

# **MEMORANDUM OF UNDERSTANDING FOR THE CONSTRUCTION AND REVITALIZATION OF BALTIMORE CITY PUBLIC SCHOOLS**

## **Annual Report on the Progress of Replacements, Renovations, and Maintenance of Baltimore City Public School Facilities**

**October 1, 2013**

Submitted to the Governor, Board of Public Works, and Legislative  
Committees

### **The MOU Executive Committee:**

Mr. Michael J. Frenz, Maryland Stadium Authority, Chair

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The Honorable Stephanie Rawlings-Blake, City of Baltimore

Dr. David Lever, Executive Director, Interagency Committee on School Construction



**BALTIMORE CITY  
PUBLIC SCHOOLS**



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**MEMORANDUM OF UNDERSTANDING  
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**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)** for the Construction and Revitalization of the Baltimore City Public Schools is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **Maryland Stadium Authority** (the “Authority”); the **Mayor and City Council of Baltimore** ( the “City”); the **Baltimore City Board of School Commissioners** ( the “School Board”); and the **Interagency Committee on School Construction** (the “IAC”). The Authority, the City, the School Board, and the IAC are each a “Party,” and may be collectively referred to as the “Parties.”

**RECITALS**

**WHEREAS**, House Bill 860 (Ch. 647 (2013)), The Baltimore City Public Schools Construction and Revitalization Act of 2013 ( the “Act” as defined herein), requires the Parties to enter into this MOU for the purpose of the construction, revitalization, relocation, and closure of certain Baltimore City public school buildings pursuant to the Act.

**WHEREAS**, a purpose of this MOU is to advance the beneficial relationships between the Parties to carry out their respective responsibilities under the Act in an effective and efficient manner.

**WHEREAS**, pursuant to the Act, the Parties are committed to providing Baltimore City Public School System students with better access to Baltimore City public schools (the “School Buildings” as defined herein) that support and encourage educational success.

**WHEREAS**, the Act authorizes the Authority to finance the Renovation and Replacement of School Buildings through the issuance of revenue bonds in an amount not to exceed \$1,100,000,000 and to carry out those Renovation and Replacement projects in accordance with the Baltimore City Public Schools’10-Year Plan approved by the School Board on January 8, 2013 (the “10-Year Plan” as defined herein), subject to certain limitations.

**WHEREAS**, the Parties acknowledge that the 10-Year Plan is a significant economic investment and that essential principles of this extensive undertaking are: flexibility, high-quality design and construction, sustainability, adaptability, and capacity to change in the interests of continual cooperation, efficiency, steadfastness, and the best interests of Baltimore City Public School System students.

**WHEREAS**, the Parties acknowledge that schools are the foundations of communities and neighborhoods and that in implementing the 10-Year Plan, the Parties will identify opportunities for students to gain work experience; for graduates of City Schools (as defined herein) to connect to career paths; for local residents, including minority and women-owned businesses, to access employment and other economic opportunities; for sustainable and green building practices to be implemented; and for stakeholders to engage in the planning process as each Renovation and Replacement project commences.

**WHEREAS**, except as agreed to in this MOU, the powers granted to the Authority under the Act may not in any way interfere with the enumerated powers of the School Board under Title 4, Subtitle 3, of the Education Article or the rights and responsibilities of the IAC for the design and construction of school facilities; and the powers of the School Board may not limit the ability of the Authority to carry out its obligations under the Act.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, conditions, representations, and agreements set forth herein, the Parties hereto **AGREE AS FOLLOWS**:

## **I. DEFINITIONS**

For purposes of this MOU, the following terms have the following definitions:

**“10-Year Plan”** means the Baltimore City Public Schools’ 10-Year Plan approved by the School Board on January 8, 2013, as may be subsequently amended, for the renovation, replacement, and associated closures of certain Baltimore City public schools. **“Funded 10-Year Plan”** means the portion of the projected project list under the 10-Year Plan that will be financed by the Act.

**“10-Year Plan Project”** means a Replacement school constructed under the management of the Authority or a Renovation project performed under the management of the School Board pursuant to the Funded 10-Year Plan.

**“Act”** means House Bill 860 (Ch. 647 (2013)), The Baltimore City Public Schools Construction and Revitalization Act of 2013, as codified in various sections of the Annotated Code of Maryland (the “Code”) at Economic Article, Title 10, Subtitle 6; Education Article, Title 4, Subtitles 1 and 3, and Title 5, Subtitles 2 and 3; State Finance and Procurement Article, Title 6, Subtitle 2; and State Government Article, Title 9, Subtitle 1.

