



Department of Education

Department of Treasury

GOVERNMENT OF
WESTERN AUSTRALIA

A photograph of three students in a chemistry laboratory. They are wearing white lab coats and safety goggles. The student in the center is smiling and looking down at a beaker. The student on the right is also smiling and looking at the beaker. The student on the left is partially visible, also smiling. The background shows laboratory equipment and shelves.

WA SCHOOLS PUBLIC PRIVATE PARTNERSHIP PROJECT

Project Summary

Dated:
May 2016

CONTENTS

FOREWORD	1
1. PROJECT OVERVIEW.....	2
1.1 Background.....	2
1.2 The Project	2
1.3 Project Objectives	4
1.4 Delivery Model.....	5
1.5 Project Governance.....	6
1.6 Project Scope	7
1.7 Procurement Process.....	8
1.8 Timetable	10
1.9 Probity.....	11
1.10 Value for Money	12
1.11 Achieving Project Objectives	14
1.12 Public Interest Considerations.....	14
2. KEY COMMERCIAL FEATURES.....	16
2.1 Parties to the Project Documentation	16
2.2 State Project Documentation and Related Agreements	17
2.3 Key Commercial Principles	18

FOREWORD

This Project Summary provides an overview of the commercial and contractual arrangements for the delivery of the WA Schools Public Private Partnership Project (the Project).

This Project Summary is divided into two parts.

Part One provides a broad overview of the Project, including the rationale to deliver it under a Public Private Partnership (PPP) model, a summary of the procurement process, the value for money outcome, the public interest considerations and the timetable for the Project.

Part Two focuses in more detail on the key commercial features of the Project, including the main parties and their respective obligations, the broad allocation of risk between the public and private sectors and the treatment of various key project issues.

This 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 Project Deed and associated Project documentation.

1. PROJECT OVERVIEW

1.1 Background

Since 2009, the Department of Education (DoE), in conjunction with Treasury has been investigating opportunities to deliver educational facilities through a PPP arrangement. In August 2009, an inter-departmental team commissioned PricewaterhouseCoopers to prepare a procurement options analysis report to assess the merits of project delivery under a PPP as compared with alternative procurement models.

After detailed consultation and analysis, the procurement options analysis report identified a Design, Build, Finance and Maintain (DBFM) PPP model as most likely to achieve the Project objectives and deliver the best value for money. The recommendation highlighted the whole of life focus of PPPs and the ability of the State to effectively allocate an appropriate level of risk to the private sector as the key influencing factors.

Forecasting undertaken by the DoE indicated that enrolment numbers for State schools will significantly increase over the next few years. In response to the growing demand within the Perth metropolitan area, the DoE identified the need for four Primary Schools (PSs) to be ready for opening from the commencement of the 2017 academic year and seven stages of Secondary Schools (SSs) to be ready for opening between 2018 and 2023.

To maximise value for money for the State in delivering these facilities, the DoE worked with the Department of Treasury's Strategic Projects and Asset Sales (SP&AS) division to package the schools as a 'bundle' rather than contracting the design, construction and maintenance for each school on an individual basis.

1.2 The Project

The planning phase for the Project concluded with the approval of the Project Definition Plan (PDP) by Cabinet in September 2014, which outlined the final package of schools to be delivered under the Project.

An invitation for Expressions of Interest (EOI) to deliver the Project under a DBFM procurement model was advertised in October 2014 and three consortia were shortlisted in December 2014 (Shortlisted Respondents). The Request for Proposals (RFP) was issued to the Shortlisted Respondents in December 2014 and closed in May 2015. Appointment of the preferred respondent, EduWest Partners (EduWest) was approved in July 2015, together with a reserve respondent, Plenary Schools. Exclusive negotiations resulted in the achievement of contractual close with EduWest on 25 September 2015, followed by financial close on 1 October 2015. Under the terms of the Project Deed the EduWest consortium is known as 'Project Co'.

Construction of the School Facilities will be undertaken by Badge Constructions (WA) Pty Ltd (Badge) and Perkins (WA) Pty Ltd (Perkins) under a joint venture arrangement. The development of the School Facilities commenced on 25 September 2015 and is scheduled to continue until December 2022.

Following the completion and commissioning of each School Facility or Stage of a School Facility, facilities management services (Services) will be provided by Spotless Facility Services Pty Ltd (Spotless) until 31 December 2047.

Table 1 provides a summary of the key members of Project Co involved in the delivery of the Project and other key project facts. Note that School Facility names listed below are for planning purposes only, and are subject to change prior to opening.

Table 1: Key Project Facts

KEY PROJECT FACTS		
Contracting Entity		
Project Co	EduWest Project Co Pty Ltd in its personal capacity and as trustee for the EduWest Project Trust	
Key Members of Project Co		
D&C Subcontractor (Builder)	Perkins (WA) Pty Ltd and Badge Constructions (WA) Pty Ltd	
Services Subcontractor (FM Provider)	Spotless Facility Services Pty Ltd	
Finance		
Equity Investors	Macquarie Corporate Holdings Pty Ltd Aberdeen Infrastructure Investments (WAS) Ltd	
Debt Providers	Sumitomo Mitsui Banking Corporation National Australia Bank Ltd REST	
Project Duration		
Development Phase	25 September 2015 to scheduled completion of December 2022	
Operating Phase (Facilities Management)	In respect of each Stage, generally commencing on the day after the Date of Commercial Acceptance for that Stage, with a final expiry date of 31 December 2047.	
Site Details		
School Facility	Location	Area (Ha)
Alkimos Beach PS	McMillan Rd, Alkimos, 40km north of the Perth CBD.	3.44
Baldivis PS	Linaker St, Baldivis, 40km south of the Perth CBD.	3.53
Byford South West PS	Intersection of Kinsella Avenue and Kokoda Boulevard, Byford, 34km south east of Perth CBD.	4.0
Landsdale East PS	Kingsway Road, East Landsdale, 18km north east of the Perth CBD.	4.08
Ellenbrook North SS	Maffina Parade and Cashman Avenue, Ellenbrook, 21km north east of Perth CBD.	10.0
Harrisdale SS	Intersection of Keane Road and Skeet Road, Harrisdale, 25km south east of the Perth CBD	10.2
Lakelands SS	Banksiadale Gate, Mandurah, 65km South of Perth CBD.	8.5
Hammond Park SS	New subdivision 30km South of Perth in the suburb of Hammond Park.	10.2
Design and Construction		
Key features	<ul style="list-style-type: none"> • Four primary schools to be ready for commencement of the 2017 school year; • Three secondary schools each delivered in two stages; and • The second stage of Harrisdale secondary school. 	

