

# *Partnerships Victoria* in Schools Project Summary

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in conjunction with the Department of Treasury and Finance

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# Foreword

This Project Summary provides information about the contractual nature of the *Partnerships Victoria* in Schools Project (Project).

*Partnerships Victoria* is part of the Victorian Government's strategy for providing better services to all Victorians by expanding and improving Victoria's public infrastructure. The *Partnerships Victoria* framework is designed to utilise private sector expertise in designing, financing, building and maintaining infrastructure projects.

Victoria has taken the lead in developing a Public Private Partnerships (PPP) market in Australia. Since 2000, 18 *Partnerships Victoria* projects have been contracted. They equate to almost \$5.8 billion of capital investment. This figure includes \$255 million for this Project.

This Project Summary does not alter or replace any of the National PPP Policy and Guidelines or supplementary Victorian PPP guidance material, which together comprise the *Partnerships Victoria* framework. Comprehensive policy guidelines are available at [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au). They cover matters from the procurement process and risk allocation to detailed financial benchmark case studies. Further information on the *Partnerships Victoria* framework is also available at this website.

This document is divided into two parts. The first part provides a broad overview of the Project, including the rationale for undertaking it under the *Partnerships Victoria* framework, a summary of the tender process, the value-for-money calculation, the public interest considerations for the Project and the Project timetable. The second part focuses in more detail on the key commercial features of the Project, including the main parties and their general obligations, the broad allocation of risk between the public and private sectors, the treatment of various key project issues including the payment mechanism and the finance and security arrangements.

NB: This Project Summary should not be relied on as a complete description of the rights and obligations of the parties to the Project and is not intended for use as a substitute for the contracts.

# Part One: Project Overview

## 1.1 The *Partnerships Victoria* in Schools Project

The Project involves the State entering into a contract with Axiom Education Victoria Pty Ltd (**Axiom**) for the design, construction, financing and maintenance of 11 new government schools in key growth areas of Melbourne that will open for the 2010 and 2011 school years. The new schools will complement, but not replace, existing schools and are being developed in accordance with broader planning coordinated by the Growth Areas Authority and local councils. The Victorian Government will retain responsibility for teaching and school curriculum.

The schools to be delivered and their respective locations are listed in Table 1 and illustrated in Figure 1.

**Table 1: School Facilities**

School Facilities
Casey Central Secondary College*
Craigieburn West Primary School
Cranbourne East P-12 School
Cranbourne North East Primary School
Derrimut Primary School
Kororoit Creek Primary School
Lyndhurst Primary School
Mernda Central Primary School
Point Cook North P-9 School
Taylors Hill Primary School
Truganina South Primary School

\*Casey Central Secondary College will be delivered over two stages. The first stage incorporates all facilities other than the Years 10-12 learning communities which will be delivered as part of the second stage.

This is critical new infrastructure for these outer Melbourne communities that brings together the best in contemporary educational design and promotes active student-centred learning through the creation of flexible, functional spaces. The schools will also be leading examples of ecological sustainability, with wetlands in all schools to retain and reuse water and a range of other utility conservation measures. This is a key initiative in linking the teaching of environmental sustainability with its practical application.

Figure 1: School Locations



An exciting, innovative aspect of the Project is the YMCA Facilities to be built at six of the school sites. These are detailed in Table 2. In addition, Axiom has partnered with:

- the Stephanie Alexander Kitchen Gardens Foundation to deliver a kitchen garden at Point Cook North P-9; and
- Metro Canteens to deliver enlarged canteen facilities at the two secondary schools.

All these facilities, together with school designs that facilitate after-hours community use of the core school facilities, deliver on the Victorian Government's commitment to providing community and children's services in the one location where families need them most.

**Table 2: YMCA Facilities**

School	YMCA Facility
Craigieburn West Primary School	<ul style="list-style-type: none"> <li>• long day care centre (not for profit)</li> <li>• community centre</li> </ul>
Derrimut Primary School	<ul style="list-style-type: none"> <li>• long day care centre (not for profit)</li> <li>• community centre</li> </ul>
Kororoit Creek Primary School	<ul style="list-style-type: none"> <li>• long day care centre (not for profit)</li> <li>• community centre</li> <li>• aquatic centre (with a 25 metre pool)</li> </ul>
Point Cook North P-9 School	<ul style="list-style-type: none"> <li>• long day care centre (not for profit)</li> <li>• community centre</li> </ul>
Taylors Hill Primary School	<ul style="list-style-type: none"> <li>• long day care centre (not for profit)</li> <li>• community centre</li> </ul>
Truganina South Primary School	<ul style="list-style-type: none"> <li>• long day care centre (not for profit)</li> <li>• community centre</li> </ul>

The Project will play a crucial role in shaping these growing communities which need good community facilities. Further, these modern facilities will assist in ensuring that Victorian students are able to receive the best modern education.

**Figure 2: Artist's impression of Cranbourne East P-12**



## Project Vision and Objectives

### *Project Vision*

Research confirms a direct relationship between the design, quality and day-to-day management of physical learning environments and improved educational outcomes. Investment in school infrastructure can improve the educational outcomes of individual schools. At a minimum, the quality of school infrastructure has a significant impact on teacher motivation, performance and retention.

The Victorian Government's long-term vision is to transform education infrastructure to ensure all Victorian government schools are equipped to provide high-quality education to their students, now and in the future.

Consistent with this long-term vision, the Government released the Victorian Schools Plan (VSP) in October 2006. The VSP is the Government's ten-year plan to transform state education by funding the rebuilding, renovation or extension of every Victorian government school. It is the largest school building program in Victoria's history.

With Melbourne continuing to expand, the State identified a need for world-class teaching and learning facilities in the growing areas of the city. Accordingly, as part of the VSP, the Government committed to building 20 new schools in growth areas.

On 6 December 2007, the Premier announced that 11 of these new schools would be delivered under the Government's *Partnerships Victoria* framework. This reflects the State's commitment to encouraging private sector investment in public infrastructure where such investment brings clear benefits to the community.

The identified package of schools was selected using clear criteria such as level of need, school viability, service mix, investment complexity and timing.

### *Project Objectives*

To assist in achieving the Project vision, the following specific objectives were developed to guide the delivery of the Project.

#### *Learning environments and outcomes*

- Encourage best practice design to promote more effective student learning and improved teacher practice.
- Deliver high quality school facilities and ancillary services to ensure the best possible teaching and learning environments.

#### *Flexibility*

- Ensure the school facilities are adaptable to new technologies and changing teaching and learning practices.

#### *Whole of life approach*

- Deliver efficiencies and overall value for money to the State through a whole of life approach to design and construction and ongoing asset management.

#### *Improved facilities management delivery*

- Deliver improved maintenance and other facilities management services over the life of the Project.

*Interface with School Services*

- Enhance the ability of DEECD to deliver all School Services by, for example, freeing up teacher and principal time from everyday issues of infrastructure ownership and management.
- Promote smooth and efficient interface between the infrastructure ownership and management services to be delivered by the private party and the School Services.

