



Queensland
+ **Government**

SEQ Schools PPP Project Project Agreements Summary

November 2009



Prepared by the Department of Education and Training

TABLE OF CONTENTS

- 1 Introduction 1**
 - 1.1 The Project..... 1
 - 1.2 Process in awarding contract 2
- 2 Overview of the Project’s contract 3**
 - 2.1 Project participants..... 3
 - 2.2 Contractual Structure 4
 - 2.3 Conditions Precedent..... 5
- 3 The Project Deed 6**
 - 3.1 General Obligations of Project Company and risks accepted 6
 - 3.2 The Sites, Access and Interface..... 8
 - 3.3 The Role of Parties, Representatives and Administration 8
 - 3.4 Design and Construction 8
 - 3.4.1 Design Documentation..... 8
 - 3.4.2 Works Program 8
 - 3.4.3 Quality Assurance, manuals and reports 9
 - 3.4.4 State’s rights to inspect and test during D&C phase 9
 - 3.4.5 Timing for Completion of the works..... 9
 - 3.4.6 Late Completion of the works..... 9
 - 3.5 Staged Construction and Operation 9
 - 3.5.1 Staged Construction..... 9
 - 3.5.2 Operating obligations 9
 - 3.5.3 Performance monitoring and reporting..... 9
 - 3.5.4 Market testing / Benchmarking..... 10
 - 3.5.5 Use of facilities 10
 - 3.6 Variations 10
 - 3.7 Payment and revenue 11
 - 3.8 Insurance, liability and indemnity..... 11
 - 3.8.1 Insurance and indemnities 11
 - 3.8.2 Release..... 12
 - 3.8.3 Risk of loss or damage..... 12
 - 3.8.4 Reinstatement and application of insurance proceeds..... 12
 - 3.8.5 Liability for indirect or consequential loss..... 12
 - 3.8.6 Insurance policies required 13
 - 3.8.7 Notices of potential claims 13
 - 3.8.8 Uninsurable risks..... 13
 - 3.9 Default, Termination and Expiry of Term..... 14
 - 3.9.1 Step In, suspension and emergencies 14
 - 3.9.2 Rights at the end of the Term..... 14
 - 3.10 General Provisions 15
 - 3.10.1 Subcontracting 15
 - 3.10.2 Employee Requirements..... 15
 - 3.10.3 Utilities and Rates 15
 - 3.10.4 Force Majeure 15
 - 3.10.5 Restrictions on business 16
 - 3.10.6 Change in Control..... 16
 - 3.10.7 Restrictions on dealing and finance documents..... 16
 - 3.10.8 Arrangements in the last three years of the Project 16
 - 3.10.9 Dispute Resolution 17
 - 3.10.10 Miscellaneous Provisions 17

1 Introduction

This report summarises the main contracts for the SEQ Schools PPP Project which is being delivered in partnership with the private sector.

It has been prepared by the Queensland Department of Education and Training in accordance with the public disclosure requirements of the Queensland Government's 2008 guidelines *Public Private Partnerships Guidance Material – Value for Money Framework* and *Probity and Process Governance*, and has been submitted to the Auditor-General for endorsement as a fair account of the Project's agreements, prior to tabling in Parliament.

As required by the Guidelines, this report:

- Details those contracts to which the Minister for Education and Training on behalf of the State of Queensland (the State) is a party; but
- Does not disclose the private sector parties' cost structure or profit margins; matters relating to intellectual property or other matters where disclosure would put them at a commercial disadvantage with competitors.

This report also explains other contracts where the State is not a party to the extent necessary to explain the State's exposure.

This report has been prepared for information purposes for Parliament and the public and is not intended for use as a substitute for the contracts.

1.1 The Project

On 13 February 2008, the Queensland Government announced seven new schools would be constructed and operated through the SEQ Schools PPP Project (the Project), a Public Private Partnership (PPP) using a Supported Debt Model (SDM) variation. The SDM utilises Queensland Treasury Corporation (QTC) debt for approximately 70 per cent of the total financing required during the Project's operational phase. The general structure of the PPP and the services to be provided under the PPP remain the same under the SDM variation.

On 20 April 2009, the government announced that the State had entered into a Contract with the Aspire Schools consortium (Aspire Schools) to deliver the Project.

Advance works commenced 20 April 2009 on the Peregian and Thornlands sites.

Financial Close was completed on 29 May 2009.

Seven new schools being delivered through the project are as follows:

Location	Type	Stage 1 Delivery	Stage 2 Delivery
Peregian Springs Thornlands South	(P-7) (P-7)	2010	2012
Bellbird Park Collingwood Park East Coomera	(P-7) (P-7) (P-7)	2011	2013
Bundilla Murrumba Downs	(P-7) (7-12)	2012	2014

The Project involves two distinct phases:

- The design and construction (D&C) phase which commenced with the start of construction of the Peregian Springs and Thornlands South schools on 20 April 2009 (Stage 1 Peregian and Thornlands) and ending on the date for practical completion for all seven schools anticipated for the start of school 2014 (Stage 2 Murrumba Downs and Bundilla);
- The operating phase will commence following the completion of Stage 1 at Peregian Springs and Thornlands South in January 2010 and ends on 31 December 2039.

The Project involves Aspire Schools through Aspire Schools (Qld) Pty Ltd (Project Company) and its subcontractors taking responsibility for the design, construction, ongoing maintenance, and partial financing of the new schools over a concession period ending on 31 December 2039. The scope of the ongoing tasks to be undertaken by the Project Company include: hard facilities

maintenance (building repairs, plumbing, etc), and a number of soft services (security and help desk).

The State has redefined the structure of the cleaning, grounds maintenance and janitorial services. The Project Company will have the day-to-day management responsibility for security, cleaning and schools officer(s) staff. The structure for the employment and deployment of staff to deliver these services is encapsulated in a Management and Supervision Agreement in accordance with the applicable certified agreements and the pre-defined core principles.

PPP delivery will allow the State to open these schools sooner than could have been done traditionally and will lock in maintenance funding for these schools for 30 years.

The State will pay the Project Company a performance-based monthly payment. These payments will ramp up over the construction phase as a direct result of facilities being made available for service delivery and continue through to the end of the contract term on 31 December 2039.

1.2 Process in awarding contract

The evaluation and contract finalisation processes were conducted in accordance with the Queensland Government's *Public Private Partnership policy – achieving value for money in public infrastructure and service delivery*.

In February 2008 the Department of Education and Training issued an Invitation for Expressions of Interest (EOI) for the SEQ Schools PPP Project. Six consortia responded to the EOI and four consortia were shortlisted and invited to submit binding bids. One consortium withdrew prior to submitting a binding bid. Binding Bids were required by 7 November 2008.

The binding bids received were subjected to extensive evaluation against three broad categories – technical; legal and procurement; and, financial and commercial, and for value for money against the State's Public Sector Comparator¹. The Project Evaluation Committee was assisted by MBM (Technical advice), Freehills (legal advice) and Ernst & Young (financial advice) and was under the oversight of the Project Steering Committee and the Probity Auditor (BDO Kendalls). Further specialist advice was provided with respect to the SDM by QTC.

Following an initial strategic evaluation of binding bids, in December 2008 all three consortia were invited to participate in a two stage Request for Response process to clarify / confirm aspects of each bid. This was followed by a detailed evaluation process. All processes were oversights by the Project's Probity Auditor and conducted in accordance with the evaluation methodology.