KEY PROJECT FACTS		
School Facility Commercial Acceptance	Stage 1 Date for Commercial Acceptance	Stage 2 Date for Commercial Acceptance
Alkimos South West PS	9 December 2016	Not applicable
Baldivis PS	9 December 2016	Not applicable
Byford South West PS	9 December 2016	Not applicable
Landsdale East PS	9 December 2016	Not applicable
Ellenbrook North SS	8 December 2017	11 December 2020
Lakelands SS	14 December 2018	10 December 2021
Hammond Park SS	13 December 2019	9 December 2022
Harrisdale SS	Not applicable	13 December 2019
Facilities Management (FM) Services		
Services Provided	<ul style="list-style-type: none"> • Building maintenance services including scheduled and unscheduled maintenance and lifecycle replacement (Estate Services); • Grounds and Gardens Services; • Security Services; • Utilities Management Services; • Cleaning Services; • Waste Management Services; • Pest Control Services; • Caretaker Services; • Help Desk Services; and • Management and Integration Services. 	

1.3 Project Objectives

1.3.1 Project Objectives

The following Project Objectives which align to the DoE Strategic Plan, approved in the PDP, guide the development of the Project:

- achieve functional educational designs that provide quality teaching and learning environments;
- achieve value for money over the whole of life of the infrastructure pursuant to education outcomes;
- improve efficiencies in service delivery for the DoE; and
- achieve time and cost efficiencies in the delivery of a program of works through economies of scale.

1.3.2 Development Phase Objectives

In addition to the Project Objectives that will continue to guide the development of the Project, the Development Phase Objectives have been created to ensure that all aspects of the design, construction, commissioning and completion of the School Facilities aim to achieve and align with the overall Project Objectives. The Development Phase Objectives are to:

- deliver highly functional School Facilities that provide quality teaching and learning environments to promote the wellbeing of students, school staff and the community;
- interpret and anticipate the specific needs of new and future technologies and learning methods, and

ensure spaces have built in flexibility to accommodate these changes;

- provide designs which respond to each individual site and cultural context while conveying the civic role of the School Facilities within the communities;
- provide designs which enable opportunities for shared community use of School Facilities and facilitate community engagement;
- incorporate sustainability principles into the design of School Facilities and verge infrastructure, and maximise the opportunity for ecological sustainability initiatives during the Operating Phase;
- provide a healthy and safe environment for all users during the term of the contract (including during construction and during the Operating Phase);
- utilise best industry practices to deliver high quality design and construction outcomes which achieve value for money in the delivery of School Facilities; and
- ensure a whole of life approach is taken for the design and construction of School Facilities, including to ensure that the design and construction responds to Operating Phase requirements and objectives specified in or which could reasonably be inferred from the service specifications in the contract to deliver ongoing value for money to the State.

1.3.3 Operating Phase Objectives

A suite of key Operational Objectives have also been developed for the Operating Phase of the Project (Operating Phase Objectives) that align with the overall Project Objectives, as follows:

- provide an operating environment that facilitates student and school staff engagement, motivation, performance and retention;
- utilise best operating practices to deliver the Services with minimal disruption to school activities;
- ensure flexibility in delivery of the Services to accommodate the day-to-day and evolving needs of the school activities;
- provide a healthy and safe environment for students, users of the School Facilities and the community; and
- ensure that the School Facilities continue to satisfy the fit for purpose warranty during the term of the contract.

1.4 Delivery Model

As part of the procurement options analysis in the PDP, the State analysed four packaging options as detailed in Table 2. Each option was considered with reference to either the public or private sector delivery of the Project components.

Table 2: Procurement Options Analysis

OPTION	DELIVERY MODEL	DESCRIPTION
Option A	Construct Only	Public sector provision of the design (developed in consultation with a third-party). Private sector is contracted for construction only.
Option B	Design and Construct	Private sector contracted for design and construction.
Option C	Design, Build, Finance and Maintain	Private sector is contracted for design, construction, financing and maintenance of the facilities.

OPTION	DELIVERY MODEL	DESCRIPTION
Option D	Design, Build, Finance and Maintain with Capital Contribution	Private sector is contracted for design, construction, partial finance and maintenance of the facilities, with a capital contribution provided by the State, in effect becoming a partial funder to the Project.

After careful analysis, which included a market sounding process, the State identified Option C as the preferred procurement model.

Under the preferred procurement model the State sought to enter into a contract with a private sector entity that is required to:

- design, construct and finance the Project; and
- provide the facility management services at the School Facilities over the Operating Phase of the Project.

Students' education in the eight schools remains the responsibility of the DoE. The State also retains ownership of the School Facilities.

The DBFM model was chosen because of the following benefits:

- it is well understood by the market and is considered capable of extracting very competitive market responses and tender prices;
- it injects significant intellectual, operational and commercial focus of the consortium entities such as the Services Subcontractor carrying out the Services and the financiers into the procurement process, resulting in whole of life benefits;
- it ensures a robust maintenance regime is delivered over the Operating Phase to minimise asset deterioration and a focus on preventative maintenance rather than reactive maintenance;
- it has an excellent track record of achieving delivery on time and within budget when compared with traditional procurement models. The private sector entity is only entitled to commence receiving quarterly service payments upon the achievement of commercial acceptance. This provides a powerful incentive to achieve construction timeframes; and
- it provides the most efficient and effective structure for the transfer of both construction and facilities management risks to the private sector by effectively locking-in the quarterly service payments and the implementation of an extensive abatement regime.