*User Satisfaction*

- Ensure high levels of satisfaction amongst users including principals, teachers, students, parents and communities thereby encouraging teacher and student motivation, performance and retention.

*Community Partnerships*

- Support community engagement by promoting and maximising opportunities for community use.

*Ecological sustainability*

- Ensure school facilities and their environments are ecologically sustainable and responsible.

## 1.2 Partnerships Victoria - A Public Private Partnership

The Project is being delivered as a PPP in accordance with the Victorian Government's *Partnerships Victoria* framework.

*Partnerships Victoria* is designed to capture the best of what Government does, and combine this with the expertise the private sector has in designing, financing, building and maintaining infrastructure projects. The parties the State has contracted with to deliver the Project are identified in Part Two of this document.

As part of its 2005 Business Case – Schools Alternative Procurement, the State undertook a detailed assessment of alternative procurement methodologies for the delivery of DEECD's school program (both new and replacement schools) to improve educational outcomes, asset quality, environmental sustainability, timeliness and value for money. The State tested the following four procurement methodologies:

- **Traditional:** The State separately engages a design team to develop the design documentation and then engages a builder to deliver the works at a fixed price. The State separately delivers the non core services (with the State continuing to deliver education, curriculum and teaching).
- **Design and Construct:** The State engages a private sector contractor to manage some or all aspects of the design and to deliver the works on behalf of the State for an agreed lump sum. The State separately delivers the non core services (with the State continuing to deliver education, curriculum and teaching).
- **Alliancing:** a contractual arrangement based on a target price with some sharing arrangements for upside/downside as compared to an agreed budget. It is based on a relationship culture which encourages a "no blame" approach to issues and instead seeks to foster a "solutions" based mentality. The contractual arrangements are less prescriptive than for the other methods. The State continues to deliver education, curriculum and teaching.
- **PPP:** the State engages a private sector consortium to design and build the project, finance it and assume responsibility for facilities management and asset replacement and delivery of various 'soft' services over a defined period (typically around 25 - 30 years). The State continues to deliver education, curriculum and teaching.

Following a detailed assessment, the PPP structure was selected as the preferred procurement method for the Project. The PPP model was considered to offer the optimal result in the delivery of



high quality educational outcomes. The following were considered to be the key benefits of the model:

- **Transfer of maintenance obligations:** the PPP structure effectively locks in 25 years of funding to ensure the facilities are always maintained to a high standard. In addition, by transferring the maintenance obligations and whole of life risk to the private sector, the State frees up principals and other education professionals from facilities management activities allowing them to focus fully on core education services.
- **Whole-of-life efficiencies:** the PPP model encourages bidders to take a whole-of-life approach to evaluating costs and to optimise the trade-off between increased capital costs and lower maintenance / lifecycle costs. It delivers efficiencies through the linking of the capital investment decision to the ongoing maintenance obligations.
- **Improved asset quality:** the PPP model provides greater control over the quality of school assets and non core service delivery through a contract that specifies minimum standards and an abatement regime that ensures they are met.
- **Improved lifecycle:** the PPP model allows a more even spread of maintenance investment and asset quality over the asset life.

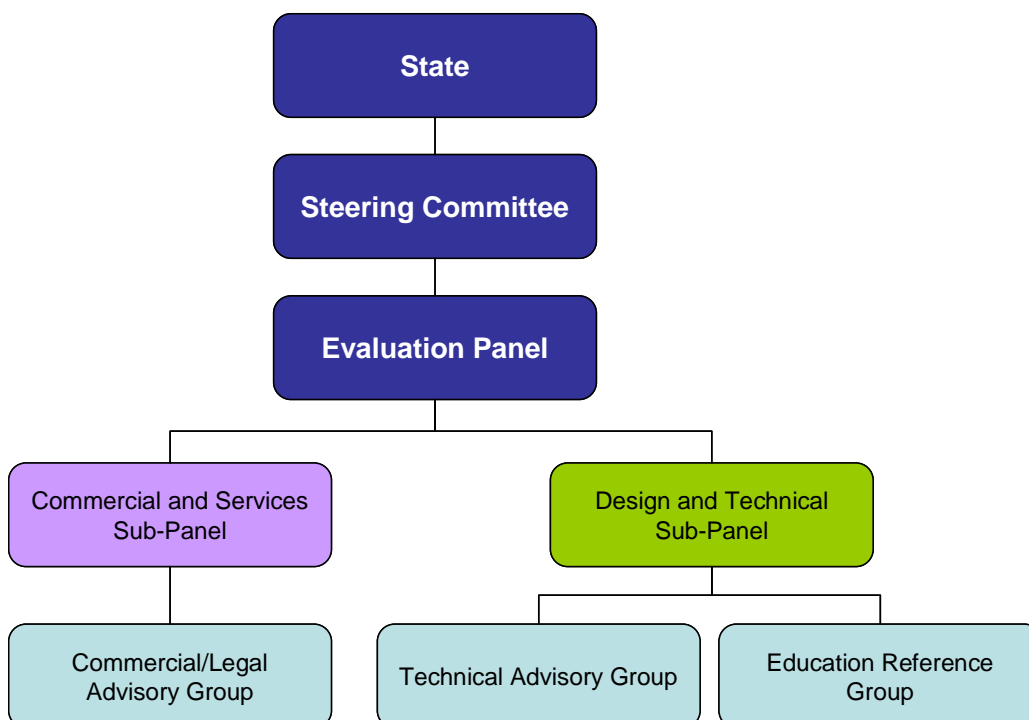
The above findings were supported by the November 2007 feasibility study into using PPPs to build new schools.

### 1.3 Tender Process

The State conducted a competitive tender process to identify the private sector party to deliver the Project. The tender process was implemented in accordance with the *Partnerships Victoria* framework to ensure that the State received the best value-for-money outcome.

A formal project governance structure was put in place to oversee the tender process, including the evaluation of Expressions of Interest and the detailed Project Brief proposals. The governance structure is represented diagrammatically in Figure 3.

**Figure 3: Project Evaluation Structure**



Final proposals from a shortlist of three proponents were received on 11 September 2008. After an extensive evaluation process (see Appendix 4), the State invited the Axiom consortium to enter into exclusive negotiations with the State with a view to resolving a number of key issues that needed to be satisfactorily addressed before the State could enter into contractual arrangements with the Axiom consortium.

At the completion of the exclusive negotiation period, the State was satisfied that all key issues had been addressed and Axiom's solution continued to represent the best value for money. Accordingly, the State and Axiom proceeded to execute the Project Agreement and ancillary contracts that govern the Project.

The major advantages of Axiom's solution were:

- a competitive whole-of-life cost;
- an excellent functional and architectural design solution;
- a strong funding and commercial solution;
- an innovative opportunity to partner with YMCA, the Stephanie Alexander Kitchen Gardens Foundation and Metro Canteens to deliver excellent community facilities and canteen/nutritional programs at various school sites;
- a strong Environmentally Sustainable Development (ESD) solution with wetlands in all schools to retain and reuse water thereby linking the teaching of environmental sustainability with its practical application;
- an appropriate allocation of project risk between parties; and
- a sound services solution.

