienced excessive CMA fees when projects were extended past their completion dates due to bankruptcy or other performance issues among the trade contractors. LEAs also report that not being at risk, CMAs appear to be less inclined to fight for the owner’s interests in disputes with the trade contractors, and to demand the level of accountability and contract follow-up necessary to maintain the schedule.⁷ Just as CMA procurement needs to ensure that the construction manager is capable of forcefully managing the project with the owner’s interests in mind, CMA contracts need to be

⁶ Joseph Price, Facility Planner, Worcester County Public Schools, email dated August 1, 2007

⁷ Brian Foret, Director of Facilities Services, Wicomico County Public Schools, email dated September 5, 2007

written very carefully in order to limit the liabilities of the LEA in the event of unforeseen conditions, an extended schedule, or trade contractor default.

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. Since this approach works best if the GMP can be negotiated between the owner and the CM, it was not widely used for public schools in Maryland before the Public School Facilities Act of 2004 enabled the use of competitive negotiation for project procurement. It is frequently stated that CMR combines the advantages and corrects the deficiencies of both the General Contracting and the Construction Management Agency delivery methods: it establishes a single point of responsibility, the CMR, which carries all risk for the project schedule and cost, but it allows the constructor to be deeply involved in the design process in order to tailor the project scope to the approved budget *before* the owner is obligated to make a decision to proceed. When selection is based on competitive negotiation, the CMR's qualifications, including previous experience with similar projects and their overall record of responsibility, integrity, and responsiveness, can play a very large role in the procurement process. LEAs anticipate that these factors will improve the teamwork on the project, an element that is critical to smooth project delivery and that can often be instrumental in avoiding the misunderstandings that generate unnecessary costs.

- *Dorchester County Public Schools* has solicited CMR services for replacement of a Career and Technology High School facility. The school system intends to solicit the trade packages through competitive sealed bid. The facility planner for the system, who has extensive private-sector experience with a variety of delivery methods, writes:

“[We] are convinced that CM at Risk is the best delivery method to control cost, schedule, engender a team approach to the project and ultimately to deliver a high quality, well thought out facility that will stand the test of time. The project team has the incentive to pursue both quality and profit in an atmosphere of trust and mutual respect. The owner mitigates the risk on the front end by knowing the “price tag” for a given scope at the outset.”⁸

- *Montgomery County Public Schools* has used a modified form of the CMR approach, in which the LEA procures certain major trades independently through a multi-step sealed bid process, and then assigns them to the CMR as part of the GMP. The balance of the trade packages are procured through either competitive sealed bid or targeted solicitation, both of which establish an acceptable level of competition.
- *Prince George's County Public Schools* has obtained pre-construction and construction-phase services for a major high school replacement project through a process of competitive negotiation that was exceptionally objective (see above). The CMR will present the GMP during the Design Development phase, i.e., at approximately 50% to 70% of design completion. The trade packages will be procured through competitive sealed bidding, obligating the CMR to re-bid or re-scope individual packages as necessary in order to bring costs within the GMP.

⁸ Christopher Hauge, School Facilities Engineer, Dorchester County Public Schools, email dated July 24, 2007

- *Wicomico County Public Schools* has indicated its intention to use CMR for the delivery of a major high school replacement, and is currently investigating the procurement and contractual procedures that are required under COMAR.

Design-Build (DB), in which a single entity is responsible for both design and construction of the project, has been used only 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. This is partly due to the increased management responsibilities placed on the owner, requiring qualified owner staff or contracted outside services. In addition, there are 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 2005 experience, the constructor wing of the DB entity refused to honor its initial cost estimate for a major project because of cost escalation, and withdrew from the project just before construction was to begin. 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 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. It can be used with a design-build approach, for example with mechanical system retrofits that are relatively small in scope but require initial investigation to uncover existing conditions and arrive at the best solution. With the exception of a locally-funded science classroom renovation project in Prince George's County, no school system has used this method to build a major project. *Montgomery County Public Schools* writes that "for most systemic projects, it is less expensive to do public bids with defined scopes and drawings."⁹

CONCLUSION

Following enactment of the Public School Facilities Act of 2004, the private sector was active in soliciting the interest of school boards and county governments to use alternative financing arrangements for school construction. To date, the response of the LEAs has been largely tentative: many are interested, but almost all 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. The Barbara Ingram School for the Arts project in Washington County may well serve as the test case that will encourage other LEAs to investigate alternative financing for their school construction tasks. Meanwhile, interest on the part of both the LEAs and the private sector entities appears to have shifted toward the construction of central administration facilities.

While interest in alternative financing remains hesitant, the liberalized procurement and project delivery 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 construction to the Construction Management At-Risk project delivery method, which has been used successfully in the private sector. Through these techniques and through access to potential private capital, the range of tools available to

⁹ James Song, Director, Division of Construction, Montgomery County Public Schools, letter dated August 2, 2007

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. 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.
- (b) 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.*

B. COMAR 23.03.03 – 23.03.05: Regulations on Public School Construction Procurement, Project Delivery, and Alternative Financing
(see also COMAR 23.03.01 and 23.03.02, Terminology and Public School Construction Program)

23.03.03 Construction Procurement Methods

Authority: Education Article, §§4-126, 5-112, and 5-301, Annotated Code of Maryland

.01 Scope.

- A. This chapter applies to a public school construction project for building, improvement, supplies, or equipment if it:
 - (1) Exceeds \$25,000 and has Board of Public Works planning or funding approval; or
 - (2) Requires review by the State Superintendent of Schools under Education Article, §2-303, Annotated Code of Maryland.
- B. This chapter does not apply to a project in a building that is not used primarily for the instruction of students, including an office building, warehouse, or vehicle maintenance or repair building.
- C. In this chapter, "IAC or its designee" includes "State Superintendent or designee" when State Superintendent approval is required by Education Article, §2-303(f), Annotated Code of Maryland.

.02 Project Procurement Proposal Review Assistance.

The State Superintendent or designee may request assistance from the IAC or its designee when reviewing project procurement proposals.

.03 Methods of Source Selection.

Unless otherwise authorized, school construction procurement contracts shall be awarded by one of the following methods:

- A. Competitive sealed bidding, including competitive multistep sealed bidding;
- B. Quality-based selection;
- C. Competitive negotiation;
- D. Unsolicited proposals;
- E. Intergovernmental cooperative purchasing;
- F. Sole source; or
- G. Negotiated award after unsatisfactory competitive sealed bidding.

.04 Choice of Method.