**“Annual Report”** means the report to be provided in accordance with §10-645(L) of the Economic Development Article of the Code.

**“Beverage Container Tax”** means the tax imposed by Baltimore City Ordinance No. 12-45 and enacted on June 26, 2012.

**“Board of Public Works”** or **“BPW”** means the Maryland Board of Public Works.

**“Bonds”** include a note, an interim certificate, refunding bond and any other evidence of obligation issued by the Authority to finance 10-Year Plan Projects in accordance with §§ 10-628 and 10-645(D) of the Economic Development Article of the Code.

**“Capital Improvement Program”** or **“CIP”** means the local school system capital improvement program developed consistent with COMAR 23.03.02.03.

**“City Housing”** means the Baltimore City Department of Housing and Community Development.

**“City Recreation and Parks”** means the Baltimore City Department of Recreation and Parks.

**“City Planning”** means the Baltimore City Planning Department.

**“City Schools”** means the Baltimore City Public Schools System, administered by the Chief Executive Officer under the direction and supervision of the School Board.

**“Closure of a School Building”** means that a School Building will no longer be retained by the School Board for public education purposes, but will instead be transferred to the City for surplus, pursuant to the procedures set forth at §§4-115 and 9-111 of the Education Article of the Code, COMAR 23.03.02, and School Board Policy FCA and FCA-RA.

**“Closure of a School Program”** means that a public school that occupies a School Building will be closed and will no longer enroll students. When the Closure of a School Program occurs, the School Building may be retained by the School Board for other public education purposes or transferred by the School Board to the City for disposition.

**“Completion Date”** of a contract for the Construction of a Replacement under the Funded 10-Year Plan occurs when (i) approvals from Life Safety Inspections are received, and (ii) the Authority provides written notice to City Schools that performance under the contract has been achieved.

**“Construction”**

- a. means the process of building, altering, repairing, equipping, or improving any structure, building, or other improvement to real property;
- b. includes demolition;
- c. includes any major work necessary to repair, replace, prevent damage to, or sustain existing components of an improvement to real property; and
- d. does not include Maintenance or the routine operation of an existing improvement to real property or activities related to an energy performance contract.

**“Cooperative Use Space”** means co-located or shared space in a School Building, including but not limited to community meeting, health, and recreational space, that is allocated to support community initiatives to serve school children and the general community.

**“Coordinating Committee”** means a work group of the Parties established by this MOU to maximize the coordination of community development and revitalization goals with the 10-Year Plan Projects.

**“Day” or “days”** means a day that the offices of the Executive branch agencies of the State of Maryland are open for routine business operations, unless expressly stated otherwise.

**“Design”** means the comprehensive development of plans, specifications, and related documents under the supervision and responsibility of an architect or engineer who is licensed to practice in the State.

**“Design Development Phase” or “DD”** means the phase in which design documents are continued from the approved schematic design phase, and which begins to identify site, mechanical, electrical, plumbing, structural and architectural details. This phase results in documents that include floor plans, sections, elevations, full dimensions, and narratives/outlines of material specifications.

**“Education Facilities Master Plan”** or **“EFMP”** means the local school system long range plan, required by §5-301(d)(3) of the Education Article of the Code and COMAR 23.03.02.02.

**“Enhanced Approval Package”** means a written and graphic proposal that includes:

- a. The research phase of a project, including:
  - i. site analysis;
  - ii. zoning requirements;
  - iii. jurisdictional restrictions; and
  - iv. educational specifications, feasibility studies, and design elements of educational buildings;
- and
- b. Schematic design drawings, documents, or other media that illustrate:
  - i. concepts of the design (i.e. site plan, floor plan(s), elevations, and other conceptual/illustrative documents);
  - ii. spatial relationships, scale and form; and
  - iii. overall dimensions and square footage estimates (Gross/NASF) of each usage type and any other elements for program goal(s).

**“Executive Committee”** means a committee of the Parties established by this MOU to oversee implementation of the MOU.

**“Facilities Fund”** means the Baltimore City Public School Construction Facilities Fund established under §10-657 of the Economic Development Article of the Code.

**“Feasibility Study”** means a detailed investigation and analysis conducted to determine the financial, economic, technical, or other advisability of a proposed project.

**“Financing Fund”** means the Baltimore City Public School Construction Financing Fund established under §10-656 of the Economic Development Article of the Code.

**“Green Building Standards”** means a jurisdiction’s required standards regarding:

- a. Energy savings;



9.16.13

- b. Resource conservation;
- c. Storm water management;
- d. Environmental site design;
- e. Renewable energy; and
- f. Any other sustainability strategies to achieve budgetary and life-cycle cost savings, and health benefits for building occupants.