On 20 April 2009 following a contract finalisation process, the State announced the selection of Aspire Schools as the successful proponent. The Minister for Education and Training signed the Project Deed.

Financial Close occurred on 29 May 2009.

1. Public sector comparator is the estimated cost of delivering the project using traditional procurement and is used as the test for demonstrating Value for Money.

2 Overview of the Project's contract

2.1 Project participants

An overview of the Project's contract structure, key participants, and debt and equity structure are detailed in the diagrams below (Figures 1 and 2).

Figure 1. Overall PPP Structure

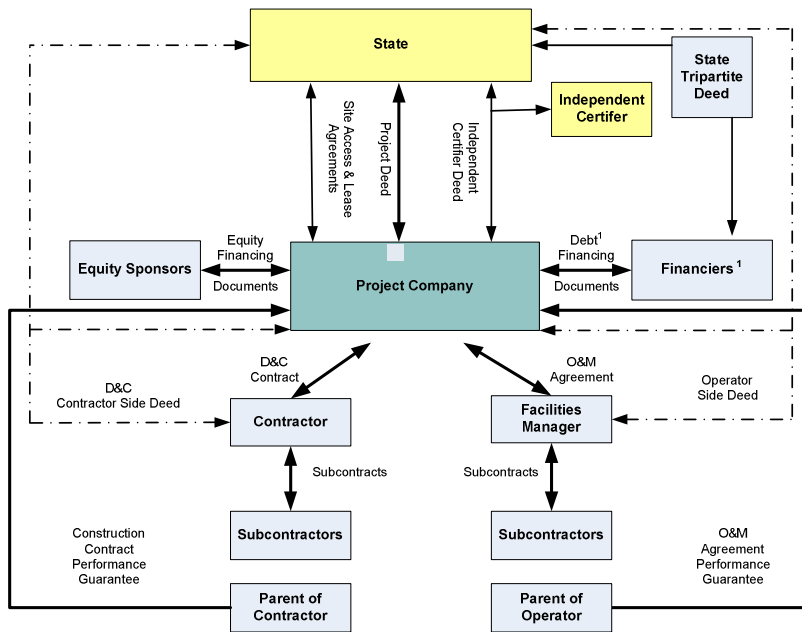
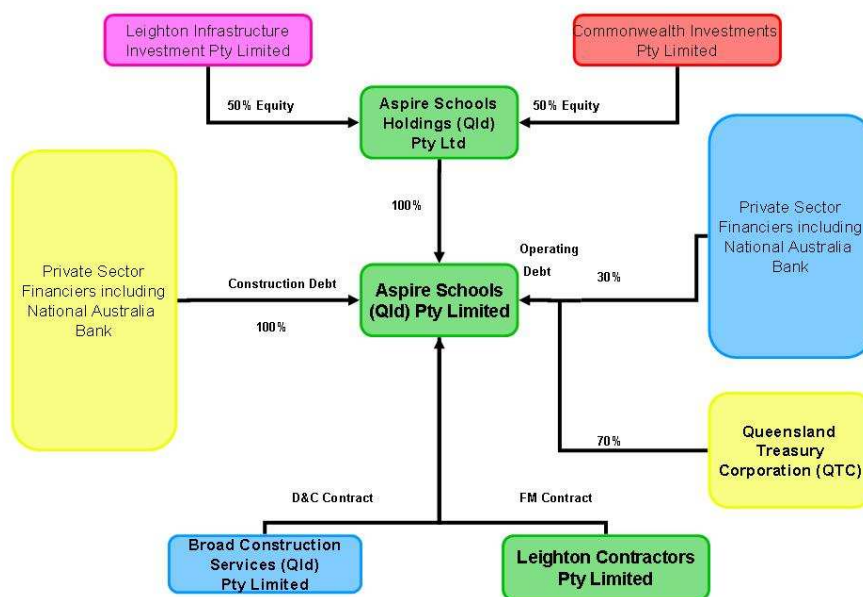


Figure 2. Aspire Schools Structure



The Minister for Education and Training has entered into the Project contracts on behalf of the State through the Department of Education and Training (DET).

The private sector parties which have contracted with the State are:

- **Aspire Schools (Qld) Pty Limited** (Project Company) which is wholly owned by Aspire Schools Holdings (Qld) Pty Limited which is owned by Leighton Infrastructure Investments Pty Limited and Commonwealth Investments Pty Limited.
- **Broad Construction Services (Qld) Pty Limited** (Contractor).
- **Leighton Holdings Limited** (Contractor Guarantor) which guarantees the due performance of the Contractor of all conditions contained in the design and construct contract with the Project Company
- **Page Kirkland Queensland Pty Limited** (Independent Certifier) which is contracted to undertake services relating to certification, inspection and dispute resolution during the construction and commissioning of the facilities.
- **Leighton Contractors Pty Limited** (Operator), which is wholly owned by Leighton Holdings Limited.
- **Leighton Holdings Limited** (Operator Guarantor) which guarantees the Operator's performance with respect to services obligations to the Project Company.
- **Aspire Schools Financing Services (Qld) Pty Limited** which is a financier of the Project and has contracted with the State and Aspire Schools Holdings (Qld) Pty Limited as part of the financing arrangements for the Project.

QTC has agreed to provide 70% of the Project's financing requirements during the Operating Phase.

2.2 Contractual Structure

The primary contract is the SEQ School PPP Project Deed (Project Deed), dated 20 April 2009, between the State and the Project Company.

Project Deed

Under the Project Deed the Project Company has agreed to design and construct the schools facilities (the Accommodation) for the State and provide services in the operating phase in return for monthly service payments.

This agreement sets out the terms under which:

- (a) The Project Company must design, construct and commission the Accommodation. This will be achieved through contractual arrangements the Project Company has put in place with the Contractor.

The performance of the Contractor under its design and construct Contract with the Project Company has been guaranteed to the Project Company by Leighton Holdings Limited, under a Parent Company Guarantee.

The Independent Certifier, appointed under the Independent Certifier Deed for the Project Company will carry out specified certification, inspection and dispute resolution functions with respect to the design and construction component of the Project.

- (b) The Project Company must provide the services to the Accommodation as and when the school facilities become operational through to the expiry date of 31 December 2039.

This will be achieved through contractual arrangements between the Project Company and the Operator.

The performance of the Operator under its Operations and Maintenance Agreement with the Project Company has been guaranteed to the Project Company by Leighton Holdings Limited, under a Parent Company Guarantee.

Cleaning, janitorial and grounds maintenance services at each school will be provided by State employees (provided by the State to work under the day to day direction, management and supervision of the Project Company). The terms of this arrangement are set out in the Management and Supervision Agreement between the State and the Project Company. The State employees engaged in providing these

services will continue to be employed by the State.