- A. Except as this regulation otherwise provides, an LEA shall use competitive sealed bidding.
- B. Quality-Based Selection; Competitive Negotiation; Unsolicited Proposals.
 - (1) An LEA may use quality-based selection or competitive negotiation or accept an unsolicited proposal in order to finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction.
 - (2) An LEA intending to use quality-based selection or competitive negotiation or to pursue an unsolicited proposal shall:
 - (a) Present a written determination that the circumstances listed in §B(1) of this regulation exist; and
 - (b) Obtain authorization from the IAC or its designee.
- C. An LEA may use intergovernmental cooperative purchasing when the circumstances set forth in Regulation .11B of this chapter exist.
- D. Sole Source.
 - (1) If the LEA determines that a competitive source selection method cannot be used because there is only one available source for the subject of the procurement, the LEA may award a contract without competition to the sole source.
 - (2) An LEA intending to use sole source selection shall present a written determination that the circumstances listed in §B(1) of this regulation exist.
- E. An LEA may use negotiated award after unsatisfactory competitive sealed bidding when the circumstances set forth in Regulation .14A of this chapter exist.

.05 Approvals.

- A. IAC or designee authorization to use quality based selection or competitive negotiation or to pursue an unsolicited proposal is distinct from IAC or designee approval of project planning and funding. If the IAC or designee approves the project for use of a competitive negotiation method but does not approve the project for planning, the project may proceed as a locally funded project.
- B. The LEA shall obtain State approval before entering into an alternative financing method as set forth in COMAR 23.03.05

- C. The LEA shall obtain State approval of each construction contract.

.06 Other Requirements.

- A. All projects shall comply with State procedures and requirements for educational and design review.
- B. Regardless of project procurement method, the LEA may not begin construction until the IAC or its designee has authorized the LEA to proceed.
- C. Project Delivery Methods. The requirements of COMAR 23.03.04 apply to procurements conducted in accordance with this chapter.
- D. Minority Business Enterprise (MBE). The State's minority business enterprise program applies to procurements conducted in accordance with this chapter that the State funds in whole or part.
- E. Prevailing Wage. To the extent required by law, the State's prevailing wage requirements apply to procurements conducted in accordance with this chapter that the State funds in whole or part.
- F. Debriefing and Protests.
 - (1) The LEA shall establish procedures by which unsuccessful bidders and offerors may be debriefed upon written request within a reasonable time by a procurement official familiar with the rationale for the selection decision and contract award.
 - (2) The LEA shall establish procedures by which an interested party may file a protest relating to the solicitation or award of a procurement contract.
- G. If a single bid or offer is submitted following appropriate notification and solicitation procedures, the LEA may award the contract to the single bidder or offeror if the bid or offer is determined responsible and responsive.

.07 Competitive Sealed Bidding — One Step Sealed Bidding.

- A. Prequalification. The LEA may establish procedures to ensure that bidders are responsible. The LEA may require a bidder to be prequalified according to LEA procedures before submitting a bid.
- B. Invitation for Bids.
 - (1) The invitation for bids shall be used to initiate a competitive sealed bid procurement.
 - (2) The invitation for bids shall include:
 - (a) Instructions and information concerning bid submission requirements including the date, time, and place for receipt of bids;
 - (b) Whether electronic bids will be accepted;
 - (c) Specifications or drawings or both that clearly and accurately describe the functional characteristics of or the nature of the work to be procured;
 - (d) The delivery or performance schedule;
 - (e) MBE goals, if applicable;
 - (f) Prevailing wage requirements, if applicable;
 - (g) Requirement that bidders acknowledge receipt of each amendment and addendum issued;
 - (h) Requirement for submission of bid bond;
 - (i) Information with respect to prebid conference if a conference is to be held;
 - (j) Requirement for submission of bid affidavit; and
 - (k) Any other information the LEA requires.
- C. The LEA shall obtain approval from the IAC or its designee before issuing the invitation for bids.
- D. Public Notice. The LEA shall publish notice of an invitation for bid at least 14 calendar days before the bid due date in:
 - (1) eMaryland Marketplace;
 - (2) An electronic posting or a physical posting on the LEA's bid board; or
 - (3) A newspaper of general circulation in the LEA's region.
- E. Bid Receipt, Opening, Disclosure.
 - (1) Upon its receipt, each bid shall be stored in a secure place until the time set for bid opening.
 - (2) Bids shall be opened publicly in the presence of at least one LEA employee and read aloud at the time, date, and place designated in the invitation for bids, or are to be made available to the public through a method in accordance with local policy and procurement practice. The name of each bidder, the bid price, and other appropriate information shall be read aloud or otherwise made available. This information shall be recorded at the time of bid opening. The bids shall be tabulated or a bid abstract made.
 - (3) Opened bids shall be available for public inspection at a reasonable time after bid opening and before contract award. Bidders may designate trade secrets, financial data, or other proprietary data as confidential; material so designated shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. The LEA shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. All information submitted by bidders is subject to State and local public disclosure laws.
- F. IFB Cancellation; Bid Rejection; Irregularities.
 - (1) Before opening of bids, the LEA may cancel the invitation for bids in whole or in part if the LEA determines that the cancellation is fiscally advantageous or otherwise in its best interest.

- (2) After opening of bids but before award, the LEA may reject all bids in whole or in part if the LEA determines that the rejection is fiscally advantageous or otherwise in its best interest.
- (3) The LEA may reject any bid in whole or in part if it is in the LEA's best interest to do so. Reasons for rejecting a bid may include that the bidder is not responsible, that the bid is not responsive, that the price is unreasonable, or that the bidder is debarred or otherwise ineligible.
- (4) Irregularities.
 - (a) Minor, Material; Correction.
 - (i) The LEA may permit a bidder to correct a minor irregularity or may waive a minor irregularity. A minor irregularity is one that is merely a matter of form and not of substance or pertains to an immaterial or inconsequential defect or variation in a bid, the correction or waiver of which would not be prejudicial to other bidders.
 - (ii) The LEA may not waive or permit a bidder to correct a defect or variation in a bid that is material as to price, quantity, quality, or delivery.
 - (b) Up to and including the time for bid opening, a bidder may correct a defect or variation with respect to:
 - (i) Bid bond;
 - (ii) Acknowledgment of addenda; or
 - (iii) MBE submission materials.
 - (c) After bid opening, the LEA may not waive or permit a bidder to correct a defect or variation with respect to these requirements unless the defect or variation is determined to be minor and does not affect the competitiveness of the bid.
- G. Bid Evaluation and Award.
 - (1) The LEA shall award the contract to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the invitation for bids and is the most favorable bid.
 - (2) The LEA may not evaluate a bid for any criterion that is not disclosed in the invitation for bids.
- H. Single Bidder. If after proper publication of invitation for bid and proper bid opening, the LEA receives one responsive bid, the LEA may:
 - (1) Award the contract to the single responsible bidder; or
 - (2) Reissue the invitation for bid.

.08 Competitive Sealed Bidding — Multistep Sealed Bidding.