The tender process was undertaken within a robust probity framework, endorsed by the Project's probity auditor, based on the following probity objectives:

- fairness and impartiality;
- use of a competitive process;
- consistency and transparency;
- security and confidentiality;
- identification and resolution of conflicts of interest; and
- compliance with Government policies as they apply to tendering.

## 1.4 Value for Money

The *Partnerships Victoria* framework seeks to identify and implement the most efficient form of infrastructure delivery. The concept of value for money goes beyond the selection of the cheapest solution, focussing on the true value of each delivery option. This involves a careful analysis of State-managed delivery options and each proposal received from the private sector. The analysis considered quantifiable elements (ie. items that can be quantified in dollar terms) as well as subjective or qualitative considerations.

### **Public Sector Comparator**

The Public Sector Comparator (PSC) is an estimate of the risk-adjusted, whole-of-life cost of the Project if delivered by the State. The PSC is developed according to the same output specifications included in the Project Brief and assumes the most likely and efficient form of conventional (ie. non-PPP) delivery by the State.

The PSC is expressed in terms of the net present cost to the State, calculated by a discounted cash flow analysis and takes full account of the costs and risks that would be encountered by following that style of procurement. The PSC includes amounts to cover both the design and construction costs and the maintenance and facilities management costs during the 25-year operating phase of the Project.

The net present cost of the service payments to be paid to Axiom is compared with the PSC. If it is lower than the PSC, it is an indication that at face value, the bid represents value for money.

The PSC is made up of a number of elements as indicated in Table 3 below:

**Table 3: Public Sector Comparator**

Components of the Public Sector Comparator (PSC)	Net Present Cost \$m
Capital Costs	141.5
Operating Costs (25 years)	<u>97.6</u>
<b>Raw PSC</b>	<b>239.1</b>
Transferred Risks	22.4
Competitive Neutrality	<u>0.0</u>
<b>PSC</b>	<b>\$261.5</b>

*Note: The assumptions used to formulate the PSC include:*

- a discount rate of 5.5 per cent real
- all numbers are expressed in net present values as at 31 December 2008
- the transferred risk calculation of \$22.4 million refers only to the risks transferred to the private sector under the Partnerships Victoria arrangements (i.e. those risks that the State would otherwise assume) and excludes the State's estimates of its retained risks
- the competitive neutrality adjustment removes any net competitive advantages that accrue to a government business by virtue of its public ownership

**Table 4: Quantitative Value-for-money Comparison between Public Sector Delivery and Private Sector Delivery**

Public Sector Comparator (Net Present Cost (excluding retained risk))	Net Present Cost of Axiom's winning proposal	Savings
\$261.5 million	\$254.8 million	2.6 per cent

The \$254.8 million includes both construction costs and facilities maintenance costs (over 25 years). Moreover, the construction costs included within the \$254.8 million incorporate the additional YMCA Facilities (largely offset by rentals payable by YMCA) and numerous additional design enhancements incorporated in the Axiom proposal that go beyond the scope of the reference project used to determine the PSC. They are discussed further below.

#### ***Additional value-for-money benefits of Axiom's proposal***

The net present cost of Axiom's proposal is approximately 2.6 per cent below the PSC. Although this saving indicates value for money for the State, it does not recognise a range of other significant value-for-money benefits provided by the Axiom proposal (but which were not included in the PSC).

These additional benefits include:

- a highly innovative design, offering improved functionality and flexibility as well as an excellent teaching and learning environment;
- additional music practice rooms, science laboratory and larger theatre, at each secondary school;
- provision of Plexipave at each school in place of bitumen for outdoor play surfaces;

- enhanced architecture and landscaping;
- total floor areas for the schools are greater than those assumed in the PSC (approximately 1.5 per cent greater for the primary and P-9 schools and approximately 5 per cent greater for the secondary schools);
- the YMCA Facilities (as described above);
- high capacity wireless networking throughout all schools;
- a dedicated services officer at each site who will be responsible for janitorial services, day-to-day maintenance and minor works, inspections, portorage etc;
- a kitchen garden at Point Cook North P-9 for the delivery of the Stephanie Alexander Kitchen Garden program;
- provision of enlarged kitchen/canteen facilities to be operated in partnership with Metro Canteens at Casey Central Secondary College and Cranbourne East P-12; and
- various ESD initiatives that go significantly beyond the State's minimum requirements as set out in the Project Brief (and assumed in the PSC) including wetlands in all schools to retain and reuse water.

These additional elements will significantly improve the schools' delivery of a modern education as well as being of great benefit to the broader community, which will have access to these facilities.



## 1.5 Public Interest Test

At various stages throughout the development of the Project, an assessment was made of the extent to which the Project was in the public interest. The analysis was undertaken in accordance with the *Partnership Victoria* guidance on how to evaluate whether a project meets the public interest.

At all stages, it was considered that, on balance, the public interest was being protected. The Project will make a wide range of services and facilities more accessible to all, and relate well to surrounding development land uses and landscapes. It will enable the State to provide world-class school facilities to ensure best possible teaching and learning environments for Victorian public school students. In addition, it provides local communities with access to quality community facilities and services.

Appendix 3 contains a summary of the final Public Interest Test.

## 1.6 Project Milestones

The construction of the 11 new schools will occur over two phases, with five of the schools scheduled to open in January 2010 (Phase 1 Schools) and the remaining six in January 2011 (Phase 2 Schools).

**Table 5: Scheduled School Opening Dates**

Facility	Scheduled Opening Date
Casey Central Secondary College	Stage 1* - January 2010 Stage 2* – January 2011
Cranbourne North East Primary School	January 2010
Derrimut Primary School	January 2010
Point Cook North P-9 School	January 2010
Taylors Hill Primary School	January 2010
Craigieburn West Primary School	January 2011
Cranbourne East P-12 School	January 2011
Kororoit Creek Primary School	January 2011
Lyndhurst Primary School	January 2011
Mernda Central Primary School	January 2011
Truganina South Primary School	January 2011

\*Stage 1 incorporates all facilities other than the Years 10-12 learning communities which will be delivered as part of Stage 2.

## Part Two: Key Commercial Features

Part Two of this document outlines the contractual relationships between the parties involved in the Project, including the allocation of risks and the obligations of both Axiom and the State. A brief description of the YMCA arrangements is also provided. In some areas, this Part provides more detail on the issues and topics discussed more generally in Part One.