- (c) The State must pay the Project Company performance-based payments for providing the Accommodation and providing the services. An abatement regime is contained in the schedules to the Project Deed. Deductions will be made if specified standards are not met.
- (d) The State has granted a licence to the Project Company, its subcontractors and other entities duly authorised by the Project Company in respect of each (construction) site, to enter the (construction) site to undertake construction activities and perform the services. This licence will terminate in respect of each (construction) site from the commencement of the interim headlease and interim sublease which is executed as each stage of each school facility becomes operational.
- (e) The State and the Project Company have agreed to enter into an interim headlease and an interim sublease when Stage 1B of each school facility reaches practical completion (see section 3.5 below) and is made available to the State. This will signal the commencement of the operating phase for that school facility.
- (f) The State and the Project Company have agreed to enter into a headlease and sublease for the entire school facility when the second and final stage of each school facility is completed and is made available to the State and the interim headlease and interim sublease will then terminate. The headlease and sublease for each of the sites will continue through to 31 December 2039, or earlier termination.
- (g) On 31 December 2039, or upon earlier termination of the Project Deed, the Project Company must hand over the school facilities to the State or to others as directed by the State.

Some of the rights and obligations of the State and the Project Company under the Project Deed, are subject to restrictions or additional process requirements under the:

- State Tripartite Deed;

- Contractor Side Deed; and
- Operator Side Deed.

State Tripartite Deed

The State, the Project Company and the security trustee under the Project Company's debt financing arrangements (on behalf of the Project Company's debt financiers) entered into the State Tripartite Deed. This agreement governs the relationship between the State, the Project Company and the Project Company's financiers and the manner in which certain rights in respect of the Project are to be regulated. Among other things, the State Tripartite Deed requires the State to notify the financiers before it terminates the Project Deed which gives them an opportunity to cure the Project Company's defaults.

Contractor Side Deed

The State, the Contractor, the Contractor Guarantor and the Project Company entered into this deed which contains controls over the Contractor's rights to terminate the D&C Contract and governs the State's right to "step in" to the D&C Contract and the rights and obligations of the parties should the Project Deed be terminated.

Operator Side Deed

The State, the Operator, the Operator Guarantor and the Project Company entered into this deed which, in a similar manner to the Contractor Side Deed, contains controls over the Operator's rights to terminate the Operations & Management (O&M) Agreement and governs the State's right to "step in" to the O&M Agreement and the rights and obligations of the parties should the Project Deed be terminated. Among other things, under this deed the Operator undertakes to the State to perform its obligations under the O&M Agreement.

2.3 Conditions Precedent

Although the Project Deed was executed on 20 April 2009, most of the terms, conditions and obligations did not become binding until all the conditions precedent were satisfied or waived.

The following is a summary of the conditions precedent under the Project Deed:

- Delivery to the State of certified copies of executed project documents (to which the State is a party) and notification to the

State that documents to which it is not a party had been duly executed;

- receipt by the State of names and specimen signature of authorised officers of the Project Company and consortium details;
- receipt by the State of evidence that any stamp duty payable in connection with the entry into the project documents had been paid;
- the insurance policies as required by the Project Deed to be in place by financial close were in place;
- receipt by the State of certified copies of executed finance documents and evidence that they were unconditional and available;
- delivery to the State of the financial model base case on terms satisfactory to the State;
- delivery to the State (if necessary) of a certified copy of unconditional approval from the Australian Treasurer advising that there was objection under the *Foreign Acquisitions and Takeovers Act* (Cth) to the ownership of the Project Company and/or its interest in the Project;
- delivery to the State of the rates for the services to be the subject of benchmarking and market testing;
- delivery to the State of certified copies of binding rulings from the Australian Taxation Office; and
- receipt by the State of the agreed list of independent experts.

Each of the above conditions precedent were either satisfied or waived by the State. Details of the conditions precedent that were waived are noted below.

The State was satisfied, without limiting the Project Company's obligations under the Project Deed as to tax and stamp duty, that the Project Company had obtained adequate taxation advice from its taxation advisors that:

- no stamp duty (other than nominal duty) was payable on or in connection with entry into the project documents; and
- the Project Company did not require a tax ruling on Part IVA of the *Income Tax Assessment Act 1936* (Cth), and as such agreed to waive these conditions precedent.

Similarly, the State was satisfied that satisfactory evidence had been provided by the Project Company's legal advisers that the Project Company did not require approval from the Australian Treasurer advising that there was no objection under the *Foreign Acquisition and Takeovers Act* (Cth) to the ownership of the Project Company and/or its interest in the Project and as such, the State did not require the corresponding condition precedent to be satisfied.

Accordingly, on 29 May 2009, following satisfaction or waiver of all the conditions precedent described above, the Project Deed became unconditional.

3 The Project Deed

3.1 General Obligations of Project Company and risks accepted

The Project Company's general obligations are that it must undertake the financing, planning, design, construction, commissioning, operation, maintenance, repair and handback of the seven school facilities comprising the Project in accordance with the Project Deed and other specified project agreements.

In fulfilling its obligations the Project Company must have regard to the agreed "Project Objectives" as contained in the Project Deed. These Project Objectives are:

- (a) to develop high standard Accommodation and provide services for the school facilities in accordance with the output specification that ensure the best possible operating environment to facilitate quality, cost efficient and innovative delivery of core education services by the State and are flexible and adaptable to accommodate change;

- (b) for the parties to create long term, sustainable relationships which enhances the State's ability to deliver core educational services, protects the public interest, and promotes innovation;
- (c) to procure the Project at a cost and quality which delivers an affordable value for money solution for the State;
- (d) to achieve appropriate and efficient risk allocation between the parties; and
- (e) ensure delivery of the Project in a timely fashion.

The Project Company has accepted risks associated with the Project including:

- (a) all risks associated with the costs of financing, designing, constructing, and commissioning the school facilities;
- (b) the operation, maintenance and repair of the school facilities and performance of the services;
- (c) the handback of the school facilities in a condition as specified in the contract; and
- (d) the risk of liability for taxes or duty being greater than estimated by the Project Company or its advisers.

The State has also retained some risks. These are as follows:

Designation

The State must use its best endeavours to obtain Ministerial designations for each of the sites to allow the Project Company to commence construction in accordance with DET's output specification.

Should the Ministerial designations be delayed or not forthcoming so that the Project Company is unable to proceed with its obligations in accordance with the Project Deed, a compensation event will be deemed to occur so as to compensate the Project Company for any additional costs and/or lost service payments.

Site Conditions and Site Studies

The State has undertaken a number of site studies which were made available to shortlisted proponents to assist in formulating

their bids. The State is not liable for any inaccuracy, omission or incompleteness in the information provided to the Project Company.

The Project Company has independently reviewed, evaluated and conducted additional site studies to ascertain the condition of the sites.

The State has assigned the benefit of the contracts entered into by the State and the site studies consultant to the Project Company and the Contractor.

The Project Company accepts the sites in their current state and physical condition. This includes responsibility for pre-existing contamination, native title applications and artefacts.

The State has however, undertaken to procure that two of the sites are remediated in accordance with acquisition/development agreements entered into by the State for the acquisition of those sites. If these two sites are not remediated in accordance with the terms of the respective acquisition/development agreement and this impacts performance by the Project Company of its obligations under the Project Deed, the State will compensate the Project Company.

Change in Law

Where a change in law necessitates a change to the facilities or results in an increase to the operating costs and meets certain criteria with respect to the date of effect of the change in law, jurisdiction of the law and specified monetary thresholds, then the State may be required to provide compensation to the Project Company in accordance with the principles set out in the Project Deed. Where a change in law leads to a beneficial outcome for the Project Company (i.e. a cost saving) the State is entitled to share that cost saving in accordance with the same principles.

However, if the change in law results in incurred capital expenditure during the design and construction phase of the Project (approximately 4 1/2 years) the Project Company will not be entitled to such compensation. This is a Project Company risk.