- A. General.
 - (1) Competitive sealed bidding may be conducted through multistep sealed bidding.
 - (2) Multistep sealed bidding is a multiphase process in which bidders submit a technical offer (statement of qualifications) and a second phase in which those bidders who are determined qualified during the first phase may have price bids considered.
- B. Request for Qualifications.
 - (1) The request for qualifications is used to initiate a competitive two-step sealed bid procurement.
 - (2) The request for qualifications shall set forth the factors by which the bidder's qualifications will be evaluated.
 - (3) Evaluation Factors shall include:
 - (a) Bidder's understanding of the scope and schedule of the work;
 - (b) Bidder's prior experience with projects of similar size and scope, and if bidder is a joint venture, experience of at least one of the members of the joint venture entity;
 - (c) Bidder's plan for management of the project, and the organizational structure proposed for the project;
 - (d) Experience of bidder's individual staff members with projects of similar size and scope;
 - (e) MBE plan, if applicable; and
 - (f) Other factors that the LEA sets forth.
 - (3) The request for qualifications shall set forth the minimum standards that a bidder shall meet to be found qualified.
 - (4) The request for qualifications may include information concerning the project scope, schedule, MBE, and prevailing wage as the LEA considers appropriate.
- C. Public Notice. The LEA shall publish notice of a request for qualification at least 14 calendar days before the technical-offer due date in:
 - (1) eMaryland Marketplace;
 - (2) An electronic posting or a physical posting on the LEA's bid board; or
 - (3) A newspaper of general circulation in the LEA's region.
- D. Qualifications Evaluation.
 - (1) The LEA shall evaluate the bidder's qualifications to determine whether the bidder meets the minimum qualification standards.
 - (2) The LEA shall compile a list of bidders that are determined to meet the minimum qualification standards. Only the bidders on that list shall be permitted to submit bids.
 - (3) Interviews may be conducted as a component of the qualifications process.
- E. Invitation For Bids.

- (1) After preparing the list of qualified bidders, the LEA may issue an invitation for bids to all bidders on that list.
 - (2) The invitation for bids shall include:
 - (a) Instructions and information concerning bid submission requirements including the date, time, and place for receipt of bids;
 - (b) Whether electronic bids will be accepted;
 - (c) Specifications, drawings, or both, that clearly and accurately describe the functional characteristics of or the nature of an item to be procured;
 - (d) The delivery or performance schedule;
 - (e) MBE goals, if applicable;
 - (f) Prevailing wage requirements, if applicable;
 - (g) Requirement that bidders acknowledge receipt of each amendment and addendum issued;
 - (h) Requirement for submission of bid bond;
 - (i) Information with respect to pre-bid conference if a conference is to be held;
 - (j) Requirement for submission of bid affidavit; and
 - (k) Any other information the LEA requires.
 - (3) The LEA shall obtain approval from the IAC or its designee before issuing the invitation for bids.
- F. Bid Receipt and Opening; Disclosure.
- (1) Upon receipt, each bid shall be stored in a secure place until the time set for bid opening.
 - (2) Bids shall be opened publicly in the presence of at least one LEA employee and read aloud at the time, date, and place designated in the invitation for bids. The name of each bidder, the bid price, and other appropriate information shall be read aloud or otherwise made available. This information shall be recorded at the time of bid opening. The bids shall be tabulated or a bid abstract made.
 - (3) Opened bids shall be available for public inspection at a reasonable time after bid opening and before contract award. Bidders may designate trade secrets or other proprietary data as confidential; material so designated shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. The LEA shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. All information submitted by bidders is subject to State and local public disclosure laws.
- G. IFB Cancellation; Bid Rejection; Irregularities.
- (1) Before opening bids, the LEA may cancel the invitation for bids in whole or in part if the LEA determines that the cancellation is fiscally advantageous or otherwise in its best interest.
 - (2) After opening of bids but before award, the LEA may reject all bids in whole or in part if the LEA determines that the rejection is fiscally advantageous or otherwise in its best interest.
 - (3) The LEA may reject any bid in whole or in part if it is in the LEA's best interest to do so. Reasons for rejecting a bid include that the bidder is not responsible, that the bid is not responsive, that the price is unreasonable, or that the bidder is debarred or otherwise ineligible.
 - (4) Irregularities.
 - (a) Minor, Material; Correction.
 - (i) The LEA may permit a bidder to correct a minor irregularity or may waive a minor irregularity. A minor irregularity is one that is merely a matter of form and not of substance or pertains to an immaterial or inconsequential defect or variation in a bid, the correction or waiver of which would not be prejudicial to other bidders.
 - (ii) The LEA may not waive or permit a bidder to correct a defect or variation in a bid that is material as to price, quantity, quality, or delivery.
 - (b) Up to and including the time for bid opening, a bidder may correct a defect or variation with respect to:
 - (i) Bid bond;
 - (ii) Acknowledgment of addenda; or
 - (iii) MBE submission materials.
 - (c) After bid opening, the LEA may not waive or permit a bidder to correct a defect or variation with respect to these requirements unless the defect or variation is determined to be minor and does not affect the competitiveness of the bid.
- H. Bid Evaluation and Award.
- (1) The LEA shall award the contract to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the invitation for bids and is the most favorable bid.
 - (2) The LEA may not evaluate a bid for any criterion that is not disclosed in the invitation for bids.
- I. Single Bidder. If after proper publication of invitation for bid and proper bid opening, the LEA receives one responsive bid, the LEA may:
- (1) Award the contract to the single responsible bidder; or
 - (2) Reissue the invitation for bid.

.09 Quality-Based Selection.