1.5 Project Governance

The Project is being managed in accordance with the State Government's governance arrangements for strategic non-residential building projects. The Project Steering Committee has been established by Cabinet to guide the delivery of the Project. It provides leadership and oversight on the Project through the provision of strategic, cross-agency guidance and advice that ensures that the Project is developed in accordance with agreed scope, time, cost and quality parameters. The Steering Committee reports to the Treasurer, the Minister for Education and Cabinet.

The Steering Committee is jointly chaired by the Executive Director, SP&AS from Treasury and the Executive Director, Infrastructure from the DoE. Other members include the Deputy Director General (Finance and Administration) DoE; Executive Director (Strategic Policy and Evaluation) from Treasury; Director (Strategic Policy and Evaluation) from Treasury; Assistant Executive Director (State wide Planning

and Delivery) DoE; Assistant State Solicitor, State Solicitor's Office (SSO); and the Principal Project Director, SP&AS.

The Treasury SP&AS division has the leading role in planning and delivering the Project and the DoE is the client agency, responsible for defining the service scope and functional requirements for the School Facilities. The DoE is the agency accountable for the Operating Phase and will have leadership responsibility for managing Project Co during the Operating Phase.

A Project Control Group (PCG) has been established to undertake the overall direction for the delivery aspects of the Project at an operational level. It is chaired by the Principal Project Director, SP&AS. The PCG is responsible to the Steering Committee.

The project team is comprised of government representatives from relevant agencies (Treasury, DoE and SSO) with expertise in educational services, infrastructure, commercial and legal aspects of the Project.

1.6 Project Scope

Table 3 below summarises Project Co's key responsibilities under the Project Deed.

Table 3: Project Scope

SCOPE OF THE WA SCHOOLS PPP PROJECT (ELEMENTS TO BE DELIVERED BY PROJECT CO)	
Project Element	Description
Finance	Project Co is required to procure fully underwritten project finance necessary to meet all funding requirements for the Project.
Design	Project Co is responsible for design development in accordance with the State Project documents and the design development plan.
Works	Project Co is responsible for constructing, commissioning and completing the School Facilities. In broad terms, the Works comprise the following: <ol style="list-style-type: none"> a) ground improvement works, where required; b) the School Facilities; c) hard and soft landscaping (including reticulation); d) internal roads, parking areas and paving; e) verge works within the verge works site which may include construction of hard and soft landscaping (including reticulation) and parking embayments immediately adjacent to the verges (controlled by the relevant local Authority) which are immediately adjacent to each Site; f) signage, pedestrian footpaths and lighting; g) work in connection with Utility Infrastructure required to ensure continuous supply of Utilities to each School Facility; h) provision of serviced areas for transportable classrooms within each Site; i) fit-out works and the provision and installation of Project Co furniture, fittings and equipment; and j) testing and commissioning of all School Facilities in accordance with the State Project documents.
Authorisations	With the exception of the authorisations to be obtained by the State, Project Co is responsible for identifying and obtaining all other authorisations required to deliver the Project.
Services	Project Co is responsible for delivering the Services. In broad terms, the Services comprise the following: <ol style="list-style-type: none"> a) Estate Services; b) Grounds and Gardens Services;

SCOPE OF THE WA SCHOOLS PPP PROJECT (ELEMENTS TO BE DELIVERED BY PROJECT CO)	
Project Element	Description
	c) Security Services; d) Utilities Management Services; e) Cleaning Services; f) Waste Management Services; g) Pest Control Services; h) Caretaker Services; i) Help Desk Services; and j) Management and Integration Services.
Handover at end of Term	Project Co is required to handover the School Facilities at the end of the term of the contract in a well maintained and pre-specified condition for nil consideration.

1.7 Procurement Process

The State undertook an open and competitive procurement process to appoint EduWest as the preferred respondent. The procurement process was implemented in accordance with relevant State tendering guidelines and undertaken in three stages as described below.

1.7.1 Expressions of Interest Phase

The procurement process commenced with the public release of the Invitation for EOI on 6 October 2014. The purpose of this document was to invite suitably skilled and qualified consortia to submit EOI to deliver the Project. It also contained information concerning the Project and set out the information that respondents were to provide in their submissions and the criteria against which submissions would be assessed.

After a detailed evaluation of the EOI submissions, the State invited the following three Shortlisted Respondents to progress to the RFP phase of the procurement process:

- The Decmil Programmed consortium comprising Decmil Group Ltd, Programmed Maintenance Services Ltd, Decmil Australia (D&C Subcontractor) and Programmed Facility Management Pty Ltd (Services Subcontractor);
- The EduWest Partners consortium comprising Macquarie Corporate Holdings Ltd, Badge Constructions (WA) Pty Ltd and Perkins (WA) Pty Ltd (D&C Subcontractor) and Spotless Facilities Services Pty Ltd (Services Subcontractor); and
- The Plenary Schools consortium comprising Plenary Origination Pty Ltd, Pindan Contracting Pty Ltd (D&C Subcontractor) and Delta FM Australia Pty Ltd (Services Subcontractor).

1.7.2 Request for Proposals Phase

The second phase of the procurement process commenced with the release of the RFP document to Shortlisted Respondents on 18 December 2014. The RFP contained the detailed technical, services commercial and legal requirements for the Project. The RFP requested the Shortlisted Respondents to submit detailed fully costed and complete proposals based on the requirements set out in the RFP document (Proposals).

From February 2015 to April 2015, the State conducted an Interactive Tender Process (ITP) between the State project team and each of the Shortlisted Respondents. The intention of the ITP was to provide timely

and meaningful feedback on the concept design and other aspects of the RFP to assist Shortlisted Respondents' understanding of the State's requirements and increase the quality of the final Proposals.