Law includes legislation (including subordinate legislation), court made law and Government policy requirements applicable to State and Commonwealth jurisdictions.

3.2 The Sites, Access and Interface

The State has granted a licence to the Project Company, its subcontractors and other entities authorised by the Project Company to enter the sites to undertake construction activities and perform the services.

During the design and construction phase the Project Company has full responsibility for security of the sites.

Matters pertaining to site conditions have been summarised in section 3.1 above.

At completion of construction of a school facility at each site, the Project Company must submit a survey plan of the site which sets out the school facilities and is in accordance with the reconfiguration approval as required to effect the headlease and sublease.

3.3 The Role of Parties, Representatives and Administration

The Project Deed requires the State to appoint a State Representative as an agent of the State and provide delegated authority to act for and on behalf of the State. The State Representative may delegate powers, duties, and authorities under the Project Deed.

The Project Company must appoint a Project Company Representative who has the power to act for and on behalf of, and bind the Project Company to the extent of delegation notified by the Project Company to the State from time to time.

A Project Control Group has been established with representatives of the State, Project Company, Contractor and Operator and such other persons as nominated by the State or agreed by the State and the Project Company from time to time. The Project Control Group will oversee the Project Company's obligations, however, decisions of the Project Control Group do not bind the State or the Project Company.

An Operations Committee will be established at the commencement of the operating phase and will comprise representatives of the State, the Project Company and the Operator and any other persons as nominated by State or as agreed by the State and Project Company from time to time. The Operations Committee

will oversee the Project Company's obligations, however, decisions of the Operations Committee will not bind the State or the Project Company.

An Independent Certifier has been jointly engaged by the State and the Project Company whose role is to undertake a building certification and commissioning function and other functions as specified by the Project Deed and further outlined in the Independent Certifier Deed.

A determination of the Independent Certifier made in respect of matters required by the Project Deed to be determined by the Independent Certifier will be final and binding upon the parties.

3.4 Design and Construction

The Project Company is responsible for designing, constructing and commissioning the facilities in accordance with the Project Deed, the output specification, and as detailed in its response and design documentation which has been approved as construction design documentation.

3.4.1 Design Documentation

The State has the opportunity to comment on design documentation and has the power to reject it where it does not comply with the designs submitted in the Project Company's response (ie. base design documentation) or approved construction design documentation.

The Project Company must supply "as built" drawings to the State prior to and as a condition precedent to reaching practical completion of a stage (of a school facility), a school facility and the Accommodation.

3.4.2 Works Program

The initial Works Program is contained in an Appendix to the output specification. It contains milestones in relation to the works, practical completion dates and availability dates with respect to the school facilities.

The Project Company must submit further detailed and revised works programs which should be consistent with the initial Works Programs but will proceed with the revised program at its own risk.

3.4.3 Quality Assurance, manuals and reports

The Project Company must implement and maintain a Quality Assurance System including the development of a Quality Plan in accordance with AS/NZS ISO 9001-2000 "Quality Management Systems".

The Quality Assurance System and Quality Plan must be audited every six months during the design and construction phase and every 12 months during the remainder of the term.

The Project Company must develop an Operations and Maintenance Manual and continually review and update it throughout the life of the project.

Copies of the Quality Plan and Operation and Maintenance Manual must be submitted to the State.

3.4.4 State's rights to inspect and test during D&C phase

Upon reasonable notice being provided to the Project Company, unless in a case of an emergency, the State can inspect any of the works, inspect and test materials, reject any material not conforming with the Project Deed and conduct tests to ensure the school facilities perform and function in accordance with the Project Deed. In doing so the State must not cause any unnecessary delay or disruption.

3.4.5 Timing for Completion of the works

The Project Company is required to notify the State of any circumstances that have caused or may cause a delay to the progress of the works.

Where the works have or will be delayed by an extension event the Project Company must advise the State as soon as practicable of the activities affected and the impact on milestone dates, practical completion dates, and the delivery of the core education services.

The State will review the information provided by the Project Company and will grant an extension of time where entitled under the Project Deed.

3.4.6 Late Completion of the works

Where practical completion of one or more stages (of a school facility) does not occur by the date for practical completion, the Project Company must pay the State liquidated

damages at the rates specified in the Project Deed.

If practical completion of a stage (of a school facility) does not occur until after the start of the school academic year, (in addition to being liable to pay liquidated damages if the date for practical completion is missed), the State may direct that the stage availability date for the stage will not occur until the next school term (and as such the State shall not be required to pay the monthly service payment until the next school term).

3.5 Staged Construction and Operation

Throughout the operating phase the Project Company must notify the State of any safety issues, potential or actual industrial action, and serious damage or defect to the school facilities.

3.5.1 Staged Construction

An objective of the project is to allow for the school facilities to be completed in stages (i.e. stage 1A, 1B and stage 2) as detailed below, so as to allow the facilities to be operational earlier than would otherwise be possible.

Once Stage 1A is complete, core administrative buildings will be completed to allow staff to commence administrative activities in preparation for opening the school facility.

On completion of Stage 1B, the school facility is operational.

Further facilities comprising Stage 2 will be constructed while Stage 1B is operational, but the Project Company is required to ensure there is no disruption to core educational services.

3.5.2 Operating obligations

The Project Deed outlines the general operating obligations of the Project Company.

The Project Company must provide the services in accordance with the Project Deed, good industry practice, the output specification, all applicable laws and consents, the Operations and Maintenance Manual, the project plans, and its duty of care obligations.

3.5.3 Performance monitoring and reporting

The performance measurement system will be developed and operated by the Operator. The

State may monitor and review the system by any method it sees fit including:

- analysing helpdesk reports;
- benchmarking;
- user surveys;
- performance data and condition assessment data; and
- State audit.

The Project Company will provide to the State a monthly invoice accompanied by a monthly performance report with work papers clearly setting out the derivation and calculation of any deductions made.

The Project Company has agreed to implement a system of continuous improvement and will report on proposed continuous improvement strategies and methodologies. Where necessary, they will submit variation proposals to implement improvements.

3.5.4 Market testing / Benchmarking

The Project Company must undertake a “benchmarking” exercise every five years to determine the relative quality and competitiveness of its cleaning, grounds and gardens, security, pest control, janitorial and waste management services.

Electricity, gas and water are not subject to a regular “benchmarking” exercise as these costs are a direct pass through from the Project Company to the State. The State does however have the ability to direct the Project Company to “market test” the cost of these services every three years. The Project Company must also ensure it complies with the requirements of the Output Specification as to efficient management and usage of these services.

If a dispute arises the State may refer the matter to an independent expert and if the independent expert is of the opinion that the only way to fairly and properly resolve the dispute is to undertake a market testing exercise he/she may direct that this step be undertaken in accordance with the procedures outlined in the relevant schedule to the Project Deed. Alternatively, the State may in its discretion call for the “benchmarked” services to be market tested.

If the cost/saving difference resulting from the benchmarking or market testing exercise (for those services which are required to be benchmarked) is greater than a specified percentage (upwards or downwards) the State

will adjust the service payment accordingly for the amount in excess of the specified percentage.

For electricity, gas and water as the services are a direct pass through cost, any increased cost or cost saving is passed onto the State.

The Project Company must carry out insurance market testing every two years. If the insurance cost/saving difference is greater than a specified percentage (upwards/downwards) the State will adjust the service payment accordingly.