- A. General. Quality-based selection means a method of source selection based on a combination of qualification and cost factors.
- B. Request for Proposals.
- (1) The request for proposals is used to initiate a quality-based selection procurement.
 - (2) The request for proposals shall include:
 - (a) Instructions and information concerning proposal submission requirements including the date, time, and place for receipt of proposals;
 - (b) Whether electronic proposals will be accepted;
 - (c) Specifications, drawings, or both, that clearly and accurately describe the functional characteristics of or the nature of the work to be procured, delivery or performance schedule, and any special instructions;
 - (d) The evaluation factors and an indication of the relative importance of each evaluation factor including price;
 - (e) MBE goals, if applicable;
 - (f) Prevailing wage requirements, if applicable;
 - (g) Information with respect to preproposal conference if a conference is to be held;
 - (h) Requirement for submission of proposal affidavit;
 - (i) Requirement that offerors acknowledge receipt of each amendment and addendum issued;
 - (j) Requirement for submission of bid bond; and
 - (k) Any other information the LEA requires.
 - (3) LEAs may request that qualification factors in the proposal be submitted separately from price information.
 - (4) The LEA shall obtain approval from the IAC or its designee before issuing the request for proposal.
- C. Public Notice. The LEA shall publish notice of a request for proposals at least 14 calendar days before the proposal due date in:
- (1) eMaryland Marketplace;
 - (2) An electronic posting or a physical posting on the LEA's bid board; or
 - (3) A newspaper of general circulation in the LEA's region.
- D. Proposal Receipt. The LEA shall keep submitted proposals in a secure place until the due date. Proposals may not be opened publicly but shall be opened in the presence of at least two LEA employees.
- E. Proposal Disclosure. Offerors shall indicate clearly the portions of their proposals that they consider confidential information. All information submitted by offerors is subject to State and local public disclosure laws.
- F. Proposal Evaluation.
- (1) The LEA shall evaluate the proposal based on the evaluation factors set forth in the request for proposals.
 - (2) Evaluation factors shall include:
 - (a) Offeror's understanding of scope of the work;
 - (b) Offeror's prior experience with projects of similar size and scope, and if offeror is a joint venture, experience for at least one of the members of the joint venture entity;
 - (c) Offeror's plan for management of the project and organizational structure proposed for the project;
 - (d) Experience of offeror's individual staff members with projects of similar size and complexity;
 - (e) MBE plan, if applicable;
 - (f) Other qualification factors that the LEA sets forth; and
 - (g) Price.
 - (3) Interviews may be conducted as a component of the qualification process.
- G. IFB Cancellation; Proposal Rejection; Irregularities.
- (1) Before opening of proposals, the LEA may cancel the request for proposals in whole or in part if the LEA determines that the cancellation is fiscally advantageous or otherwise in its best interest.
 - (2) After opening of proposals but before award, the LEA may reject all proposals in whole or in part if the LEA determines that the rejection is fiscally advantageous or otherwise in its best interest.
 - (3) The LEA may reject any proposal in whole or in part if it is in the LEA's best interest to do so. Reasons for rejecting a proposal include that the offeror is not responsible, that the proposal is not susceptible of award, that the price is unreasonable, or that the offeror is debarred or otherwise ineligible.
 - (4) Irregularities.
 - (a) Minor, Material; Correction.
 - (i) The LEA may permit an offeror to correct a minor irregularity or may waive a minor irregularity. A minor irregularity is one that is merely a matter of form and not of substance or pertains to an immaterial or inconsequential defect or variation in a proposal, the correction or waiver of which would not be prejudicial to other bidders.
 - (ii) The LEA may not waive or permit an offeror to correct a defect or variation in a proposal that is material as to price, quantity, quality, or delivery.
 - (b) Up to and including the time for proposal opening, an offeror may correct a defect or variation with respect to:
 - (i) Bid bond;

- (ii) Acknowledgment of addenda; or
 - (iii) MBE submission materials.
 - (c) After proposal opening, the LEA may not waive or permit an offeror to correct a defect or variation with respect to these requirements unless the defect or variation is determined to be minor and does not affect the competitiveness of the bid.
- H. Evaluation and Award.
- (1) The LEA may not evaluate a proposal for any criterion that is not disclosed in the request for proposals.
 - (2) The LEA shall award the contract to the offeror whose proposal is, in the LEA's determination, the highest ranked proposal based on the factors contained in the request for proposals including price.
- I. Single Offeror. If after proper publication of request for proposal and proper proposal opening, the LEA receives one responsive offer, the LEA may:
- (1) Award the contract to the single responsible offeror; or
 - (2) Reissue the request for proposal.

.10 Competitive Negotiation.

- A. Definition.
- (1) In this regulation, the following term has the meaning indicated.
 - (2) Term Defined. Competitive negotiation means a method of source selection that:
 - (a) Permits offerors to demonstrate creativity, experience, and knowledge;
 - (b) Allows offerors to submit proposals that vary widely in scope, cost, and other factors; and
 - (c) Allows negotiating between the LEA and the qualified offerors with the objective that the final proposal be the most advantageous to the LEA.
- B. Request for Proposals.
- (1) The request for proposals is used to initiate a competitive negotiation procurement.
 - (2) The request for proposals shall include:
 - (a) Instructions and information concerning proposal submission requirements including the date, time and place for receipt of proposals;
 - (b) A statement as to whether electronic proposals will be accepted;
 - (c) At a minimum, a general description of the final product or services the LEA seeks;
 - (d) The evaluation factors and an indication of the relative importance of each evaluation factor, including price;
 - (e) A statement that discussions may be conducted with those responsible offerors that submit proposals judged to be in the competitive range, as previously determined by the LEA;
 - (f) MBE goals, if applicable;
 - (g) Prevailing wage requirements, if applicable;
 - (h) Information with respect to preproposal conference if a conference is to be held;
 - (i) Requirement for submission of a proposal affidavit;
 - (j) Requirement that offerors acknowledge receipt of each amendment and addendum issued;
 - (k) Requirement for bid bond, if applicable; and
 - (l) Any other information the LEA requires.
 - (3) The LEA shall obtain authorization from the IAC or its designee before issuing the request for proposals.
- C. Public Notice. The LEA shall publish notice of a request for proposals at least 14 calendar days before the proposal due date in:
- (1) eMaryland Marketplace;
 - (2) An electronic posting or a physical posting on the LEA's bid board; or
 - (3) A newspaper of general circulation in the LEA's region.
- D. Proposal Receipt. The LEA shall keep submitted proposals in a secure place until the due date. Proposals are not required to be opened publicly but shall be opened in the presence of at least two LEA employees.
- E. Proposal Disclosure. Offerors shall indicate clearly the portions of their proposals that they consider confidential information. All information submitted by offerors is subject to State and local public disclosure laws.
- F. Proposal Evaluation.
- (1) LEAs may interview offerors as part of the evaluation process.
 - (2) The LEA shall evaluate the proposals based on the evaluation factors set forth in the request for proposals.
 - (3) The LEA shall evaluate the technical proposals and price proposals independently of each other.
 - (4) Evaluation factors shall include:
 - (a) Offeror's understanding of scope of the work;
 - (b) Advantages of the offeror's proposal to the LEA and to the public in general;
 - (c) Offeror's prior experience with projects of similar size and scope, and if offeror is a joint venture, experience for at least one of the members of the joint venture entity;
 - (d) Offeror's plan for management of the project, and the organizational structure proposed for the project;
 - (e) Experience of offeror's individual staff members with projects of similar size and scope;
 - (f) Financial resources of team and team members;