### 2.1 Parties to the Project

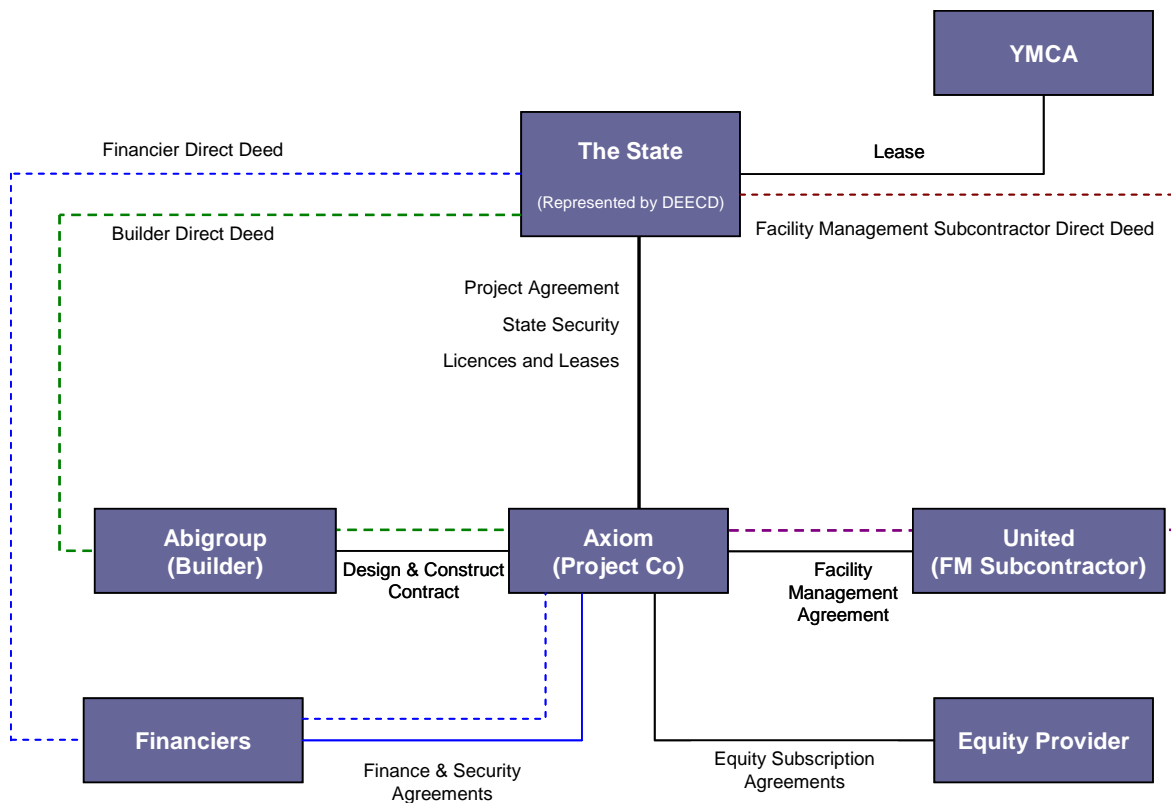
The Minister for Education, on behalf of the State, has executed contracts with Axiom to design, build and finance the 11 new schools and YMCA Facilities and provide facilities management services over a 25 year period. The relevant parties under the contractual arrangements are:

- **The State:** The State is a signatory to the Project Agreement and other ancillary Project documents. The Minister for Education is the person empowered to execute these contracts on behalf of the State. None of the individual schools or school principals are parties to the Project Agreement or other documentation.
- **Axiom:** Axiom is the organisation that has contracted to deliver the Project. Axiom is the counterparty to Project Agreement and is the main contracting entity with the State. Axiom in turn has entered into a range of contractual relationships with its consortium partners to deliver elements of the Project. Notwithstanding this, Axiom will be the organisation ultimately responsible for the delivery of the Project and will, amongst other things, provide strong hands-on management over the entire duration of the Project.
- **Equity Provider:** ABN AMRO Australia Pty Limited is underwriting the equity in Axiom.
- **Financiers:** ABN AMRO Bank N.V. (Australian Branch) is the sole financier. ABN AMRO Bank N.V. is the hedge provider. The funding comprises a series of floating rate bank debt facilities with staggered maturities.
- **Builder:** Axiom has engaged Abigroup Contractors Pty Ltd (**Abigroup**) to design, construct and commission the new schools and the YMCA Facilities. Abigroup is a reputable mid-tier builder with experience in both the education and PPP sectors.
- **Facilities Management Subcontractor:** Axiom has engaged United Group Services Pty Ltd (**United**) to deliver the hard and soft facilities management services to each of the schools. It will also deliver facilities management services (other than cleaning and pool related services) to the YMCA Facilities. United is a highly reputable services company with Victorian PPP experience.
- **Victorian YMCA Community Programming Pty Ltd (YMCA):** YMCA will lease facilities directly from the State to deliver various YMCA programs.

#### *Project contractual relationships*

The State has contracted with a single party (ie. Axiom) to deliver all aspects of the Project. The relationship between the State, Axiom, YMCA and other related parties is detailed in the Project Agreement and associated contracts. The structure and principal agreements required for the delivery of the Project are outlined in Figure 4.

Figure 4: Contractual Relationships



## 2.2 Risk Transfer

The risk allocation in the Project Agreement is consistent with the *Partnerships Victoria* framework. In *Partnerships Victoria* projects, the State seeks to achieve best value for money by allocating risks to the party best able to manage them. This process results in various risks being:

- retained by the State;
- transferred to the private sector; and/or
- shared between the parties.

The Project Agreement and associated documents establish the obligations of each party in managing these risks.

Table 6 provides a high-level outline of the risk allocation for the Project. Where a risk is allocated to both parties, they may not share that allocation equally. All risks are dealt with in detail in the Project Agreement and associated documents.

**Table 6: Risk Allocation Positions**

Risk Category	Description	State	Axiom (or YMCA if relevant)
<b>Planning Risk</b>			
Obtaining town planning approvals	Risk that planning permits for the use of the site will be refused or granted with onerous conditions. The State relies on Section 16 of the <i>Planning and Environment Act 1987</i> under which the Minister for Education is exempted from the provisions of a planning scheme.	✓	✓ (only in relation to uses other than school uses)

Risk Category	Description	State	Axiom (or YMCA if relevant)
<b>Site Risks</b>			
Pre-existing contamination <sup>1</sup>	Cost relating to the management and removal of pre-existing contamination on any site	✓ (up to \$1million)	✓
All other contamination	Cost relating to the management and removal of all other contamination on any site	✓ (only where caused by the State or migrating from an adjoining site)	✓
Heritage claim	Risk that any site has archaeological and cultural heritage value (above or below ground)	✓	
Native Title	Risk that any site is the subject of a Native Title claim	✓	
<b>Design, Construction and Commissioning Risks</b>			
Design risk	The risk that the design development activities cannot be completed on time and/or to budget		✓
Construction risk	The risk that construction activities cannot be completed on time and/or to budget		✓
Equipment	Responsibility for the selection, procurement and maintenance of equipment	✓	✓
Fit for purpose (commissioning)	Risk that the final constructed design of the Project is not fit for purpose or does not comply with contractual obligations		✓
Modification	If the State elects to make a significant variation to the facility or the services to be provided by Axiom	✓	
Commissioning	Risk that a facility cannot be commissioned in accordance with the agreed commissioning criteria		✓
<b>Operational Risks</b>			
Educational services demand	Risk that the operating costs of running the educational services (such as teacher costs) are greater or less than anticipated	✓	
Fit for purpose (operating)	Risk that the facility is not able to deliver the services and/or is not fit for purpose at the required levels		✓
Maintenance costs	Risk that maintenance costs exceed Axiom's budgeted cost over the operating phase of the Project.		✓

<sup>1</sup> This excludes those sites not owned by the State at contractual close, in respect of which the State took all contamination risk.