3.5.5 Use of facilities

The facilities can be used by the State for the delivery of educational, training and associated purposes within agreed times (i.e. core times). Use of the facilities outside of core times may incur a service charge.

The Project Company may enter into arrangements for third party use of any part of the facilities provided that it has submitted the proposed third party use to the State for consent. Consent cannot be unreasonably withheld.

The Project Deed contains a number of restrictions on use by the Project Company or third parties. For example restricted services include the provision of services that are core education services or incidental to the provision of core education services, the use is inconsistent with the law, discloses personal information or interferes with the privacy of staff, students and associates or is of an objectionable or offensive nature.

3.6 Variations

State initiated variations

Any variation to the State’s requirements as agreed to and contained in the Project Deed, a schedule, appendix or annexure to the Project Deed may be proposed to the Project Company. The Project Company must respond and outline the effects of the proposed variation, the time to implement the variation and if applicable, time consequences on the overall project and the estimated cost.

The State has the option to accept, reject or enter into negotiations to reach a mutually acceptable position.

If the State accepts the Project Company’s response and issues an acceptance notice the

Project Company is required to amend design documentation, operating manuals and any other relevant documentation.

In the operating phase, if the State proposes a variation and the Project Company responds to such proposal, the State may decide not to proceed with the variation, and engage an external contractor to undertake the work. In this case the State may require the Project Company and the external contractor to enter into a co-ordination and interface agreement and the Project Company must not hinder, prevent or delay the State or its contractors in undertaking this work.

Project Company Initiated Variations

The Project Company may at any time by notice to the State request a variation.

The notice must state the effect of and set out the reasons for the proposed variation. It must confirm that the proposal will not result in any delays to the milestones and/or practical completion dates. Unless otherwise agreed by the State, the Project Company must bear all costs and expenses of any variation.

Where a variation saving arises the State will share in the savings.

3.7 Payment and revenue

The State must make monthly service payments to the Project Company from the commencement of the first stage availability date (i.e. anticipated 15 January 2010) through to 30 December 2039 or earlier termination of the Project Deed.

These monthly service payments will comprise:

- a performance-based gross monthly fee less deductions arising in the previous month for:
 - unavailability failures (i.e. where parts of the school facility may be unavailable for use by the State);
 - service failures measured by key performance indicators outlined in the performance measurement system; and
 - reporting failures where the Project Company failed to disclose an event in a previous monthly report which has led to a deduction; and
- a service employee cost component (for the costs of State employees under the management and supervision of the Project Company);

- a lifecycle payment;
- a modular adjustment component (for modular units provided on sites);
- an energy payment (which is a direct pass through of energy costs incurred by the Project Company in providing the services);
- an insurance payment component (each quarter);
- a car park maintenance payment;
- a non-usage rebate (an amount deducted from the service payment if the State does not require the Project Company to make any of the school facilities available during a school academic year);
- upward and downward adjustments arising as a result of movements in the base rate of the private sector operational phase finance facilities;
- upward and downward adjustments to reflect any amounts owing by the State and the Project Company to each other under other provisions of the Project Deed; and
- GST payable in respect of the above amounts.

The net present value of the gross monthly payments and scheduled maintenance payments total \$456 million over the entire concession period.

3.8 Insurance, liability and indemnity

3.8.1 Insurance and indemnities

The Project Company indemnifies the State, its officers, employees, agents and staff (including contractors and consultants) against any claim or loss from:

- any breach or failure to observe any of the covenants, obligations, agreements and conditions under the Project Deed or other project documents by the Project Company;
- any negligent or unlawful acts or omissions or wilful misconduct by the Project Company;
- death, disease, illness or personal injury, to persons;
- loss of, damage to or destruction of real or personal property,

except to the extent that any such claim or loss above is a direct consequence of circumstances such as:

- the negligent or unlawful acts or omissions or wilful misconduct of the State;
- a breach of the State of its express obligations under the Project Deed or other project documents;
- any act or omission of the Project Company in accordance with instructions of the State or its representative;
- a failure by the State to comply with applicable employment terms of Service Employees (under the Management and Supervision Agreement).

3.8.2 Release

The Project Company releases to the full extent permitted by law the State from all claims of any kind. This release does not apply to claims directly arising from any negligent or unlawful acts or omissions or wilful misconduct or breach of the project documents by the State.

In cases that the release does not apply, and the Project Company is insured, the Project Company will first seek to recover the loss under insurance.

The Project Company must release the State from any claim where the State would have been indemnified had the Project Company had the insurance policies in place as required by the Project Deed or had not done or failed to do something (eg. non-disclosure) which prejudiced the entitlement of the State to indemnification.

3.8.3 Risk of loss or damage

From the applicable access date for each site until the end of the concession period, the Project Company will bear the risk of and not have any claims against the State as a result of loss or damage to or destruction of the works, the Accommodation, or the sites.

This does not apply to the extent that any loss or damage is a direct consequence of any negligent or unlawful act or omission of the State or breach by the State of its express obligations under the Deed, unless, and to the extent that, the Project Company is entitled to recover any such loss under a policy of insurance, or would have been entitled to

recover such loss, but for a failure by the Project Company to maintain insurance.

3.8.4 Reinstatement and application of insurance proceeds

Where such loss or damage occurs to the works, the Accommodation, or the sites the Project Company must:

- at its own cost and expense and in a timely and efficient manner, remedy any damage or defect;
- promptly notify the State of any damage or defect and as soon as practicable, provide the State with a further detailed report of action being taken, and consult with the State as to the programming of the works required for reinstatement or repair; and
- apply all insurance proceeds received towards the cost of reinstatement or repair.

The Project Company will not however be required to perform such reinstatement or repair where the event causing the loss or damage is a Force Majeure event which was not insurable at the date of the Deed (such events are specifically referred to in the Deed).

The State may also direct the Project Company not carry out its above obligations in which case the Project Company waives (in favour of and for the benefit of the State) its right to give a notice of claim to the insurer and must pay to the State all proceeds it receives from the insurance policies. The Project Company will be relieved of its obligations to an extent reasonably determined by the State.

3.8.5 Liability for indirect or consequential loss

The State does not have any liability to the Project Company for any indirect or consequential loss incurred or sustained by the Project Company as a result of a breach or negligent act of the State.

Indirect or consequential loss includes loss of revenue, loss of profit, loss of business opportunity and payment of liquidated sums, penalties or damages under any agreement (other than the Project Deed, D&C Contract and O&M Agreement), but does not include property damage or losses arising from third party claims in respect of property damage, personal injury, nervous shock or death.

3.8.6 Insurance policies required

The Project Company must effect and maintain the following insurance policies:

- contract works insurance (including advance consequential loss) covering the works for the full replacement/reinstatement value of the construction works, plant and equipment and materials until the completion of all construction activities. Where materials and equipment are to be imported for the Project, relevant marine cargo insurance must be in place on such items. Prior to commencing any modification or refurbishment of the school facilities the Project Company must effect contract works insurance;
- public liability and products liability insurance, for at least \$150 million per occurrence relevant to the design and construction activities and for at least \$150 million relevant to the services (and in the case of product liability \$150 million in total during any 12 month period). The insurance covering design and construction must be maintained until the expiration of the last defects liability period and the insurance in respect of the services must be maintained up to 31 December 2039 or any earlier termination of the Project Deed;
- professional indemnity insurance, for at least \$20 million per claim and \$20 million in total during any 12 month period (and one reinstatement for the facilities during the design and construction phase), until seven years after completion of the school facilities, and the same level of coverage for professional services relating to the delivery of the services until seven years after the expiry date;
- workers' compensation insurance;
- motor vehicle insurance;
- industrial special risks insurance, (including business interruption insurances) until 31 December 2039 or any earlier termination of the Project Deed; and
- any other insurance required by law.