- (g) MBE plan, if applicable;
 - (h) Price;
 - (i) If applicable, process by which operation and maintenance of the facility will be transferred to the LEA; and
 - (j) Other factors that the LEA sets forth.
- (5) The LEA shall establish a competitive range based on the ratings of each proposal.
- (6) Price may be a component in the first evaluation phase of the request for proposals, but is not required. The LEA may exclude price as a factor in the first phase of the request for proposals in order to assess the range of conceptual options that are available for a particular project.
- G. Negotiations.
- (1) The primary objective of negotiations is to obtain the most advantageous contract for the LEA.
 - (2) The LEA shall undertake negotiations with each offeror in the competitive range. During negotiations, an offeror may revise its proposal.
 - (3) During negotiations, the LEA may establish a final competitive range. The LEA may limit the number of offerors that are included in the final competitive range.
 - (4) After negotiation, the LEA shall give each offeror in the final competitive range the opportunity for a final proposal revision.
- H. Award.
- (1) The LEA shall select the offeror whose proposal is, in the LEA's determination, the most advantageous to the LEA.
 - (2) Before seeking approval of the award from the local board of education, the LEA shall:
 - (a) Discuss the project in an open meeting; and
 - (b) Notify the public as to when the proposed contract will be brought before the board of education for approval.
 - (3) Following approval of the award by the local board of education, the LEA shall prepare and submit to the IAC or its designee a statement that explains why the proposal is the most advantageous. The explanation shall:
 - (a) Describe the proposed scope of work, including alternative financing arrangements, if applicable;
 - (b) Include a cost schedule, indicating the costs associated with various services to be provided by the vendor or phases of the work, and whether those costs are eligible for State reimbursement;
 - (c) Summarize the evaluation system used to select the offeror;
 - (d) Summarize the apparent successful offeror's proposal; and
 - (e) Describe the MBE plan.

.11 Unsolicited Proposals.

- A. Receipt of Unsolicited Proposals; Competing Proposals.
- (1) If an LEA receives a proposal other than one submitted in response to a solicitation and it determines that it is interested in pursuing the unsolicited proposal, the LEA shall:
 - (a) Publish notice that it has received an unsolicited proposal;
 - (b) Briefly describe the nature of the proposal;
 - (c) Give any other interested offeror at least 28 days to submit a competing proposal after the public notice is issued; and
 - (d) Inform the IAC or its designee of its intention and provide a description of the proposed method to procure the project.
 - (2) The unsolicited proposal and any competing proposals shall be in writing and sufficiently detailed to permit the LEA to determine if it is advantageous and should be the basis for a contract award.
- B. Notice. Notices required under this regulation shall be placed in:
- (1) eMaryland Marketplace;
 - (2) An electronic posting or a physical posting on the LEA's bid board; or
 - (3) A newspaper of general circulation in the LEA's region.
- C. If the LEA receives one or more competing proposals, the LEA shall evaluate and negotiate the proposals consistent with Regulations .09F and G of this regulation.
- D. Award.
- (1) The LEA may award a contract that it determines to be advantageous based on an unsolicited proposal or a competing proposal.
 - (2) The LEA shall prepare and submit to the IAC or its designee a statement that explains why the proposal is the most advantageous. The explanation shall:
 - (a) Describe the proposed scope of work or services, including alternative financing if applicable;
 - (b) Include a cost schedule, indicating the costs associated with various services to be provided by the vendor or phases of the work, and whether those costs are eligible for State reimbursement;
 - (c) Summarize the evaluation system used to select the offeror;
 - (d) Summarize the apparent successful offeror's proposal; and

- (e) Describe the MBE plan, if applicable.
- (3) Before seeking approval from the Board of Education, the LEA shall:
 - (a) Discuss the project in an open meeting; and
 - (b) Notify the public as to when the proposed contract will be brought before the Board of Education for approval.

.12 Intergovernmental Cooperative Purchasing.

- A. General. Intergovernmental cooperative purchasing means a method of source selection that permits an LEA to aggregate with other government entities their common requirements for purposes of maximizing economies of scale when soliciting bids or proposals for goods and commodities or to purchase its requirements from another governmental entity's contract if that contract is an intergovernmental cooperative purchasing agreement.
- B. An LEA may use the intergovernmental cooperative purchasing method if it determines that the method:
 - (1) Will provide cost benefits, promote administrative efficiencies, or promote governmental cooperation; and
 - (2) Is not intended to avoid competition.
- C. Types. An LEA may use the following types of intergovernmental cooperative purchasing method:
 - (1) Pooling, a method that includes the following steps:
 - (a) Each participating governmental entity agrees to procure its respective requirements from the successful bidder or offeror;
 - (b) A lead jurisdiction conducts the procurement on behalf of all participants; and
 - (c) Either a master contract award or awards is made by the lead jurisdiction on behalf of all participants or each participant awards its own contract; and
 - (2) Piggybacking, a method wherein an LEA purchases its requirements from another governmental entity's contract if that contract contains an intergovernmental cooperative purchasing clause.

.13 Sole Source.

- A. Sole source procurement is permissible if a requirement is available from only a single vendor.
- B. Examples of circumstances that might necessitate a sole source procurement are as follows:
 - (1) Only one source exists which meets the requirements;
 - (2) The compatibility of equipment, accessories, or replacement parts is the paramount consideration;
 - (3) A sole vendor's item is needed for trial use or testing; or
 - (4) Public or regulated utility services are to be procured and only one source exists.
- C. The LEA shall submit a written sole source justification to the IAC or its designee.

.14 Negotiated Award After Unsatisfactory Competitive Sealed Bidding.

- A. General. An LEA may make a negotiated award after unsatisfactory competitive sealed bidding if, after bids have been opened, the LEA:
 - (1) Rejects all bids pursuant to Regulation .07F(2) or .08G(2) of this chapter; and
 - (2) Determines that:
 - (a) Funding does not permit an award to the lowest responsible and responsive bidder;
 - (b) Any delay resulting from a resolicitation with revised specifications under competitive sealed bidding would be fiscally disadvantageous or would not otherwise be in the best interest of the LEA or the State; or
 - (c) Both.
- B. Invitation for Revised Bids. The LEA shall:
 - (1) Issue an invitation for revised bids based on revised specifications to the original bidders as promptly as possible; and
 - (2) Require a prompt response.
- C. Discussion. Discussion may not be conducted with bidders after revised bids have been submitted unless the LEA determines that there is compelling need for further negotiation. Any discussion concerning revised specifications shall be conducted with all responsible bidders in a fair and equal manner.
- D. Award. The LEA shall award the contract to the lowest responsive and responsible bidder whose bid meets the invitation for revised bids.

23.03.04 Project Delivery Methods

Authority: Education Article, §§4-126, 5-112, and 5-301, Annotated Code of Maryland

.01 Scope.

- A. This chapter applies to a public school construction project for building, improvement, supplies, or equipment if it:
 - (1) Exceeds \$25,000 and has Board of Public Works planning or funding approval; or
 - (2) Requires review by the State Superintendent of Schools under Education Article, §2-303, Annotated Code of Maryland.

- B. This chapter does not apply to a project in a building that is not used primarily for the instruction of students, including an office building, warehouse, or vehicle maintenance or repair building.
- C. In this chapter, "IAC or its designee" includes "State Superintendent or designee" if State Superintendent approval is required by the Education Article, §2-303(f), Annotated Code of Maryland.

.02 Project Delivery Proposal Review Assistance.

The State Superintendent or designee may request assistance from the IAC or its designee when reviewing project delivery proposals.

.03 Methods of Project Delivery.