Risk Category	Description	State	Axiom (or YMCA if relevant)
Operational costs (non-reviewable services)	Risk that operational costs exceed Axiom's budgeted cost over the operating phase of the Project.		✓
Operational costs (reviewable services)	Risk that operational costs exceed budgeted cost over the operating phase of the Project.	✓	✓
Lifecycle costs	Risks associated with the replacement and refurbishment of the facility (including plant and finishes) over the operating phase of the Project.		✓
Utility price and volume risk	Risk of change in the price of the utility inputs required by the facilities and energy demand risk	✓	
<b>Change in Law or Policy Risks</b>			
Changes in law and policy (General)	Risk that general changes in law and legislation will impact on the construction or operations of a school	✓	✓
Changes in law and policy (Project Specific)	Risk that project specific changes in law and legislation will impact on the construction or operations of a school	✓	
Tax risk	Risk of changes in income tax, GST or the introduction of a tax affecting companies generally.		✓
<b>YMCA Activities</b>			
Tenant/Rental Risk	Risk that YMCA does not fulfil its tenant obligations or does not exercise its option for a further term	✓	
Commercial risk	Risk that demand for YMCA activities are above or below forecast		✓
<b>Force Majeure</b>			
Force Majeure	Risk that construction or school operations are prevented due to a 'force majeure' event	✓	✓
<b>Finance Risk</b>			
Interest rate risk after Financial Close	Risk of movements in interest rates after financial close		✓
Shared operating insurance premium risk	Risk of price movements in policy renewals over the operating period in relation to the shared insurances	✓	✓
Residual value	Risk that on expiry of the contract term the condition of the asset is less than that required by the Project Agreement		✓

## 2.3 General Obligations of Axiom

In its simplest terms, Axiom has contracted with the State to finance, design and build the 11 new schools and YMCA Facilities and provide related facility management services over a 25 year term (or 26 years in respect of the Phase 1 Schools). The full array of Axiom's obligations is detailed in the Project Agreement and ancillary contracts and summarised in Table 7.

Table 7: Axiom's Obligations

Project Element	Description
Design and construct	<p>Design, construction and commissioning of:</p> <ul style="list-style-type: none"> <li>▪ the 11 new schools in two stages;</li> <li>▪ the YMCA Facilities;</li> <li>▪ a Metro Canteen at each of Casey Central Secondary School and Cranbourne East P-12; and</li> <li>▪ a kitchen garden at Point Cook P-9 to be delivered in partnership with the Stephanie Alexander Kitchen Garden Foundation, <p>(together, '<b>Facilities</b>').</p> <p>Axiom is also responsible for:</p> <ul style="list-style-type: none"> <li>▪ coordinating and managing the design development process to finalise the design aspects of all Facilities; and</li> <li>▪ assisting DEECD in implementing an appropriate communications strategy to engage with the school communities and other relevant stakeholder groups.</li> </ul> </li></ul>
Furniture, Fittings and Equipment ( <b>FF&amp;E</b> )	<p>Procurement, installation, commissioning and maintenance of all FF&amp;E (other than those items to be procured and maintained by the State (such as computers and other curriculum related equipment)). There is a detailed indicative list of required FF&amp;E appended to the Project Agreement. However, Axiom takes the risk that the FF&amp;E provided to each school is adequate. The State has some flexibility to comment on the final type and quantity of all FF&amp;E.</p>
Services	<p>Provision of the following services to each school in accordance with the services standards specified in the Project Agreement:</p> <ul style="list-style-type: none"> <li>▪ facility related training;</li> <li>▪ help desk services;</li> <li>▪ building management services including caretaker works;</li> <li>▪ cleaning services;</li> <li>▪ utilities management services;</li> <li>▪ waste management services;</li> <li>▪ security services;</li> <li>▪ grounds and gardens maintenance services;</li> <li>▪ minor works;</li> <li>▪ pest control services; and</li> <li>▪ churn management services (which comprise janitorial duties, day-to-day repair work and portering),</li> </ul> <p>(together, '<b>Services</b>').</p> <p>Axiom is also responsible for the delivery of:</p> <ul style="list-style-type: none"> <li>• the Services to any relocatable requested by the State; and</li> <li>• building management services, pest control services, waste management services, helpdesk services, security services and maintenance of plant and equipment (other than the swimming pool) at the YMCA Facilities.</li> </ul> <p>In respect of the YMCA Facilities, YMCA will deliver all other relevant services (including, cleaning services, portering services and maintenance of the pool, pool equipment and pool water) under the lease arrangements.</p>
Insurances	<p>Axiom is required to take out a range of insurances in relation to the Facilities (including for the YMCA Facilities).</p>
Third Party Use	<p>Use of a facility (or any part of it) introduced by Axiom for uses permitted under the Project Agreement (whether or not commercial). At a minimum, the relevant school council must approve any such third party use. Third party use previously notified by the school will take priority.</p>

Project Element	Description
Finance	Procurement of debt and equity to fund the delivery of the Project.
Handback	Undertaking all necessary tasks to ensure that the Facilities and sites are returned to the State in accordance with the Project Agreement's end of term requirements.

## 2.4 General Obligations of the State

### *Delivery of School Services*

The State (through individual school councils, principals and teachers) will continue to provide all curriculum, teaching and pastoral support, career guidance, extra-curricular, remedial, training, vocational, scholastic and educational services together with all related parent, guardian and community liaison and administrative support functions, at each facility.

### *Obligations under the Project Agreement*

Under the Project Agreement, the State:

- is required to make quarterly service payments to Axiom during the operating phase of the Project (subject to the abatement regime that may apply if services are not delivered to the required standard);
- may review and comment on design documentation and other material that will be submitted by Axiom in accordance with the Project Agreement;
- must procure the grant of a construction licence over the 11 sites for the delivery of the building works and a lease over each of the sites during the operations phase for the delivery of the services;
- must procure the site for Lyndhurst Primary School;
- must procure leases over the relevant facilities in favour of YMCA for the operation of the YMCA Facilities; and
- must pay for any utilities costs (ie. the State takes both utility volume and price risk).

## 2.5 State Facilities

The new schools and YMCA Facilities will at all times be owned by the State. However:

- Axiom will be granted a non-exclusive construction license during the design and construction phase of the Project to construct the facilities and a lease over the 25 year operating phase of the Project; and
- YMCA will be granted leases over the YMCA Facilities to deliver the agreed YMCA programs.

## 2.6 Potential Payments to the State

**Refinancing Gains:** The State is entitled to a 50 per cent share of any gains earned by Axiom from a refinancing post financial close that:

- increases the amount of debt beyond the level assumed in the financial model as at financial close; or
- occurs after Axiom (or any member of its group) has entered into committed funding covering the full debt repayment period (as at financial close).