All insurance policies must be made available to the State or sufficient evidence provided to the State to assure that the above insurances are in place.

The State has the right to request the Project Company to insure against a risk not covered in the required insurance policies or increase the extent of, or change terms of an existing insurance policy. The State must reimburse the Project Company for any additional premium that is incurred.

3.8.7 Notices of potential claims

The Project Company and the State must inform the other of any occurrence or incident that might give rise to a claim the value of which is expected to exceed \$100,000 (indexed by reference to CPI), except where the insured's right under the policy may be prejudiced. Each party must keep the other informed of developments with respect to the claim.

The Project Company and the State must inform the other if it becomes aware of any occurrence or incident which might materially reduce the Project Company's insurance cover.

3.8.8 Uninsurable risks

If a risk is or becomes uninsurable – either because it is not available in the international insurance market or because the associated premiums become so high that the risk is not generally being insured against by prudent, competent and experienced service providers – the Project Company must notify the State within five business days.

If both parties agree that the risk is uninsurable and has not become uninsurable because of the actions or insurance history of the Project Company, its subcontractors or their employees or agents then the parties must meet to discuss the best way to manage the risk, through self-insurance or otherwise.

If agreement cannot be reached in respect of a "material risk" as defined in the Project Deed, the State may deduct from the monthly service payments an amount equal to the premium that was payable for that risk.

If an uninsurable risk occurs which is a "material risk", and notice had been provided to the State that the material risk had become uninsurable, then the State can either:

- pay to the Project Company an amount equal to the insurance proceeds that would have been payable had the relevant insurance coverage continued; or

- where the school facility/facilities have been substantially damaged or destroyed, either terminate the Project Deed and invoke a termination payment (see termination section below), or propose a variation where the affected school facility/facilities are excised from the Project Deed.

3.9 Default, Termination and Expiry of Term

The Project Deed contains a number of Project Company default categories being:

- Immediate Termination Events
- Remediable Default Termination Events
- Irremediable Default Termination Events
- Persistent Breach

Immediate Termination Events are those events that are so severe it is considered necessary to terminate immediately. Examples of this type of event are an insolvency event, an illegality event, extended force majeure, the construction long stop date is not achieved or is determined by the Independent Certifier as unachievable, or deductions reach a specified threshold over certain periods or the Project Company abandons the Project.

Remediable default termination events occur where a remediable default event has occurred and the Project Company, the security trustee or other determined parties as specified under the finance documents do not cure or remedy the default and leads to the serving of a termination notice.

Remediable default events are events that are curable, for example the Project Company does not effect and maintain the required insurances. The Project Company must submit a Cure Plan which must contain full details of all steps which the Project Company is taking, or proposes to take, in order to remedy or mitigate the effect of such breach.

Likewise irremediable default termination events occur where an irremediable default event has occurred and the Project Company, the security trustee or other determined parties as specified under the finance documents cannot cure or remedy the default which leads to the serving of a termination notice.

Irremediable default events are primarily where repeated failures have occurred with respect to the provision of the services by the Project Company. The Project Company is required to

submit a Prevention Plan which contains full details of all steps which the Project Company is taking, or proposes to take, in order to prevent a reoccurrence of the failures.

Persistent breaches occur where continued breaches occur by the Project Company. The Project Company is served with a warning notice and if the breach continues then within certain timeframes a Final Notice may be served.

3.9.1 Step In, suspension and emergencies

The State may step in and take whatever steps necessary to remedy the situation if:

- the Project Company is in default of the Project Deed which gives rise to an emergency;
- the State reasonably forms an opinion that there is a material risk to the environment or its ability to discharge its duty of care is jeopardised; or
- the State otherwise forms a reasonable opinion that action must be taken to discharge its public duty.

Once the State has stepped in and is then satisfied that the situation has been averted or overcome, or its consequences have been mitigated or otherwise dealt with, it may direct the Project Company to recommence its performance of its obligations under the Project Deed.

3.9.2 Rights at the end of the Term

At the end of the contract (ie. 31 December 2039) the Project Company must:

- vacate and return to the State the facilities and the relevant site/s free from any encumbrances and in a state and condition which complies with the Project Deed;
- provide copies of relevant documentation and systems with respect to the operations of the site;
- transfer all equipment and materials related to the Project to the State;
- transfer all relevant intellectual property rights necessary to enable the State to carry out works contracted under the Project Deed;
- remove any temporary buildings, plant, tools, equipment, goods, etc from the sites;
- ensure the sites are safe and are clear of any wreckage, rubbish and debris and take measures to secure and protect the site;

- (g) provide an adequate handover to the State or nominated agent;
- (h) novate to the State or its nominee any agreement relating to the execution of the design and construction activities or delivery of the services if required by the State;
- (i) use reasonable endeavours to assist the State, if so requested, in the preparation for, and the conduct of, a fair and competitive tendering process for the carrying out of the services;
- (j) for a period of at least 12 months make available to the State any information, and assist in the verification of any information in connection with the retendering process; and
- (k) not do anything which avoids or materially prejudices or frustrates the transfer, as a going concern of the right to provide the services, to a new Project Company.

The Project Deed states that from the end of the term, the Project Company irrevocably appoints the State, and such other persons as nominated by the State, from time to time, to act with full power and authority to execute any agreement or novation to facilitate the State's rights with respect to matters referred in this section.

3.10 General Provisions

3.10.1 Subcontracting

The Project Company may subcontract construction activities or operations or any part of them in accordance with the provisions set out below. However in doing so, the Project Company is not relieved of any of its liabilities or obligations under the Project Deed.

The Project Company must:

- (a) promptly notify the State of any construction subcontract, or an aggregate of construction subcontract(s) that exceed(s) agreed thresholds;
- (b) obtain the prior approval of the State of any construction subcontract or an aggregate of construction subcontracts that exceed(s) an agreed threshold; and
- (c) obtain the prior approval of the State to enter into an operations subcontract where the annual fee exceeds an agreed threshold.

The Project Company agrees that any variation or amendment to or replacement of a subcontractor approved in (b) or (c) above made without the approval of the State will not be binding on the State or affect or prejudice the State's rights against the Project Company under the Project Deed.

3.10.2 Employee Requirements

As the school facilities provide services to minors, all persons employed or engaged in:

- the provision of the services; and/or
- construction works to the extent that these activities require regular contact with students,

must comply with:

- the *Commission for Children and Young People and Child Guardian Act 2000 (Qld)* (ie. Blue Card);
- the *Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)*; and
- any other legislation relevant from time to time to child related employment.

3.10.3 Utilities and Rates

The Project Company will be responsible for procuring, metering, extending, relocating, adjusting, connecting, providing and paying of any utility (includes water, electricity, gas, drainage and sewerage) to the sites to enable the Project Company to perform its obligations under the Project Documents and which are required to provide the core educational services. However, the State will procure the provision of utilities to the boundary of three of the sites (those sites which are subject to acquisition/development agreements).