- A. For a public school construction project, an LEA may use one of the following methods:
 - (1) General contracting; or
 - (2) Alternative project delivery including:
 - (a) Construction management agency;
 - (b) Construction management at risk;
 - (c) Design build; and
 - (d) Job order contracting.
- B. The LEA may use fast track to accelerate project delivery in accordance with Regulation .09 of this chapter.

.04 Other Requirements.

- A. The requirements of COMAR 23.03.03 apply to all projects conducted under this chapter.
- B. All projects regardless of delivery method shall comply with State procedures for project design review.
- C. Regardless of project delivery method, the LEA may not begin construction until the IAC or its designee has authorized the LEA to proceed.
- D. The IAC may specifically designate an individual or group to act on requests, provide the State approvals on behalf of the IAC, or both, as required in this chapter.

.05 Construction Management Agency.

- A. General. Construction management agency (CMA) means a project delivery method in which the LEA:
 - (1) Directly contracts with trade contractors; and
 - (2) Either:
 - (a) Engages a construction manager as its agent to manage the project; or
 - (b) Acts as the construction manager.
- B. Notice to the IAC.
 - (1) Not later than 2 months before the release of the solicitation documents to offerors, the LEA shall provide written notice to the IAC or its designee that the CMA method will be used.
 - (2) The LEA shall acknowledge in the notice that the State is not responsible for any project cost overruns.
- C. The LEA shall disclose in the solicitation documents if the project may be converted to the construction management at risk method or other project delivery method.
- D. State Reimbursement.
 - (1) If the LEA is not acting as construction manager, State funds may be used to reimburse allowable CMA costs associated with procuring and managing trade contracts, as defined by the IAC or its designee.
 - (2) The IAC or its designee shall maintain a list of CMA services that are eligible for State reimbursement.
 - (3) CMA services provided during the design phase of the project are not eligible for State reimbursement.
 - (4) If the LEA intends to seek reimbursement of CMA costs with State funds, the LEA shall:
 - (a) Submit the solicitation documents to the IAC or its designee for review not later than 1 month before the documents are released to offerors; and
 - (b) Identify in the solicitation documents the construction management services that are eligible for State reimbursement.
 - (5) An LEA intending to seek State reimbursement for construction manager services shall procure a construction manager in accordance with COMAR 23.03.03.
- E. Trade Contracts.
 - (1) Trade contracts may be procured concurrently or over the life of the project.
 - (2) The LEA shall submit the bidding schedule for the trade packages with proposed bid dates to the IAC or its designee and provide notice of any changes.
 - (3) The LEA shall procure each trade contract in accordance with COMAR 23.03.03.
 - (4) The LEA shall submit each trade contract to the IAC for approval.
 - (5) The LEA shall submit change orders for approval by the IAC or its designee and clearly indicate the contract to which the change order applies.
 - (6) If the project is subject to prevailing wage rate requirements, each trade contract within the project is subject to prevailing wage rate requirements.
 - (7) MBE goals shall be based on the total project price, but MBE goals may vary in individual trade contracts if the overall MBE project goal is acknowledged.

.06 Construction Management At Risk.

A. General.

- (1) Construction management at risk means a project delivery method in which the LEA engages a construction manager at risk (CMR) to:
 - (a) Contract directly with trade contractors; and
 - (b) Provide a guaranteed maximum price for project procurement and construction.
- (2) The CMR warrants that the work will be completed at or below the guaranteed maximum price with provisions for change order adjustments for work that is outside the agreed-upon work scope.
- (3) Cost savings resulting from projects completed below the guaranteed maximum price may be shared between the LEA and the CMR.

B. Guaranteed Maximum Price.

- (1) Guaranteed maximum price (GMP) means an arrangement between the LEA and the CMR in which the total amount payable to the CMR for the project is restricted to a preagreed maximum and includes the cost of construction and construction management services that is generally determined before the design is complete.
- (2) The LEA and CMR may determine the guaranteed maximum price as follows:
 - (a) In competitive sealed bidding or quality based selection, the guaranteed maximum price is based on construction documents that are sufficiently developed to allow bidders to reasonably estimate and include costs for unspecified items, and includes:
 - (i) Cost of the work;
 - (ii) Construction management fee; and
 - (iii) General conditions; and
 - (b) In competitive negotiation, including projects in which a construction manager has provided pre-GMP services, the LEA may begin negotiations to establish a guaranteed maximum price with the construction manager only after:
 - (i) The LEA has provided public notice of its intent and a request for competing proposals; and
 - (ii) At least 28 days have elapsed for receipt of competing proposals.
- (3) If the LEA receives competing proposals, the proposals shall be evaluated in accordance with COMAR 23.03.03.

C. Notice to IAC.

- (1) Not later than 2 months before the release of solicitation documents to offerors, the LEA shall provide written notice to the IAC or its designee that the CMR method will be used.
- (2) The LEA shall acknowledge in the notice that the State is not responsible for any project cost overruns.
- (3) Not later than 1 month before release to offerors, the LEA shall submit the solicitation documents to the IAC or its designee for approval.

D. State Reimbursement.

- (1) State funds may be used to reimburse:
 - (a) Allowable pre-GMP costs only if related to the solicitation of trade packages; and
 - (b) Allowable post-GMP costs.
- (2) Allowable post-GMP construction management services, as determined by the IAC, shall be included in total construction cost as if the CMR were a general contractor for purposes of determining the maximum State construction allocation, payment of requisitions, and project close out.
- (3) Total State reimbursement of eligible costs may not exceed the lesser of:
 - (a) The State's share of the guaranteed maximum price based on the cost-share formula; or
 - (b) The maximum State construction allocation.
- (4) If an LEA intends to seek State reimbursement of any of the construction management services, the services shall be procured through one of the procurement methods provided in COMAR 23.03.03.

E. Trade Contracts.

- (1) The CMR assumes all risk for cost, schedule, and performance of the trade contracts except for a trade contract that the LEA separately procures.
- (2) Trade contracts may be procured concurrently or over the life of the project.
- (3) After the guaranteed maximum price is finalized, any trade contract previously awarded by the LEA may be assigned to the CMR who then assumes all risk for coordination and completion of the trade contracts.
- (4) Subcontracts solicited by the CMR as components of the final guaranteed maximum price do not require IAC approval.
- (5) If the LEA intends to award a separate trade contract, the LEA shall submit the trade contract to the IAC for approval notwithstanding the subsequent inclusion of the trade contract in the guaranteed maximum price.

.07 Design-Build.

A. General.

- (1) Design-build means a project delivery method in which a single entity is contractually responsible for both design and construction of a project.