**“IAC”** means the Interagency Committee on School Construction or its designee, as the context requires.

**“IAC Approval”** means the decision by the IAC that a project under the 10-Year Plan, or an aspect thereof, may proceed in design and construction, subject to further reviews by the Parties.

**“Life Safety Inspection(s)”** means the inspection(s) to approve the use and occupancy of a School Building.

**“Maintenance”** means all activities that are performed to a School Building to:

- a. Continue operations or upkeep;
- b. Prevent deterioration; or
- c. Correct a deficiency, which is not a part of a Renovation that has been approved by the IAC.

**“MBE”** means a legal entity that is certified under the Maryland State Department of Transportation Office of Minority Business Enterprise.

**“Renovation”** means major Construction to restore, improve, modernize, expand, reduce, or upgrade an existing School Building or a portion of an existing School Building (and any necessary improvements to the related School Site) by the School Board to achieve the educational, building performance, and aesthetic qualities of a new school, in accordance with the Funded 10-Year Plan.

**“Replacement”** means the Construction of a new School Building on the same site as an existing School Building or on a new site by the Authority, in accordance with the Funded 10-Year Plan.

**“School Board”** means the Baltimore City Board of School Commissioners of the Baltimore City Public Schools System established under §§3-108.1 and 4-303 of the Education Article of the Code.

**“School Building”** means a public school facility that is held in trust by the City or the School Board for the benefit of City Schools, which is used primarily for educational instruction.

**“School Site”** means the real property on which a School Building exists or on which a School Building is to be constructed, renovated, or replaced.

**“STAT Committee”** means a committee of the Parties established by this MOU to implement and oversee the STAT reporting program for the Funded 10-Year Plan.

**“State-Rated Capacity”** means the number of students that the IAC, with input from the School Board, determines that an individual School Building has the physical capacity to enroll, in accordance with the process set out in COMAR 23.03.02.04.

**“Swing Space”** means a School Building, or an area of a School Building or improvement, that is temporarily used for a public education purpose.

**“Table Games Proceeds”** means the amounts paid by the State Comptroller to the City, via the State Lottery, from the proceeds of table games at the video lottery facility located in the City that are dedicated to school construction, in accordance with § 9-1A-27(d)(2)(i)(1) of the State Government Article of the Code.

**“Utilization Rate”** means the official system-wide enrollment on September 30<sup>th</sup> of each year divided by State-Rated Capacity of all School Buildings that serve students.

**“Video Lottery Facility Rent”** means the participation rent paid to the City by the operator of the video lottery facility located in the City, pursuant to the Ground Lease Agreement dated as of October 31, 2012 by and between the Mayor and City Council of Baltimore and CBAC Gaming, LLC.

## **II. SPECIFIC UNDERSTANDINGS OF THE PARTIES**

### **1. ROLES, RIGHTS, AND RESPONSIBILITIES**

#### **A. General**

The Parties agree that the charts for New School Construction (applicable to Replacements) and for Renovation Projects (applicable to Renovations), attached as

**Exhibits 1 and 2** and incorporated by reference (collectively, the “Responsibility Charts”), establish the roles, rights, and responsibilities that the Parties will perform, follow, and fulfill for each of the 10-Year Plan Projects. Any change to a line item or any other subject governed by the Responsibility Charts shall be made by formal amendment, in accordance with the provisions of Part III, ¶5 of this MOU.

**B. Work-Based Learning and Local Hiring**

1. The City, the School Board, and the Authority agree to establish and participate in a collaborative group (the “Collaborative”) to work together to maximize the opportunities for City Schools’ students and City residents to be informed about, prepared for, and connected to work-based learning and employment opportunities created by the 10-Year Plan Projects. The City, the School Board, and the Authority shall each appoint representatives to the Collaborative, and the Collaborative will engage representatives from community, professional, and trade organizations to provide input for recommendations to the Executive Committee

2. The Mayor’s Office of Employment Development (“MOED”) will develop and administer a comprehensive local hiring plan to support the goals of the Collaborative and will report to the Executive Committee on these subjects. MOED will utilize the resources of its One Stop Career Center Network and work collaboratively with a broad range of City, workforce, faith-based, and community organizations to assist in the training and preparation of City residents for employment opportunities created by the Ten-Year Plan Projects.

3. The Collaborative and MOED will develop a plan to consider the hiring of State-registered apprentices if such a plan is determined to be in the best interest of community hiring outreach.