3.10.4 Force Majeure

Force majeure events are defined in the Project Deed as any of the following which are beyond the reasonable control of the parties:

- any natural disaster, flood (only a flood which is not caused by the Project Company or arose due to a breach by the Project Company of its obligations), lightning, cyclone, hurricane, bushfires or earthquake;
- terrorism;
- war, hostilities or act of foreign enemies;
- revolution or any other unlawful act against public order or authority;

- confiscation, nationalisation, requisition or damage to property buy or under the order of any government;
- radioactive contamination or public health emergency;
- a failure of any utilities to the boundary of the site/s or within the site/s caused by a public utility during the operating phase;
- a strike, lockout, demarcation dispute or industrial dispute that occurs during the operating phases and affects the services on a State-wide or nation-wide basis,

and as a result of which a party is prevented from or delayed in performing any of its non-financial obligations under the Project Deed.

Promptly after the Project Company becomes aware that force majeure has occurred the Project Company must give the State notice containing full details of the obligations which are affected.

The parties must meet as soon as reasonably practical following service of the notice referred to above to determine the impact of the force majeure on the Project and actions to be taken. If agreement cannot be reached the matter will be referred to an independent expert for resolution in accordance with the agreed dispute resolution procedures.

If a force majeure event has occurred the State is not required to pay the monthly payment to the extent the services are not being provided during a period of suspension.

If the Project Company can recommence performing its obligations it must notify the State immediately.

If an extended force majeure event occurs causing the Project Company's obligations to be suspended for 180 days or longer, an Immediate Termination Event has occurred, (see section above), and the State may terminate the Project Deed, propose a variation to excise the affected school facility/site from the Project, or continue paying the monthly service payment (less operating costs not incurred).

3.10.5 Restrictions on business

The Project Company must not, without the prior consent of the State, conduct any business other than implementation of the Project.

3.10.6 Change in Control

Subject to very specific qualifications, the Project Company cannot effect a change in

control or amend, or permit to be amended, its constitution or other constituent documents without the prior consent of the State. Control has the same meaning as the *Corporations Act 2001(Cth)*.

Where a change in control occurs due to shares being traded and the Project Company becomes aware that a change in control has occurred it must promptly notify the State. If the State rejects the change in control the Project Company must ensure that the relevant person/s cease to hold the share capital or other equity interests or to have the voting power or control; or dispose of the equity interests it holds within 90 days after notice given by the State.

3.10.7 Restrictions on dealing and finance documents

The Project Company must not sell, transfer, assign, mortgage or otherwise dispose of its interests in the Project without the prior consent of the State. The State cannot unreasonably withhold its consent.

The State must not sell, transfer, assign, or otherwise dispose of its interests in the Project without the prior consent of the Project Company, except that nothing shall prevent the State to another party whose obligations are guaranteed by the State.

The Project Company must not enter into any financing arrangements other than those already agreed to by the State in the finance documents or make any material amendment to the finance documents without the prior consent of the State.

The Project Company must not enter into any refinancing arrangement without the prior consent of the State. A breach of this condition is an Irremediable Default Event.

Where the State consents to a refinancing which results in a refinancing gain, the Project Company agrees to pay to the State 50% of any gain.

3.10.8 Arrangements in the last three years of the Project

Approximately three years and one year prior to the end of the Project's term, the State will engage an independent surveyor (approved by the Project Company) to carry out a handback survey.

This survey will assess whether the facilities as at the date of the survey have been and are

being maintained by the Project Company in accordance with its obligations under the Project Deed. It will also determine the amount (if any) required to be expended during the remaining period up to expiry to ensure that the facilities are at a standard that complies with the output specification.

Within 20 business days of the handback survey, the Project Company must provide the State with a bank guarantee with a face value of no less than the amount determined by the independent surveyor referred to above. If the Project Company does not provide this bank guarantee, the State will deduct an amount from each monthly service payment that adequately provides for the amount as determined by the independent surveyor and pay it into a retention account held by the State.

The Project Company may call on the bank guarantee or funds held in the retention account to cover costs incurred in carrying out works identified in the independent surveyor's report or lifecycle maintenance costs.

If the bank guarantee or the retention amount in the retention account is not enough to meet all works that the Project Company must undertake to meet its obligations under the handback requirements, the Project Company will bear the balance of such costs itself.

Should there be a credit balance in the retention account at the end of the project or the bank guarantee has not be called on and the Project Company has carried out all work necessary to comply with its handback obligations under the Project Deed, then any credit balance will be paid to the Project Company or the bank guarantee held will be returned.

3.10.9 Dispute Resolution

The Project Deed sets out procedures which may (or in certain circumstances under the Project Deed, must) be followed when there is a dispute between the State and the Project Company.

The dispute resolution procedures are as follows:

- the parties will seek to negotiate a resolution. Firstly, representatives of the parties will meet to resolve the dispute using reasonable endeavours. Should this fail the matter will be referred to the Senior Dispute Representative of each party. The Senior Dispute Representative in the case of the State is the Director-General of the

Department of Education and Training. The Senior Dispute Representative of the Project Company is a person who has the powers and authorities similar to the State's Senior Dispute Representative.

- If the dispute is not resolved by way of negotiation then, where the dispute is expressly covered by the Project Deed to be handled in accordance with the dispute resolution procedures or the parties have agreed to apply further the dispute resolution procedures then the following procedures will apply:
 - The parties must agree upon the appointment of an independent expert to hear the matter. If agreement is not reached regarding this appointment, then the matter will be referred to the Institute of Arbitrators and Mediators Australia to determine the independent expert.
 - The independent expert's decision will be final and binding on the parties.

Where the parties do not agree to apply the dispute resolution procedures or the Project Deed does not expressly state that the procedures shall apply, the dispute may be referred to the appropriate court for determination.

3.10.10 Miscellaneous Provisions

Amendments

An amendment of the Project Deed must be in writing and signed by the parties.

Confidential Information

The Project Deed and other Project Documents are subject to confidentiality restrictions. Exemptions apply with respect to disclosures required by law or stock exchange listing rules; disclosures to relevant parties in order to maintain credit arrangements or perform obligations under the Deed (in which case parties receiving the information will be subject to an equivalent duty of confidentiality) other State Government agencies including the Queensland Audit Office for audit purposes in accordance with the *Financial Administration and Audit Act 1977* and the *Auditor-General Act 2009* and the publication of this *Project Agreements Summary*; or disclosure for official state purposes.

DEPARTMENT OF EDUCATION AND TRAINING
(formerly Department of Education, Training & the Arts)
SEQ Schools PPP Project
Probity Advisors Report

To: Department of Education and Training

BDO Kendalls are the appointed Probity Advisors to the SEQ Schools PPP Project. The Department of Education and Training (“DET”) is seeking a preferred Proponent for the delivery of the SEQ Schools Project as a Public Private Partnership.

Expression of Interest (EOI) Process

Following an EOI process, the Evaluation Committee, with the assistance of advisors, performed an evaluation of submissions received in accordance with the evaluation criteria and recommended the following shortlisted Proponents be invited to submit Binding Bids:

1. Axiom Education Queensland
2. Learning Works Partnership
3. Pinnacle Education
4. Aspire Schools

Subsequent to this process, one of the shortlisted Proponents, Axiom Education Queensland, decided to formally withdraw from the Binding Bids process.