Proposals were received on 12 May 2015 and evaluated against a range of qualitative and quantitative criteria that considered the following:

- overall delivery approach;
- interface management;
- design proposal;
- development phase plans and program;
- service delivery; and
- commercial solution.

The Evaluation was undertaken by a panel of senior State representatives including:

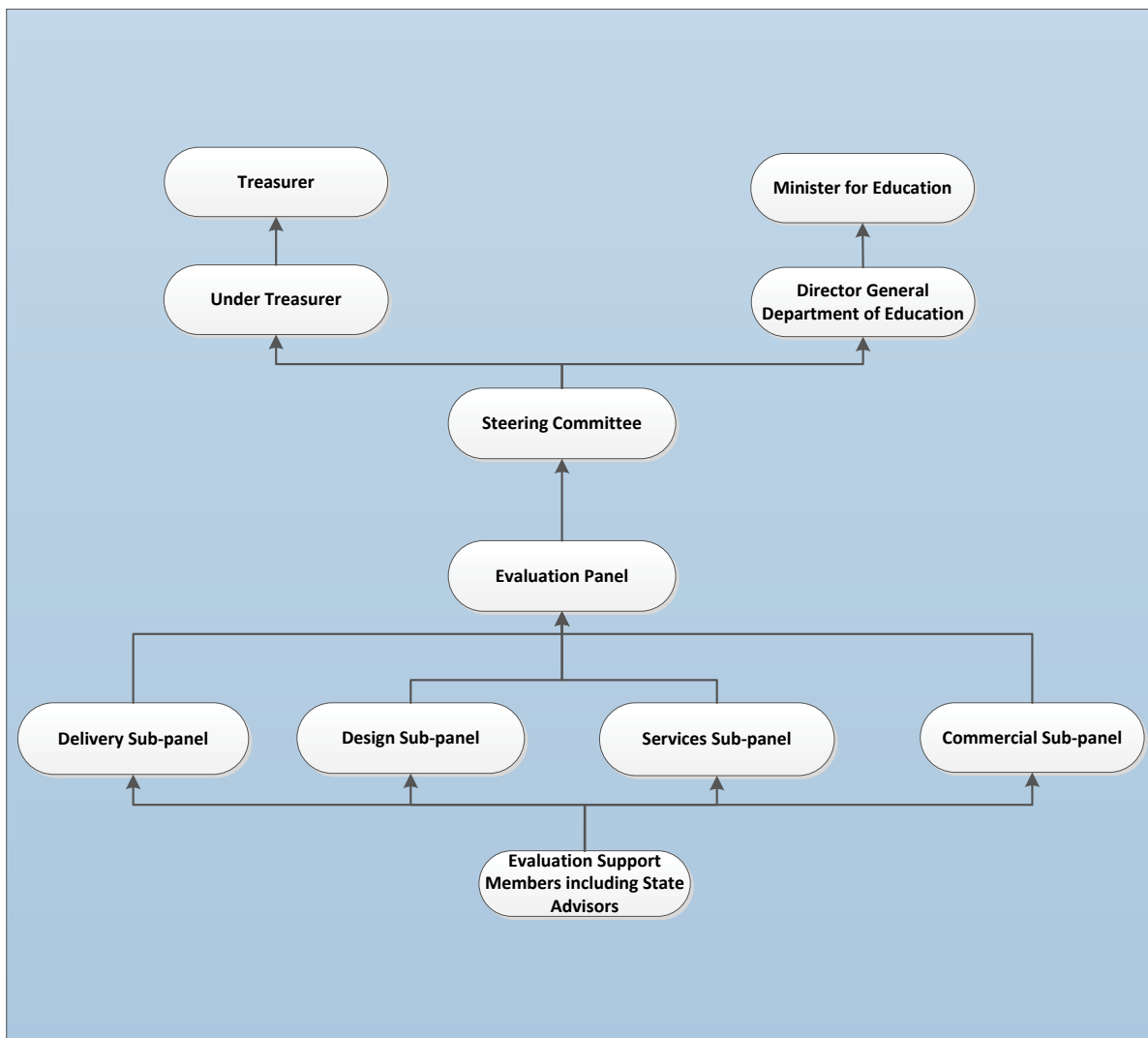
- Executive Director SP&AS, Treasury;
- Executive Director Infrastructure, DoE;
- Assistant Executive Director, DoE;
- Principal Project Director SP&AS, Treasury;
- Program Manager, DoE;
- Senior Assistant State Solicitor, SSO; and
- Acting Director, Commercial Contracting, Treasury.

The Evaluation Panel was supported by four sub-panels (respectively focusing on delivery, design, services and commercial criteria) that comprised project team members and State advisors.

The Evaluation Panel's recommendations were endorsed by the Steering Committee.

On 28 July 2015 the State approved the appointment of EduWest as the preferred respondent to proceed to exclusive contract negotiations. Plenary Schools was approved as the reserve respondent.

Figure 1: State Evaluation Structure



1.7.3 Negotiation Phase

During the negotiation phase, the State worked with EduWest to address all outstanding issues and finalise the Project documents. At the completion of an exclusive negotiation period, the State was satisfied that all key issues had been addressed and EduWest’s solution continued to represent value for money for the State. Accordingly, the State and Project Co executed the contract documentation on 25 September 2015. Financial close was achieved on 1 October 2015.

1.8 Timetable

Details of the timing of the procurement process and the Project generally are provided in the timetable below.