- (2) The LEA provides sufficient information to the design-build entity to guide it in the design of the project and specifies the reviews and approvals that will be required of the project.
 - (3) The design-build entity is responsible for the following:
 - (a) Quality of the design;
 - (b) Project costs;
 - (c) Construction quality;
 - (d) Adherence to the LEA's schedule for project completion and occupancy; and
 - (e) Other factors the LEA requires.
 - (4) Design-build may extend beyond the design and construction phases of a project to include:
 - (a) Financing, in which case the method is called finance-design-build; or
 - (b) Provision of furniture and equipment, occupant move-in, or other post-construction tasks, except as limited by §A(5) of this regulation.
 - (5) The design-build entity may not perform the routine maintenance and operation of a school building after occupancy.
- B. IAC Approval.
- (1) If the LEA decides to use the design-build method, the LEA:
 - (a) Shall request approval from the IAC or its designee 2 months prior to the release of the solicitation; and
 - (b) May not proceed with the design-build method until approval is obtained from the IAC or its designee.
 - (2) The request for approval shall at a minimum include the proposed:
 - (a) Brief description of the scope of work;
 - (b) Project phasing;
 - (c) Schedule for the submission of plans and specifications for review by the IAC or its designee;
 - (d) Solicitation schedule;
 - (e) Procurement method;
 - (f) Financing arrangement, if applicable; and
 - (g) Performance expectations.
 - (3) The LEA shall acknowledge in the request for approval that the State is not responsible for any project cost overruns.
 - (4) The LEA shall send the draft design-build solicitation to the IAC or its designee for approval not later than 1 month before it is released to bidders.
 - (5) Authorization by the IAC or its designee to proceed with the design-build method is independent of approvals of project planning and funding. If the IAC or its designee authorizes the use of the design-build method but project planning is not approved, the project may proceed as a locally funded project.
- C. Design-Build Procurement.
- (1) The LEA may develop a design-build solicitation based on:
 - (a) Performance specification;
 - (b) Performance specification combined with concept or schematic design; or
 - (c) Performance specification combined with the LEA's prototype design.
 - (2) The performance specification shall include at a minimum:
 - (a) Educational specifications;
 - (b) Performance characteristics of the school facility;
 - (c) A schedule for completion and occupancy; and
 - (d) General conditions that clearly describe the respective responsibilities of the LEA and the design-build entity.
- D. State Reimbursement.
- (1) If the LEA intends to seek State reimbursement, the LEA shall distinguish between preconstruction and construction scopes of work to allow the IAC or its designee to determine the costs that are eligible for State reimbursement.
 - (2) The State's maximum participation in the project is calculated when:
 - (a) The construction documents are complete; and
 - (b) The full scope of the project is known including ineligible items.
 - (3) Allowable preconstruction services, as determined by the IAC, shall be included in total construction cost.
 - (4) Final adjustment of the State's participation shall be made at project closeout.
 - (5) Total State reimbursement of eligible costs may not exceed the lesser of:
 - (a) The State's share of the guaranteed maximum price based on the cost-share formula; or
 - (b) The maximum State construction allocation.

.08 Job Order Contracting.

- A. In this regulation, the following term has the meaning indicated.
- B. Term Defined. "Job order contracting (JOC)" means a project delivery method in which the LEA selects a contractor through a competitive procurement process based on a multiplier or coefficient that:
- (1) Reflects the bidder's determination of the actual cost to perform the work plus overhead and profit; and

- (2) Is applied to a fixed-price list of construction items and activities.
- C. The fixed prices of the construction items and activities are defined by the LEA or through a standard project cost source.
- D. The schedule of fixed prices may include a construction escalation factor for multiyear contracts.
- E. Procurement and Award.
 - (1) An LEA shall obtain a JOC through a competitive procurement process, whether or not the LEA intends to execute State-funded projects through the JOC.
 - (2) The JOC may include extension clauses, but the State may not participate in a project executed under a JOC that:
 - (a) Has more than three annual extensions; or
 - (b) Has been increased by change order above the maximum combined price indicated in the solicitation, including all potential extensions, except for changes of scope to individual projects already begun before completion of the final annual extension.
- F. Approvals.
 - (1) If an LEA intends to execute a State-funded project through the JOC, it:
 - (a) Shall provide the IAC or its designee with evidence that the JOC was procured competitively, including the solicitation documents and the submissions from bidders or offerors;
 - (b) Shall provide the IAC or its designee with a brief description of the anticipated scope of work, the duration of the JOC contract, the number of annual extensions, and the maximum combined cost of the projects to be performed under the JOC; and
 - (c) May also include the anticipated minimum cost of each project and the estimated cost of all projects to be performed in each fiscal or calendar year.
 - (2) The LEA shall notify the IAC or its designee of its intention to use the JOC to execute a State-funded project at the earliest possible date, and shall provide the information required under §F(1)(a) of this regulation.
 - (3) The LEA shall acknowledge in the notification that the State is not responsible for any project cost overruns.
 - (4) Approval of Contracts or Reimbursement.
 - (a) The LEA shall obtain approval of project award, reimbursement, or both, in the manner and time frame required for all projects funded under the relevant program.
 - (b) Design review prior to the start of construction shall be required if it would be required for similar projects funded through the same State funding program.
 - (c) If approval is requested for a project to be executed through a JOC under which a State-funded project was previously approved, the LEA may reference the earlier approval and the JOC solicitation, but is not required to resubmit all relevant information.
 - (d) For design-build JOC projects, the request for approval of project award or for reimbursement shall clearly indicate those portions of the project cost that are associated with preconstruction activities in order to allow the IAC or its designee to determine which costs are eligible for State reimbursement.
 - (e) Allowable preconstruction services, as determined by the IAC, shall be included in total construction cost.
 - (f) Final adjustment of the State's participation shall be made at project closeout.

.09 Fast Track.

- A. General. Fast track means a modification to a project delivery method in which portions of a project begin construction while other portions of the project are still in the design phase.
- B. Notice to IAC.
 - (1) The LEA shall submit written notice to the IAC or its designee of its intent to use fast track not later than 3 months before the start of construction.
 - (2) The LEA may request a shorter notice period which the IAC or its designee may approve in its sole discretion.
 - (3) The written notice shall include at a minimum the proposed:
 - (a) Brief description of the overall project phasing;
 - (b) Schedule for the submission of plans and specifications for review by IAC or its designee; and
 - (c) Solicitation schedule.
 - (4) The LEA shall acknowledge in the notice that the State is not responsible for any project cost overruns.
 - (5) The LEA shall notify the IAC or its designee of any schedule changes.
 - (6) The LEA shall ensure that local permit agencies will accept the phasing schedule proposed by the LEA.

23.03.05 Alternative Financing

Authority: Education Article, §§4-126, 5-112, and 5-301, Annotated Code of Maryland

.01 Scope.

- A. This chapter applies to a public school construction project for building, improvement, supplies, or equipment if it:

- (1) Exceeds \$25,000 and has Board of Public Works planning or funding approval; or
 - (2) Requires review by the State Superintendent of Schools under Education Article, §2-303, Annotated Code of Maryland.
- B. This chapter does not apply to a project in a building that is not used primarily for the instruction of students, including an office building, warehouse, or vehicle maintenance or repair building.
 - C. In this chapter, "IAC or its designee" includes "State Superintendent or designee" if State Superintendent approval is required by the Education Article, §2-303(f), Annotated Code of Maryland.