**YMCA rent:** YMCA will pay the State a market based rent on a quarterly basis in respect of the facilities that it leases. In addition, YMCA will pay the State outgoings (being the cost of services being delivered by United under the Project Agreement).

**Metro Canteens:** Metro Canteens will pay each individual school a fee for use of the relevant canteens and will share a percentage of revenues earned above a specified threshold.

## 2.7 Payment Mechanism and Abatement Regime

The operating phase of the Project will commence immediately after the completion of the Phase 1 Schools. Accordingly, construction activities for the Phase 2 Schools will run concurrently with the operations of the Phase 1 Schools for approximately 12 months. Axiom will provide services during the operating phase of each school in a manner and to the standard set out in the Project Agreement. Services to the YMCA Facilities will be provided in part by Axiom and in part by YMCA.

Axiom will be paid for the delivery of the relevant services via a quarterly service payment (**QSP**) commencing after final completion of the first school and continuing throughout the operating phase. The QSP is effectively ramped up as each school is completed and will be abated to the extent the services are not delivered to the required standards specified in the Project Agreement. Payment will not commence in relation to a school until that school has been successfully commissioned and is operational.

The QSP will be indexed on a quarterly basis (the majority at the consumer price index (**CPI**), with a labour price index (LPI) applied to labour related elements). Axiom bears a significant degree of price risk for the delivery of the services including long-term maintenance, as its payment is only adjusted for CPI and LPI movements, any State initiated modifications and to reflect the five yearly re-pricing and market testing regimes for services such as cleaning and security.

The payment mechanism contains formulae detailing the calculations for payment by the State. It provides strong incentive for Axiom to perform its contractual obligations, as a failure to meet the agreed minimum performance standards may result in an abatement of the QSP.

### **Abatement regime**

Any failure to provide the services in accordance with the service specifications detailed in the Project Agreement may constitute a “service failure” and may result in the abatement of the QSP.

The Project Agreement categorises each service failure as either a:

- **Failure Event** – a service failure that affects one or more specific areas of a Facility. Where a Failure Event renders the relevant area unavailable for use for its intended function it is deemed to be an ‘Availability Failure’;
- **Quality Failure** – a service failure that is not referable to a specific area within a Facility.

Each of the above failures is categorised depending on the severity of its potential consequences taking into account the significance of the school area affected and how important it is that the area be made available. This in turn will determine the response and rectification time that will apply. Where an incident occurs in areas of high importance there will be shorter response and rectification times and potentially greater financial consequences. The abatement regime also recognises smaller failures that do not render a space unusable, but nevertheless impact on the ability to provide school services.

The QSP is abated in accordance with a pre-determined formula specified in the Project Agreement to the extent Axiom fails to deliver the services to the required standards.

Axiom is responsible for monitoring the performance of the services in accordance with the agreed performance monitoring regime. This includes a duty to record all service failures. The State will

retain the right to audit and dispute any incident that it believes is a service failure, as well as the categorisation of the service failure.

### ***Changes in costs incurred by Axiom***

The State may, at its sole discretion, request Axiom to implement modifications (to either the works, Services or FF&E it procures) provided the State adequately compensates Axiom.

The State will also invoke the modifications regime when it requires Axiom to accommodate relocatable buildings. Axiom is required to deliver the Services to the relocatable buildings at a pre-agreed rate unless a relocatable building fails to comply with an agreed minimum standard, in which case the parties will negotiate in good faith to agree an appropriate rate.

The State must pay for cost increases arising from certain changes in law and policy above certain dollar thresholds outlined in the Project Agreement.

Axiom is entitled to reimbursement for any costs or expenses it incurs which are properly attributable to damage or liability caused by the following events:

- breach by the State of any Project documentation;
- during the design and construction phase, any act or omission of the State or relevant State related parties (in their contracting capacities) other than any act or omission which is authorised or permitted under the Project Agreement;
- during the operations phase, a malicious, unlawful or reckless act or omission by the State or relevant State related parties (in their contracting capacities);
- industrial action which directly affects the Project and which Axiom can demonstrate is a direct result of an act or omission of the State or a State related party at a Facility;
- suspension of any works or the delivery of the Services required by law or the State because of a native title claim or the discovery of artefacts;
- during the design and construction phase, remediation of contamination for which the State is responsible under the Project Agreement; or
- the State fails to acquire or handover all relevant sites to Axiom by the dates specified in the Project Agreement.

## **2.8 Default, Termination and Step-In Regimes**

### ***Default***

A default by Axiom under the contractual arrangements will entitle the State to various remedies. Where a default has occurred, the State will in most circumstances be required to give Axiom an opportunity to cure the default or agree a prevention plan to prevent the default from recurring. If the default is not cured by Axiom within the allotted cure period, it will generally give rise to a State right to terminate.

Certain events of default are so severe that they are not subject to a cure regime. They give rise to a State termination right immediately upon their occurrence (default termination events).

In addition to termination rights (or potential termination rights), events of default may trigger a range of other remedies for the State, including:

- the right to step-in to remedy the situation; and
- the right to require the replacement of a subcontractor that caused the default termination event.

**Step-In**

The Project Agreement also includes step-in rights for the State where:

- a default (including, a default termination event) has occurred;
- the State is of the view that there is an immediate or potential threat to the health or safety of the school users, a Facility or a site;
- it may be necessary for the State or school council to discharge their statutory duties and powers; or
- there is damage to or destruction of any of the works or Facilities.

The default related step in right is subject to any step in rights the financiers may have. During any step-in associated with a default, the QSP will be abated to the extent that the facility is unavailable and the services are not being provided.

**Termination**

The Project Agreement can be terminated under a number of scenarios. Where the Project Agreement is terminated before the natural expiry of the intended 25 year operating period, Axiom may be entitled to a termination payment. The basis for the calculation of the termination payment will be determined by the reason for the termination as summarised in Table 8.

**Table 8: Termination Options**

Event	Trigger	Termination Payments
Default Termination	The State may terminate the Project Agreement if certain events of default have occurred.	The Facility's fair market value determined by tendering (where there is a liquid market) or an independent valuer (where there is no liquid market).
Voluntary Termination	The State may at any time, for reasons of its own choosing, unilaterally elect to terminate the Project Agreement	The outstanding debt as at termination date plus the greater of the real pre-tax and fair market value equity internal rate of return together with other reasonable costs.
Termination for Force Majeure	The occurrence of a force majeure event or an uninsurability event for which the State does not act as the insurer of last resort	The debt as at the termination date plus other agreed costs. In limited circumstances, part of equity may also be compensated.

**2.9 Finance and Security Arrangements**

The private sector financing requirements for the Project comprises senior debt and equity:

- Senior debt is comprised of a series of underwritten floating rate bank debt facilities with staggered maturities. They are to be refinanced regularly throughout the term with Axiom taking refinancing risk; and
- Equity is fully underwritten by the Project sponsor. ABN Amro will also take preferred equity units, offering net cost advantages to the State.