Table 4: Project Timetable

EVENT	DATE
Expression of Interest Phase	
Release of Invitation for EOI	6 October 2014
Closing date for lodging EOI	5 November 2014

EVENT	DATE
Announcement of Shortlisted Respondents	18 December 2014
Request for Proposals Phase	
Release of RFP	18 December 2014
Closing date for Proposals	12 May 2015
Appointment of Preferred Respondent	28 July 2015
Contract Negotiation Phase	
Contract close	25 September 2015
Financial close	1 October 2015
Development Phase	
Commence design development, site establishment and construction	From October 2015
Dates for Commercial Acceptance:	
Alkimos South West PS	9 December 2016
Landsdale East PS	9 December 2016
Baldivis PS	9 December 2016
Byford South West PS	9 December 2016
Ellenbrook North SS – Stage 1	8 December 2017
Ellenbrook North SS – Stage 2	11 December 2020
Lakelands SS – Stage 1	14 December 2018
Lakelands SS – Stage 2	10 December 2021
Hammond Park SS – Stage 1	13 December 2019
Hammond Park SS – Stage 2	9 December 2022
Harrisdale SS – Stage 2	13 December 2019
Operating Phase	
Commence Operating Phase	In respect of each Stage, generally commencing on the day after the Date of Commercial Acceptance for that Stage, The Final Expiry Date is 31 December 2047.

1.9 Probity

The procurement process was undertaken within a robust probity framework in accordance with the following probity principles:

- fairness and impartiality;
- use of a competitive process;
- consistency and transparency of process;

- security and confidentiality;
- identification and resolution of conflicts of interest; and
- compliance with State policies as they apply to tendering.

Key evaluation activities were monitored by an independent probity advisor from Protiviti Pty Ltd in accordance with a probity plan and were supported by individual evaluation plans for each phase of the procurement process.

1.10 Value for Money

The State's evaluation framework for the Project sought to identify the best overall value for money solution. The concept of value for money goes beyond the selection of the lowest priced solution, focusing on the overall value of each delivery option. This involves a careful comparison of the State-managed delivery option against each proposal received from the Shortlisted Respondents. The analysis considered quantifiable elements (i.e. items that can be quantified in dollar terms) as well as subjective or qualitative considerations.

1.10.1 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 under conventional, publicly funded procurement. The PSC is developed broadly in accordance with the National PPP Guidelines and additional State policy guidance for Western Australian PPP Projects. The PSC estimates the hypothetical risk adjusted cost of the Project if it was to be delivered by Government using a traditional procurement process.

The PSC for the Project was developed in collaboration by the State's Project team, State advisors and its commercial advisor, Ernst & Young.

The PSC contained estimates for the costs and risk of the State managed delivery option consisting of:

- the State designing, constructing and commissioning the School Facilities under a traditional design and construct contract; and
- the State being responsible for all ongoing facilities management services during the Operating Phase.

The estimated cash flows over the life of the Project are discounted in accordance with the National PPP Guidelines to obtain the Net Present Cost (NPC) of the PSC.

The State's PSC is presented in Table 5 below.

Table 5: Public Sector Comparator

PUBLIC SECTOR COMPARATOR ELEMENT	NPC \$'000
Capital Costs	317,495
Operating Costs	377,048
Raw PSC	694,543
Capital and Operating Risks	36,511
Total Risk Adjusted PSC	731,054

The NPC of the PSC is then compared with the NPC of the bids received to determine the quantitative aspect of the value for money analysis. The value for money estimate for Project Co’s proposal at Financial Close is contained in the table below:

Table 6: Quantitative Value for Money Assessment – Net Present Cost

ELEMENT	NPC \$'000
State’s Risk Adjusted PSC	731,054
Project Co’s Risk Adjusted Proposal	631,093
Savings (\$)	99,961
Savings (%)	13.7

As shown in Table 6, in comparison with the PSC, contracting with Project Co for the Project represents a circa \$100 million NPC saving or, in percentage terms, a saving of 13.7%. This saving was driven by:

- a competitive design and construction cost that represents significant savings over the State’s traditional cost of delivery; and
- competitive facilities management costs including refurbishment costs during the Operating Phase that represent significant savings over the State’s costs of delivery of these services.

Although these savings indicate value for money for the State, other value for money benefits provided by Project Co’s proposal, which exceed the specifications detailed in the RFP, are:

- solar photo voltaic solution provided at all School Facilities, which will result in a reduction in electricity costs; and
- enhancement of the primary schools ‘Standard Pattern Building’ roof design for ease of maintenance and offering whole of life cost benefits.

Unlike traditional public procurement, any risks of cost-overrun or delay are absorbed by Project Co. This risk allocation insulates the State and the taxpayer from such common public procurement events. Additionally, Project Co must maintain the schools to stringent quality standards for the life of the concession, such that they remain high quality facilities when handed back to the State.

Table 7 below contains a breakdown of Project Co’s Risk Adjusted Proposal cost of \$631,093 by financial year.

Table 7: Payments for each financial year of the Term

FINANCIAL YEAR	NPC \$'000
FY16/17	5,494
FY17/18	12,302
FY18/19	17,061
FY19/20	22,752
FY20/21	25,877
FY21/22	26,956
FY22/23	28,420
FY23/24	28,506
FY24/25	26,440
FY25/26	25,338
FY26/27	24,609

FY27/28	23,926
FY28/29	24,375
FY29/30	24,619
FY30/31	22,608
FY31/32	22,032
FY32/33	23,049
FY33/34	22,386
FY34/35	21,985
FY35/36	22,374
FY36/37	20,894
FY37/38	18,037
FY38/39	16,477
FY39/40	17,061
FY40/41	17,010
FY41/42	16,042
FY42/43	14,869
FY43/44	14,645
FY44/45	14,125
FY45/46	12,799
FY46/47	12,375
FY47/48	5,650
Total	631,093

1.11 Achieving Project Objectives

The following aspects are examples of how Project Co intends to achieve the Project Objectives outlined in section 1.3.1:

- flexible construction methodology involving an innovative structural steel frame and flexible interior wall design, which will provide future flexibility for any changes to functional educational delivery requirements;
- a focus on preventative, rather than reactive maintenance and life cycle replacement regimes for loose furniture, fittings and equipment; and
- improved efficiencies in service delivery for the DoE, as all maintenance issues will be handled through a full time site caretaker, meaning the DoE staff has more time to focus on teaching outcomes.