The Binding Bid Documentation issued to Proponents detailed the engagement and communication process including the rules for the interactive process. The engagement process included presentations, project briefings and workshops on Design/Construction, Services/Management and Supervision, and Commercial.

Lodgement of Request for Binding Bids

Lodgement of submissions closed on 7 November 2008 and the following Proponents submitted Binding Bids for the SEQ Schools PPP Project.

1. Aspire Schools (Aspire)
2. Learning Works Partnership (Learning Works)
3. Pinnacle Education (Pinnacle)

Assessment

The composition of the Evaluation Committee was consistent throughout the Bid process. The Evaluation Committee received and considered the detailed Binding Bid from each Proponent.

Scope of Work

During the process we have performed the following:

- a) Considered the Request for Binding Bids documentation and proposed timetable;
- b) Considered the Evaluation Plan and procedures;
- c) Attended meetings and discussions with the project team on process and requirements;
- d) Attended the Industry Briefing;
- e) Assistance with the resolution of probity and process issues;
- f) Considered Requests for Clarifications sent to individual Proponents;
- g) Attended Proponent Design/Construction meetings held regarding DET's design objectives and master planning requirements;
- h) Attended Services/MSA meetings;
- i) Attended Proponent Commercial/Legal workshops;
- j) Attended Proponent presentations on design and construction of each School Facility;
- k) Attended to Conflict of Interest matters;
- l) Attended Clarification meetings with Proponents;
- m) Attended Binding Bid Close on 7 November 2008;
- n) Attended Evaluation Committee meetings where the Committee had the benefit of independent analysis from specialist advisors for each of the technical, financial and legal disciplines;
- o) Discussions with the project team on progress;
- p) Attended meetings with the project team on various project issues including Addendum and Bid Document Planning;
- q) Reviewed correspondence and process documentation;
- r) Reviewed Confidentiality Deed;
- s) Reviewed Interactive Protocols;

- t) Considered Request for Responses for all Proponents;
- u) Attended Proponent Financial Model workshops where discussions were held regarding Proponents' assumptions and methodologies used in preparing their models;
- v) Attended Proponent Technical workshops which covered certainty of delivery and appropriateness of each of the Proponents' design submissions;
- w) Witnessed the Opening of Responses to the Request for Responses process on 23 January 2009; and
- x) Considered the Binding Bid Evaluation Report.

Probity Results and Opinion

Based on the scope of work performed above, we confirm the following:

- a) From a probity perspective, a formal and appropriate process was established for the SEQ Schools PPP Project;
- b) The evaluation criteria were established and documented prior to Binding Bids lodgement;
- c) The Evaluation Plan was established prior to Binding Bids lodgement;
- d) From discussions, observations and review of documentation, equal opportunity was provided to all Proponents;
- e) Proponents' Binding Bids were lodged by the due date being 7 November 2008;
- f) Appropriate opening procedures were followed for Binding Bids received, including the recording of material received;
- g) Having regard to review, observations and discussions, the Evaluation Committee observed probity protocols throughout the process;
- h) Having regard to our observation and discussion, adequate security and confidentiality procedures appeared to be followed by the Evaluation Committee and advisors;
- i) Having regard to our observation and review, the evaluation criteria contained in the Evaluation Plan was followed by the Evaluation Committee during the evaluation process; and
- j) The evaluation and the results of the evaluation were documented to evidence the process followed and the conclusions reached.

In conclusion, we have reviewed the process adopted for the SEQ Schools PPP Project relating to the Request for Binding Bids, and the evaluation and recommendation by the Evaluation Committee. From a probity perspective and having regard to the scope of work performed, we of the view that a fair and equitable process was followed in accordance with the documentation, and the evaluation process was carried out in accordance with the established criteria to reach the conclusions.

BDO Kendalls

Zoran Radosevic
Partner

Dated this 29th day of May, 2009

REPORT OF FACTUAL FINDINGS IN CONNECTION WITH
THE SEQ SCHOOLS PPP PROJECT
PROJECT AGREEMENTS SUMMARY

To the Director-General of the Department of Education and Training

SCOPE

On 31 July 2009 I was engaged by you to determine whether the Project Agreements Summary (the Summary) was a fair reflection of the various agreements entered into as part of the SEQ Schools PPP Project. This engagement was undertaken in accordance with Australian Auditing Standards applicable to agreed-upon procedures engagements. I agreed with you to perform the following procedures.

1. Check whether the following information, as recorded in the agreements and other documentation supplied, is fairly disclosed within the summary:
 - the full identity of the Preferred Proponent and its sponsors, including details of cross ownership of relevant companies
 - service delivery requirements and performance specifications
 - the term of the partnership. This information would include details of future transfers of assets of significant value back to Government at the end of the term at no or nominal cost
 - the assets that are to be transferred to the Preferred Proponent
 - maintenance provisions
 - the price to be paid by the public, and the basis for variations to this price
 - provisions for renegotiation
 - the risk sharing in the construction and operational phases
 - significant guarantees or undertakings. This would include loans entered into or agreed to be entered into
 - other key substantive elements of the Project Agreements:
 - agreed key performance indicators
 - default and termination conditions
 - substitution of parties and step in rights.
2. Check whether the following information has not been disclosed in the contract summary:
 - the Preferred Proponent's cost structure or profit margins
 - With regard to the other matters which should not be disclosed, these are outside the scope of my audit. These matters are:
 - matters relating to Intellectual Property
 - any other matters where disclosure would put the Preferred Proponent at a commercial disadvantage with its competitors
 - other state matters.

Because the above procedures do not constitute either an audit in accordance with Australian Auditing Standards or a review in accordance with Australian Auditing Standards applicable to review engagements, we do not express any assurance on any other matter in regard to the SEQ

Schools PPP Project. Had the Queensland Audit Office (QAO) performed additional procedures or performed an audit in accordance with Australian Auditing Standards or a review in accordance with Australian Auditing Standards applicable to review engagements, other matters might have come to our attention that would have been reported to you.

FINDINGS


I report as follows –

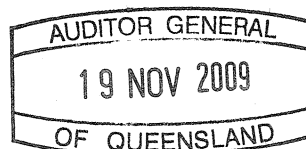
With respect to point 1 above, I found that the following were fairly disclosed within the Summary -

- a) The full identity of the Preferred Proponent and its sponsors, including details of cross ownership of relevant companies;
- b) Service delivery requirements and performance specifications;
- c) The term of the partnership, including details of future transfers of assets of significant value back to Government at the end of the term at no or nominal cost;
- d) The assets that are to be transferred to the Preferred Proponent;
- e) Maintenance provisions;
- f) The price to be paid by the public, and the basis for variations to this price;
- g) Provisions for renegotiation;
- h) The risk sharing in the construction and operational phases;
- i) Significant guarantees or undertakings, including loans entered into or agreed to be entered into; and
- j) Other key substantive elements of the Project Agreements –
 - o Agreed key performance indicators;
 - o Default and termination conditions; and
 - o Substitution of parties and step in rights.

With respect to point 2 above, I found that the Preferred Proponent's cost structure or profit margins were not disclosed within the Summary.

My report is solely to assist the Department of Education and Training in complying with the Government's Public Private Partnership Guidance Material. This report relates only to the procedures agreed to be performed and does not extend to any other matter involving the SEQ Schools PPP Project.


G G POOLE FCPA
Auditor-General of Queensland



Brisbane