.02 Alternative Project Delivery Proposal Review Assistance.

The State Superintendent or designee may request assistance from the IAC or its designee when reviewing alternative project financing proposals.

.03 Educational and Design Standards Apply.

All projects financed through alternative methods shall comply with State procedures for project design review.

.04 Use of Alternative Financing Methods.

- A. A county or an LEA may use alternative financing methods for public school construction.
- B. An LEA shall obtain the approval of the county governing body to use an alternative financing method.

.05 Types of Alternative Financing Methods.

A county or an LEA may fund all or a portion of one or more public school construction projects using one or more of the following alternative financing methods:

- (1) A lease-leaseback, in which a private entity undertakes a public school construction project on property leased from, and subleased back to, an LEA if the property leased from the LEA reverts to the LEA upon a date certain;
- (2) A sale-leaseback, in which a private entity undertakes a public school construction project on property purchased from, and leased back to, an LEA, if:
 - (a) The property purchased from the LEA reverts to the LEA upon a date certain;
 - (b) The LEA and the county have determined that the property is eligible for conveyance under Education Article, §§4-114(c)(3) and 4-115, Annotated Code of Maryland; and
 - (c) The IAC and the Board of Public Works approve the conveyance;
- (3) Performance-based contracting, in which the LEA and a private entity enter into a contract such as an energy-performance contract funded by guaranteed savings over a specific time period;
- (4) Public-private partnerships, in which the LEA and a private entity enter into a shared used arrangement of one or more portions of one or more public school facilities in return for public school property enhancement, revenue, or both;
- (5) Donation or gift, in which a private entity contributes toward the cost of a project, either through donation of funds to the LEA or through in-kind contribution of materials, equipment, building services, or all three; and
- (6) With the concurrence of both the county and the IAC or its designee, such other financing methods as the LEA may deem appropriate for public school construction projects.

.06 State Notifications and Approvals.

- A. Alternative Financing Notification. An LEA shall notify the IAC or its designee of the proposed use of an alternative financing method for the construction of a public school by submitting a written determination.
- B. The determination shall include:
 - (1) Justification for the use of alternative financing, including the advantages the method will provide to the public;
 - (2) A description of the method to be used;
 - (3) A description of the method proposed to procure the alternatively financed project;
 - (4) The estimated project cost; and
 - (5) The scope of work eligible for State reimbursement.
- C. The submission shall also:
 - (1) Acknowledge that the State is not responsible for any costs associated with financing, interest payments, design services, or project cost overruns; and
 - (2) Include a letter from the county approving the use of the alternative financing method.
- D. IAC or Designee Approval to Construct. Regardless of project financing method, the LEA may not begin construction until the IAC or its designee has authorized the LEA to proceed.

.07 State Funding.

The State may award funds for an alternatively-financed project only up to the maximum amount that the State would fund if the project were financed conventionally.

.08 Procurement.

- A. An LEA or county may procure an alternative financing arrangement for construction of public school facilities in accordance with COMAR 23.03.03.
- B. In addition to complying with requirements set forth in COMAR 23.03.03, an LEA shall evaluate the following when procuring an alternative-financing arrangement for construction of public school facilities:
 - (1) The cost benefit to the LEA and county;
 - (2) The impact on local financing and on the debt or debt burden of the LEA and county;
 - (3) A detailed analysis of whether the proposed project financing will preclude use of tax-exempt bond proceeds for the proposed project or any future projects;
 - (4) The estimated project income and its allocation;
 - (5) The financial plan, including:
 - (a) Overall feasibility and reliability of the plan;
 - (b) The offeror's past performance with similar plans and similar projects;
 - (c) The degree to which the offeror has conducted due diligence investigation and analysis of proposed financial plan; and
 - (d) The results of the analyses.

.09 Comprehensive Agreement.

- A. General. The LEA or county and the successful offeror shall enter into a comprehensive agreement regarding the parties' rights and obligations. The LEA or county may not enter into a comprehensive agreement with a private entity until the IAC or the State Superintendent, as applicable, has approved the agreement.
- B. The comprehensive agreement shall include:
 - (1) Performance, educational standards, or both, as applicable, of the project;
 - (2) Time line for completion;
 - (3) Security such as performance and payment bonds or letters of credit to assure timely completion;
 - (4) The requirements for approval of sites, plans, and specifications by the State or other authorities with jurisdiction;
 - (5) The right of the State and other authorities with jurisdiction to periodically examine the project to ensure compliance;
 - (6) Risk allocations, including liability insurance that covers the LEA;
 - (7) If applicable, monitoring by the State and local authorities with jurisdiction of the private entity's maintenance to ensure proper maintenance before the responsibility is transferred to the LEA or county;
 - (8) Procedures in the event that the comprehensive agreement is terminated with or without cause, or there is a material default by the private entity, which shall include:
 - (a) Conditions governing assumption of the responsibilities of the private entity by the LEA, county, or other designated party, and the transfer or purchase of the private entity's property or other interests by the LEA or county; and
 - (b) Requirements for LEA or county to give notice of default, procedural and response requirements of the private entity, and the LEA or county, and related procedures;
 - (9) Periodic reporting of required financial information from the private entity;
 - (10) The mechanism by which user fees, lease payments, or service payments, if any, shall be established upon agreement of the parties, including the following:
 - (a) Payments or fees shall be commensurate with those of similar facilities; and
 - (b) The private entity shall make available a schedule of the user fees and payments to the public upon request;
 - (11) The terms, if any, under which the LEA or county may be obligated to contribute financial resources;
 - (12) Periodic reports by which the private entity describes the project's impact on the LEA or county, the local community, and the State;
 - (13) The private entity's certification, including an individual certification from each team member, that:
 - (a) All material representations and material information provided in the proposal remain true and correct; and
 - (b) If material changes occur with respect to any material representation or material information, the private entity shall promptly notify the LEA or county and the IAC or designee; and
 - (14) Any other information the LEA requires.

.10 Maintenance and Operations.

The private entity shall turn over to the LEA or county the maintenance and operation of the educational portions of the alternatively financed facility on or before the date the facility is open for its intended use.

.11 Minority Business Enterprise Participation.

All alternatively financed projects shall comply with the Minority Business Enterprise requirements that would apply to similar State-supported projects.

.12 Prevailing Wage.

- A. All alternatively financed projects shall comply with the prevailing wage rate requirements that would apply to a similar State-supported project.
- B. This obligation does not apply to any part of the project that will not be used for public use or benefit as provided in State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland..
- C. Nonconstruction costs, such as movable equipment and move-in costs, are not included in calculating State participation.

C. 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

D. 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