1.12 Public Interest Considerations

Public interest matters were considered and addressed throughout the procurement phase of the Project to ensure that the public interest is protected throughout the contract term. Public interest assessments were conducted at two key phases of the procurement process, the first prior to the release of the Invitation for EOI and the second immediately prior to contractual close.

As outlined in section 1.3.1, the Project had four key objectives linked to the DoE Strategic Plan; these objectives were considered as part of the public interest considerations as follows:

- **Objective 1** – to achieve functional educational designs that provide quality teaching and learning environments.

EduWest has provided designs that meet the State's requirements and furthermore, are considered to

have made valuable enhancements to the State's standard pattern primary school design, which can now be incorporated into the State's design for future primary schools.

- **Objective 2** – to achieve value for money over the whole of life of the infrastructure pursuant to education outcomes.

As outlined in section 1.10, the contract offers value for money to the State both in quantitative and qualitative terms.

- **Objective 3** – to improve efficiencies in service delivery for the DoE.

EduWest will meet the State's required standards for infrastructure and maintenance over the period of the contract. In particular, the contract provides for the school facilities to be maintained to a high standard, including having planned lifecycle replacement. This is considered to be more efficient than current practice as the allocation of resources can be optimised rather than being needed on an ad-hoc basis and it avoids breakdowns that could cause significant disruptions at a school.

The contract also requires that when the facilities are handed back to the State at the end of the Operating Phase, they will be in good condition, meaning that the State will not be required to undertake any significant refurbishment at that time.

- **Objective 4** – to achieve time and cost efficiencies in the delivery of a program of works through economies of scale.

As noted in the value for money assessment, the comparison with the estimated cost for the State to deliver the project under conventional, publicly funded procurement indicates that the bundling of the construction and services is delivering efficiencies to the State.

Learning outcomes of students have been shown to be closely related to the quality of learning environments and level of building performance. The facilities provided under the contract have been designed to ensure quality environments for students that will also be adaptable to future changes in teaching styles. Over the Operating Phase, the facilities will be subject to ongoing maintenance and life cycle replacements to ensure the quality of the student environment is maintained.

Principals and teachers will have more time to focus on teaching and delivering excellent student outcomes as EduWest will be responsible for facilities management.

The high quality school facilities will be a vital part of the local communities in which they are located and will provide an important civic place.

2. KEY COMMERCIAL FEATURES

Part Two of this document outlines the contractual relationships between the parties involved in the Project, including the allocation of risk and the obligations of both Project Co and the State. A brief description of Project Co's arrangements with its consortium members is also provided. In some areas, this Part provides more detail on the issues and topics discussed in Part One.

2.1 Parties to the Project Documentation

On 25 September 2015, the Treasurer (in his delegated authority from the Minister for Works), and the Minister for Education jointly executed the Project Deed and other associated contract documentation with Project Co and other related parties to design, build, finance and maintain the Project.

The parties to the Project Deed are:

- the State of Western Australia;
- the Minister for Works;
- the Minister for Education; and
- EduWest Project Co Pty Ltd in its personal capacity and in its capacity as trustee for the EduWest Project Trust (Project Co).

State and Statutory Entities

The State is a signatory to the Project Deed and other State Project documents. The Treasurer and Minister for Education, in accordance with their executive powers, are empowered to execute the contract documentation on behalf of the State.

The State's Representative during the Development Phase is the Principal Project Director, Treasury (SP&AS).

Private Sector Parties

Contracting Entity – Project Co is a special purpose legal entity that has been contracted to deliver the Project. Project Co is the counterparty to the Project Deed and is the main contracting entity with the State. In turn, Project Co has entered into a range of contractual relationships with members of the EduWest consortium to deliver elements of the Project. However, Project Co is the legal entity that is ultimately responsible to the State for delivery of the Project.

D&C Subcontractor – Badge Constructions (WA) Pty Ltd and Perkins (WA) Pty Ltd entered into a joint venture agreement for the purpose of undertaking the design, construction and commissioning of the Project.

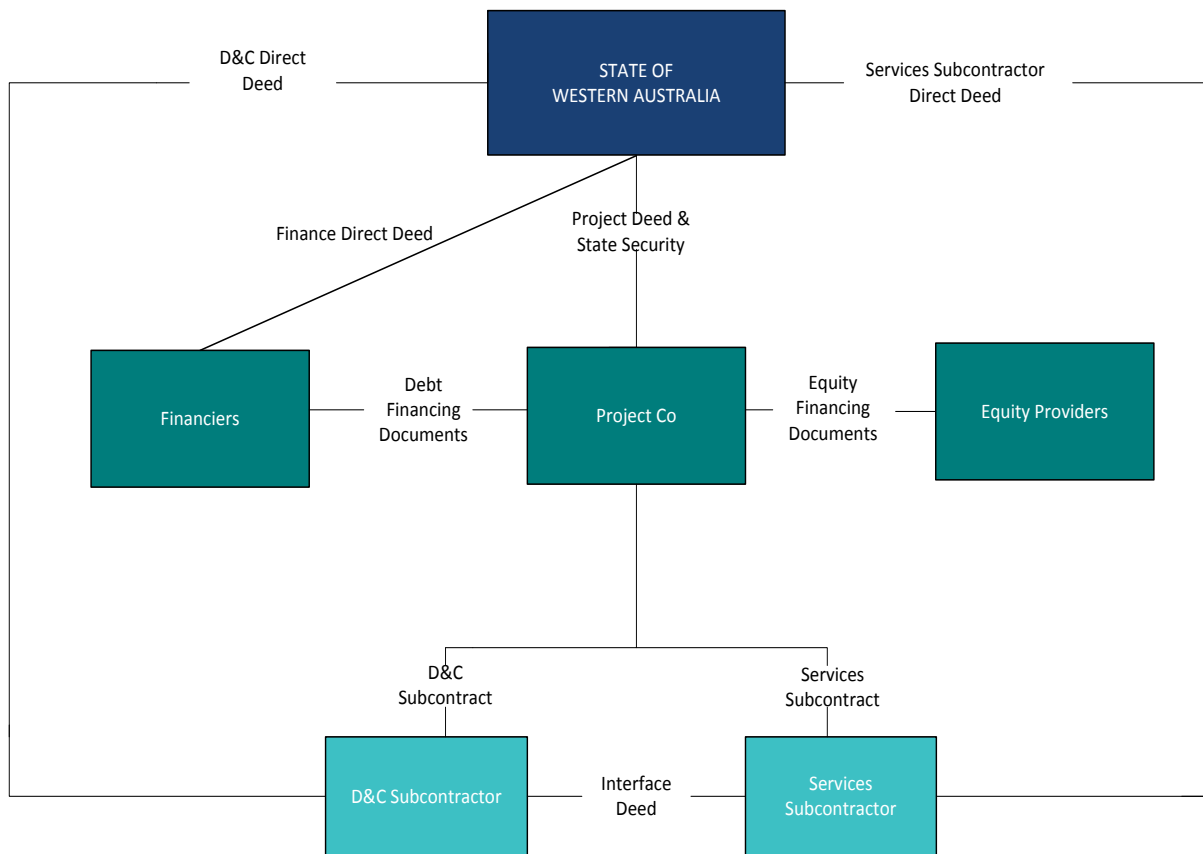
Services Subcontractor – Spotless Facility Services Pty Ltd is subcontracted by Project Co to deliver the Services during the Operating Phase of the Project.