The State has security (a fixed and floating charge) over the Project's assets in order to secure Axiom's obligations under the Project Agreement. The security enables the State to appoint a receiver over all or part of the secured assets.

The Project's financiers hold, via a security trustee, a suite of securities in relation to the Project including a fixed and floating charge over Axiom's assets. The rights and priorities as between the State and the security trustee are detailed in the Financier Direct Deed.

## 2.10 State Rights at Expiry of Contract

The Project Agreement requires Axiom to hand back the Facilities (including all of the YMCA Facilities) to the State at the expiry of the operating term for nil consideration and in a condition that meets the requirements of the Project Agreement.

To ensure that the assets are in sound working order, the Facilities will be independently inspected on an annual basis in the years leading up to handback to ensure that all lifecycle and maintenance works are being completed and that the Facilities will meet the relevant handback conditions. The handback conditions are described in the Project Agreement. The Project Agreement requires that when the Facilities are handed back to the State at the end of the term, they be in such condition that it is reasonable to expect that no major capital expenditure would be required by the State for a period of five years from contract expiry.

If Axiom is not maintaining any Facility to the standard required to satisfy the handback requirements, the State will be entitled to withhold a portion of the QSP to cover the expense of any shortfall.

## 2.11 Modification and Minor Works Regime

### *Modification regime*

The State may modify any Facility and/or the Services at any time during the contract term. The agreed capital and recurrent costs associated with a modification requested by the State will be borne by the State in accordance with the detailed regime contained in the Project Agreement. There is a separate regime governing equipment modifications.

In response to a modification request, Axiom must give the State a notice containing its proposal for carrying out the requested modification. The notice will include details of any effect the modification will have on the Facility and the delivery of the Services.

The State may accept (with or without conditions) or reject the proposal contained in the notice or withdraw its modification request. Where the State and Axiom fail to agree the cost of the modification, and the State still wishes to proceed with the modification, the cost will be determined by an independent expert. During the operating phase, the State retains the right to deliver the modification itself or via an alternate third party provider.

To provide greater transparency and certainty into the costing of modifications, the Project Agreement locks down a range of pre-agreed margins and other on-costs. In addition to the base costs of the modification, Axiom will be subject to capped amounts for margins and management fees.

### *Caretaker Works regime*

A regime has been established that will enable each school to request the Facility Management Subcontractor to perform additional minor works without the need to invoke the modifications regime.

## 2.12 Current Version

This document may be updated from time to time. Please check the *Partnerships Victoria* website at [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au) for the current edition.

## Glossary

The following abbreviations and definitions are used throughout the document.

Term	Meaning
<b>Abigroup</b>	Has the meaning given to that term in Section 2.1.
<b>Axiom</b>	Axiom Education Victoria Pty Ltd, the State's counterparty to the Project Agreement and other associated Project documentation.
<b>CPI</b>	Consumer price index
<b>Default Termination Events</b>	Has the meaning given to that term in Section 2.8
<b>ESD</b>	Environmentally sustainable development.
<b>Facilities</b>	Has the meaning given to that term in Section 2.3.
<b>FF&amp;E</b>	Furniture, fittings and equipment.
<b>LPI</b>	Labour price index
<b>Phase 1 Schools</b>	Has the meaning given to that term in Section 1.6.
<b>Phase 2 Schools</b>	Has the meaning given to that term in Section 1.6.
<b>PPP</b>	Public Private Partnership.
<b>Project</b>	The <i>Partnerships Victoria</i> in Schools Project.
<b>Project Co</b>	The private party entity that entered into the Project Agreement and is responsible for delivering the Project (in this instance, being Axiom).
<b>Project Agreement</b>	The agreement of that name entered into between Axiom and the State and dated 9 December 2008 in relation to the Project.
<b>Project Brief</b>	The document so entitled issued to those parties shortlisted during the EOI phase of the Project and which identified the State's requirements including design principles/philosophy, space requirements, architectural specifications, technical specifications, service specifications and required furniture, fixtures and equipment.
<b>PSC</b>	The Public Sector Comparator for the Project, being the risk adjusted cost of the most likely efficient form of public sector service delivery that could be employed to satisfy all elements of the output specification.
<b>QSP</b>	Has the meaning given to that term in Section 2.7.
<b>School Services</b>	All curriculum, teaching and associated services.
<b>Services</b>	Has the meaning given to that term in Section 2.3.
<b>United</b>	Has the meaning given to that term in Section 2.1.
<b>VSP</b>	Victorian Schools Plan
<b>YMCA</b>	Has the meaning given to that term in Section 2.1.
<b>YMCA Facilities</b>	The facilities to be built at six school sites as detailed in Table 2 and from which YMCA programmes will be run.



## Appendix 1: Useful References

- Project documentation, including the Project Agreement, is available at [www.contracts.vic.gov.au](http://www.contracts.vic.gov.au)
- *Partnerships Victoria* policy guidance and project information [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au)
- The DEECD website at: [www.education.vic.gov.au](http://www.education.vic.gov.au)

## Appendix 2: Key Contact Details

Department of Education and Early Childhood Development

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Melbourne Vic 3000

*Partnerships Victoria*

Website: [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au)

Department of Treasury and Finance

1 Treasury Place

East Melbourne Vic 3002

Phone: (03) 9651 5111

## Appendix 3: Public Interest Issues

The *Partnerships Victoria* framework requires that the public interest be considered from the early stages of the options appraisal process and reviewed at key stages of the procurement process.

Consistent with the *Partnerships Victoria* framework, the public interest test was performed at key stages of the procurement phase to test the differences between the proposed Project and the existing procedures for undertaking school capital works. The Project was assessed against the following elements of the public interest test:

- effectiveness;
- accountability and transparency;
- affected individuals and communities;
- equity;
- consumer rights;
- public access;
- security; and
- privacy.

### Summary of Public Interest Test

In undertaking the public interest test, the State firstly identified the standards against which each element of the public interest test was to be assessed. It then assessed how the standards were to be met.

The following assessments were made:

- the Project delivers on State objectives and policies, including providing high quality physical learning environments, freeing up education professionals allowing them to dedicate their time to education, increasing community involvement with schools, and achieving greater funding certainty over the asset life;
- the Project offers accountability and transparency to relevant school communities having developed appropriate communication plans and undertaken consultation processes with the relevant school communities. Appropriate confidentiality measures were implemented and observed throughout the procurement process. In addition, the contractual arrangements are transparent and ensure that the community can be well informed about the responsibilities of the parties. In particular, Victorian Government Purchasing Board Probitry Policy and Best Practice Probitry Advice guidelines were followed including the appointment of a Probitry Auditor. The Project Agreement and related documentation will be published subject to the confidentiality provisions of the *Freedom Of Information Act*. In addition, the Auditor-General will have full access to any information relating to the Project;
- the Project's contractual arrangements allow for the same individual and community rights and policy requirements as regular DEECD projects (including, duty of care obligations relating to students);
- the Project will comply with the relevant equity laws and regulations. The ongoing provision of services by both the public and private sectors recognise the requirements of disadvantaged groups;
- public access is protected under the contractual arrangements which give the State the right to step in and take over operations if the private party fails to deliver the required services;
- the Project protects all relevant health and safety standards in the same way that regular school capital works do. For example, the contractual arrangements require appropriate police checks for all facility staff accessing the schools and address interface issues between the private sector services provider and the school community; and
- the privacy arrangements under the Project are consistent with those under traditional procurement and ensure that user privacy rights are protected under legislation and DEECD guidelines for information services.