Equity Provider – Macquarie Corporate Holdings Pty Ltd and Aberdeen Infrastructure Investments (WAS) Ltd.

Financiers – Sumitomo Mitsui Banking Corporation, National Australia Bank Ltd and REST.

The high level contractual structure for the Project is summarised in Figure 2 below

Figure 2: Contractual Structure



2.2 State Project Documentation and Related Agreements

The contractual arrangements associated with a DBFM delivery model are complex due to the involvement of private sector finance and an associated securitised lease structure and provision of Services over the approximately 31 year Operating Phase. The table below identifies the suite of key contractual documents that the State entered into for the delivery of the Project.

Table 8: Key State Project Documents

Name	Parties	Description
Project Deed	State Project Co	This is the main legal document that sets out the key rights and responsibilities of Project Co and the State. It covers both the Development Phase and Operating Phase of the Project.
Finance Direct Deed	State Project Co Facility Agent Security Trustee	The Finance Direct Deed includes the Project’s financiers and Project Co as counter parties. It addresses: <ul style="list-style-type: none"> • priority of security held over the Project as between the State and the Project’s financiers; and • granting concessions to the Project’s financiers to allow them to remedy a default of Project Co or sell the project to another operator, and restrictions on the State’s rights to terminate the Project Deed until the financiers’ remedy periods have expired.

Name	Parties	Description
D&C Subcontractor Direct Deed	State Project Co D&C Subcontractors D&C Subcontractor Guarantors	The D&C Direct Deed includes the D&C Subcontractors and the D&C Subcontractor Guarantors as counterparties, under which the D&C Subcontractors and D&C Subcontractor Guarantors agree not to terminate the D&C Subcontract until: <ul style="list-style-type: none"> the State has had an opportunity to remedy a non-payment by Project Co; or the State terminates the Project Deed, but does not elect to take over Project Co's role under the D&C Subcontract.
Services Subcontractor Direct Deed	State Project Co Services Subcontractor Services Subcontractor Guarantor	The Services Subcontractor Direct Deed includes the Services Subcontractor and Services Subcontractor Guarantor as counterparties, under which the Services Subcontractor and the Services Subcontractor Guarantor agree not to terminate the Services Subcontract until: <ul style="list-style-type: none"> the State has had an opportunity to remedy a non-payment by Project Co; or the State terminates the Project Deed, but does not elect to take over Project Co's role under the Services Subcontract.
State Security	State Project Co	Agreement between the State and Project Co in which Project Co grants the State security over Project Co's property to secure payment of Project Co's liabilities to the State under the Project documents. The rights under the State Security may be exercised by the State if the State intends terminating the Project Deed, subject to the Finance Direct Deed.
Independent Certifier Deed of Appointment	State Project Co Independent Certifier	The Independent Certifier is jointly appointed by Project Co and the State to provide independent verification of the Project Co construction program and the completion and commissioning activities under the Project Deed. This agreement sets out the terms of the appointment including the roles and responsibilities of the Independent Certifier and the circumstances in which it can make binding decisions on the parties.
Operating Phase Licences	State Project Co	Each Operating Phase licence will set out the terms and conditions upon which the State will grant to Project Co a non-exclusive licence to use the School Facilities for the purpose of providing the Services during the Operating Phase. Each Operating Phase licence will be executed on the commencement of the Operating Phase for that Stage.

2.3 Key Commercial Principles

Set out below is a general summary of a number of the key commercial principles that apply to the Project. These were developed broadly in accordance with the National PPP guidelines for social infrastructure, and subject to Western Australian jurisdictional requirements.

2.3.1 Design, Construction and Commissioning

Project Co is responsible for completing the design, construction and commissioning (subject to certain State specific commissioning requirements) of the Works by the Dates for Commercial Acceptance. Delays in completion result in a reduced Operating Phase which decreases the number of quarterly service payments paid to Project Co by the State. In specified circumstances set out in the Project Deed (such as where the

State breaches a State Project document) Project Co may apply for an extension of time and compensation for the delay.

It is critical to the State that each Stage of a School Facility is completed by its specified Date for Commercial Acceptance and available to accommodate students and teachers for the upcoming academic year. Project Co will be required to develop a remedy plan for approval by the State, outlining an alternative methodology to accommodate students and teachers in the event that there is a delay to the Date for Commercial Acceptance for a Stage.

Project Co is responsible for designing the School Facilities and verge infrastructure to meet the design requirements and the fit for purpose warranty. Project Co accepts responsibility for site conditions (excluding migrating contamination and contamination caused by the State or a third party which is not an associate of Project Co), compliance with laws and requirements for the protection of the environment and must obtain and comply with all approvals for the Project (with the exception of specified authorisations which must be obtained by the State). The State is responsible for native title and will provide relief to Project Co in relation to the discovery of artefacts.

2.3.2 Facilities Management Services

Project Co must maintain and refurbish the School Facilities during the Operating Phase as necessary to ensure they continue to meet the fit for purpose warranty and to meet the requirements in the State Project documents. In specified circumstances set out in the Project Deed (such as a force majeure event), Project Co may apply for relief to the extent that the circumstance prevents its performance of the Services. The Services to be provided by Project Co are outlined in Table 3.

2.3.3 Operational Interface

Project Co will be responsible for the delivery of the Services in accordance with the Services specifications; however, the State will retain responsibility, through the DoE, for the day-to-day operation of the School Facilities and delivery of the school activities.

2.3.4 Payment Mechanism

The State has implemented a regime under which Project Co is entitled to receive quarterly service payments (QSPs) once commercial acceptance for a Stage is achieved. The State has adopted a value for money regime under which Project Co's entitlement to the QSP is 'ramped up' in accordance with a predetermined percentage that relates to the commercial acceptance of each Stage. The QSP is intended to allow Project Co to recover the costs associated with delivering the Project.

Payment during the Operating Phase is in the form of a QSP calculated in accordance with the Project Deed and paid in arrears. The QSP covers the construction costs, financing costs and maintenance costs including lifecycle replacement.

The QSP may also be adjusted to account for the following key components:

- a transportable services payment to account for the costs associated with the provision of Services to any transportable units at the School Facilities;
- a non-usage rebate to account for areas of the School Facilities which the State has advised Project Co are not immediately required, and in relation to which Project Co will not be required to deliver the Services for the next academic year, or part thereof;
- an insurance payment to account for changes in the cost of certain insurances, the risk of which is shared between Project Co and the State; and

- an additional use payment to compensate Project Co for additional use of the School Facilities outside of core hours or use by third parties in excess of the agreed additional use allowance.

The QSP is subject to abatement in accordance with the abatement regime set out in the Project Deed.

2.3.4.1 Abatement Regime

Specified failures to provide the Services in accordance with the Service specifications may constitute an incident failure and result in the abatement of the QSP. The abatement is calculated in accordance with a predetermined formula specified in the Project Deed.

Project Co will be subject to availability failure abatements if faults occur in any of the functional units in the School Facilities resulting in the functional unit failing to satisfy any of the availability conditions specified in the payment schedule to the Project Deed, and if the fault is not made safe or rectified by Project Co within pre-specified times.

2.3.5 Major Default and Termination Regimes

2.3.5.1 Major Default

If the State considers that a major default under the Project Deed has occurred, it may notify Project Co accordingly. Major default includes events such as Project Co failing to achieve commercial acceptance by the relevant Date for Commercial Acceptance, failure to remedy a breach of a State Project document within 20 business days of receiving a notice to do so and the accumulation by Project Co of service failure abatements above pre-specified thresholds.

If the major default is capable of remedy, the State must give Project Co a reasonable period of time to remedy it.

A failure by Project Co to remedy a major default which is capable of remedy within the period of time specified in the State's notice (as amended as the State considers reasonably necessary if Project Co gives the State a notice stating that it considers the period of time unreasonable) or a failure to comply with a remedy implementation plan in the case of delayed commercial acceptance, may give the State a right to terminate the Project Deed as discussed further in section 2.3.5.2 below. The State's rights in this respect are regulated by the Project Deed and the Finance Direct Deed.

Major defaults which are not capable of remedy and which cannot be overcome, or compensated for, by Project Co, will constitute default termination events.

2.3.5.2 Termination

Subject to the Finance Direct Deed, the Project Deed can be terminated:

- in the case of a major default which is capable of remedy, if the major default has not been remedied within the time frame specified in the State's notice (as amended as the State considers reasonably necessary if Project Co gives the State a notice stating that it considers the period of time unreasonable);
- in the case of delayed commercial acceptance, if Project Co fails to comply with a remedy implementation plan;
- as a result of a default termination event;
- as a result of a force majeure event such as a natural disaster (e.g. earthquake, landslide, tropical cyclone) that prevents Project Co from carrying out a material part of the Project activities and which subsists for a continuous period of 6 months; and

- by the State, in its discretion.

Where the Project Deed is terminated before the natural expiry of its term, Project Co may be entitled to a termination payment (and will be entitled to a termination payment if the State exercises its discretionary right to terminate). The basis for the calculation of the termination payment will be determined in accordance with the Project Deed.

2.3.6 Finance

Project Co is responsible for the provision of debt and equity finance for the Project. Its funding structure comprises senior debt drawn down progressively from financial close through construction and equity committed at financial close.

2.3.7 State Rights at Expiry of the Project

The Project Deed requires Project Co to hand over the School Facilities and verge infrastructure to the State at the end of the Operating Phase (or upon earlier termination) for nil consideration.

To ensure that the assets are in sound working order, the School Facilities and verge infrastructure (as applicable) will be independently inspected on a semi-annual basis in the four years leading up to handover to ensure that all lifecycle and maintenance works are being completed and that the School Facilities and verge infrastructure will meet the relevant handover condition. The handover condition is described in the Project Deed.

The Project Deed requires that, at a minimum, when the School Facilities are handed back to the State at the end of the term, they are in such a condition that it is reasonable to expect that no major maintenance or refurbishment works (other than routine maintenance) would be required for a period of five years.

In the event that Project Co fails to maintain the School Facilities and verge infrastructure to the standard required to satisfy the handover requirements, the State will be entitled to compensation for any works undertaken by the State to fulfil the handover requirements.