## Appendix 4: Project Brief Evaluation Criteria

The following criteria were used by the State to critically evaluate proponent responses throughout the tendering phase.

### Criterion A - Interface Management

The State will evaluate the extent to which it is evident that the Proponent has fully considered and addressed the interface between the State and Project Co and between Project Co and its Consortium Members.

In evaluating this criterion, the key issues that will be considered include:

**Project Co management** – the State will evaluate the resourcing and staffing structure and experience of Project Co personnel;

**Partnership approach** – the State will evaluate the demonstration, understanding and commitment to a partnership approach;

**Intra-consortium relationships** – the State will evaluate the proposed intra-consortium relationship framework and approach; and

**Communication strategy** – the State will evaluate the appropriateness of the proposed communications approach.

### Criterion B - Commercial

The State will evaluate the:

- Proponent's commercial solution including the legal and commercial relationships between the:
  - Project sponsors, equity and debt providers; and
  - Project Co, the Builder and the Facility Management Subcontractor.
- nature and extent of the proposed Departures.

### Criterion C(i) - Financial

The Proponent needs to demonstrate its capacity to meet the financial requirements of the Project including that the Proposal is value for money. Additionally, the State will also evaluate:

- the certainty and competitiveness of the funding structure; and
- the financial strength of the party(s) that would contract with the State (and/or party(s) providing financial support for the party that would contract with the State).

Proponents are encouraged to consider innovative ways of financing the Project (including accommodating future modifications) and sharing refinancing gains in light of current market conditions so as to maximise value for money for the State.

### Criterion C(ii) - Risk Adjusted Cost

The State will evaluate the whole of life, risk-adjusted cost of the Proposals by taking into account the financial and risk consequences of the Proponent's Proposal. This will consider the robustness of the financial assumptions underpinning the Quarterly Services Payment.

### Criterion D – Third Party Use

The State will evaluate the Third Party Use proposals with regard to:

- the extent to which the Proponent **has complied with the State's terms and conditions**;
- the **synergistic and/or complementary nature** of the proposed Third Party Use including the extent to which any such proposals affect the deliverability of the rest of the Project or the delivery of School Services;
- the **value for money** provided by such opportunities including, in respect of any proposed Community Partnerships, the extent to which benefit/amenity can be shown to flow to school users and the wider local community and the extent to which the Proponent shares (and method for sharing) any net revenue with the State; and
- **legal and commercial relationships** including the extent to which the Services are protected from non-performance of the proposed Third Party Use and the extent to which proposals consider and respond to any relevant planning framework.

### Criterion E - Design

The State will evaluate the designs for each of the Schools. In doing so, the key issues that will be considered include:

- **Design solution** – the State will evaluate the extent to which the proposal reflects the functionality and operational efficiency of the proposed design and otherwise reflects the design principles;
- **Master Planning** – the State will evaluate amongst other things:
  - **Design documentation** – the State will evaluate the extent to which the design documentation and associated information illustrates the proposals in accordance with the requirements of the Output Specification;
  - **Flexibility and future expansion capacity** – the State will evaluate the flexibility and expansion capability of the Facilities including the extent to which the design facilitates the use of Relocatables;
  - **Site access and traffic provisions** – the State will evaluate the access and traffic arrangements on and around the sites for pedestrian, bicycle and vehicular interaction;
- **Facility architecture** – the State will evaluate the architectural quality of the proposed design and will consider as part of this criteria:
  - **Whole-of-life design** – the State will evaluate the contribution of the proposed design towards an efficient whole life cost for the schools;
- **Equipment** – the State will evaluate the process for equipment selection and appropriateness and quality of the selected equipment;
- **Engineering services** – the State will evaluate the appropriateness and quality of the engineering and building infrastructure services;
- **Ecological sustainability** – the State will evaluate the ecological sustainability of the design;
- **Innovation** – the State will evaluate the extent to which the proposals demonstrate innovation in each of the above areas; and
- **Planning framework** – the State will evaluate the extent to which proposals consider and respond to the planning framework<sup>2</sup>.

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<sup>2</sup> Although this sub criteria was included in the Project Brief, the State subsequently confirmed that there are no planning requirements for the core project. Accordingly, this will only be taken into account to the extent relevant in the consideration of the Third Party Use opportunities

**Criterion F - Project Management**

The State will evaluate the extent to which it is evident that the Proponent has fully considered and understood the importance of project management and construction proposals using the criteria listed below.

In evaluating this project management criterion, the key issues that will be considered include:

- **Master Works and Facility Programs** – the State will evaluate the Proponent's proposed timelines and programs including:
  - **Design Development Process** – the Proponent's approach to the design development process, including the coordination and management of user groups and the design team;
  - **Completion** – the appropriateness of the Proponent's proposed completion methodology.
- **Construction management** – the State will evaluate the construction methodology and management processes including, the handback management of each school on expiry or termination of the Project Agreement.

**Criterion G - Service Requirements**

The State will evaluate the ability of the Proponent to support and enhance the delivery of the School Services through the provision of the Services using the criteria listed below.

In evaluating this criterion, the key issues that will be considered include:

- **Management of the service delivery** – the State will evaluate the Proponent's proposed management structure and solution for delivery of services including:
  - **General requirements** – the interface and liaison arrangements at each Facility and, if relevant, the Proponent's strategy to add value to the services currently provided by the State;
- **Service specific solutions** – the State will evaluate the Proponent's specific solutions for the delivery of the Services including proposed procedures and methodologies, flexibility and certainty of quality of delivery of Services; and
- **Lifecycle replacement** – the State will evaluate the Proponent's approach to carrying out the life cycle maintenance whilst minimising the impact on the delivery of education services.

**Other Issues**

The State may consider any or all of the following issues when evaluating Proposals:

- **Past behaviour** – the State may consider past conduct, behaviour and corporate history of any Consortium Member;
- **Conformity with the Output Specification** – the State will consider the extent to which the Proponents have submitted complete Proposals and the extent to which each Proposal complies with the requirements of the Output Specification;
- **Compliance with the Victorian Industry Participation Policy (VIPP)** – the VIPP Statement completed by each Proponent will be assessed and used in accordance with guidelines issued under this policy;
- **Probity investigations** – the State reserves the right to evaluate any matters revealed as a result of its probity and security investigations in evaluating proposals; and
- **Conflict of interest** – the State will consider the nature of any actual or perceived conflicts of interest and the way in which the Proponent proposes to manage any such conflicts.



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