4. All entities performing any on-site work on a 10-Year Plan Project shall document the number of Baltimore City residents whom they have employed on a semi-annual basis, and shall report such information for each semi-annual period to City Schools (if they are working on Renovations) or the Authority (if they are working on Replacements). City Schools and the Authority shall report this data semi-annually to the Collaborative and the STAT Committee. City Schools shall also report semi-annually to the Collaborative and the STAT Committee on the number of City Schools’ students who have been engaged in any work-based learning opportunities coordinated or sponsored by the City Schools’ Learning to Work Office (or its successor) during each semi-annual reporting period.

**C. MBE Participation**

1. The Collaborative and the Mayor's Office of Minority and Women-Owned Business Development ("MWBD") will work to maximize the utilization of State-certified locally based minority and women-owned businesses. The Collaborative and MWBD will develop an outreach and inclusion plan, in compliance with Maryland State procurement guidelines, to be administered by the Authority in partnership with MWBD for Funded 10-Year Plan Projects, and to make recommendations to the Executive Committee to implement this goal.

2. The Authority's MBE liaison, in conjunction with MWBD, will oversee the administration of the Collaborative's work in this area and will report to the Executive Committee on this subject.

**D. Executive Committee**

1. The Executive Committee, comprised of at least one (1) representative from each of the Parties, shall meet quarterly (or as frequently as otherwise agreed by the Executive Committee) for the following purposes:

- a. to oversee, review, and monitor the performance of the Parties under this MOU;
- b. to review and consider proposed amendments to this MOU;
- c. to review, mediate, and resolve certain disputes among the Parties as set forth in this MOU; and
- d. to develop the Annual Report.

2. The Executive Committee will schedule public forums to provide opportunities for public questions and comments about the 10-Year Plan.

3. Decisions and actions by the Executive Committee will be determined by majority vote, with each Party having one (1) vote.

4. The Executive Committee shall initially appoint (by majority vote) one (1) member to serve as chairperson. The chairperson will serve a one-year appointment, after which the position will be rotated among the Parties on a yearly basis.

5. In furtherance of the goals of transparency and accountability, the meetings of the Executive Committee will be conducted in compliance with the terms and provisions of the Open Meetings Act, codified as Title 10, Subtitle 5 of the State Government Article of the Code.

## **2. EDUCATIONAL SPECIFICATIONS, FEASIBILITY STUDIES, AND DESIGN ELEMENTS**

### **A. General**

1. The School Board shall have final approval authority over educational issues, including, but not limited to:

- a. Educational programs;
- b. 10-Year Plan amendments (subject to §3, below);
- c. Educational specifications;
- d. Educational aspects of Feasibility Studies;
- e. Design elements of School Buildings identified in the Enhanced Approval Package; and
- f. Placement of students.

2. The Parties will make maximum effort to ensure that scope, schedule, and budget for each Renovation and Replacement is agreed upon as final by no later than the date the Enhanced Approval Package is approved by the School Board for each project.

3. The Parties will make maximum effort to ensure that the building floor plan for each Renovation or Replacement is locked by the end of the Design Development Phase for each project.

4. All Replacements will meet or, to the extent possible, exceed the State's Green Building Standards applicable at the time that the Enhanced Approval Package for the Replacement is approved by the School Board.

5. All Renovations will meet or, to the extent possible, exceed the City's Green Building Standards applicable at the time that the Enhanced Approval Package for the Renovation is approved by the School Board.

6. To assess consistency with the goals of the City's adopted Sustainability Plan, City Schools and the Authority will meet with City Planning to obtain input on educational specifications, design standards, and Feasibility Studies. Sustainability and greening strategies shall be included throughout the Funded 10-Year Plan.

**B. Feasibility Study**

1. During the preliminary phase of each Feasibility Study for each Renovation and Replacement, the following shall occur:

- a. City Schools, the Authority, and their consultants will meet with the Coordinating Committee and the IAC to obtain City staff and IAC input on each project;
- b. Before any Feasibility Study is finalized, City Schools, the Authority, and their consultants will present the proposed final version of the Feasibility Study to the Coordinating Committee for its final review and comment;
- c. City Schools and the Authority will provide a synopsis of the proposed process for community input and engagement on each Renovation and Replacement to City staff for review and comment; and
- d. City Schools will coordinate with City Recreation and Parks and/or other City agencies to incorporate community input on community and recreational uses at School Sites, as appropriate.

2. Prior to the completion of each Feasibility Study for a Renovation or Replacement, City Schools and the Authority will meet with the Baltimore Office of Promotion and the Arts ("BOPA") and the Public Art Commission ("PAC") to incorporate public art in the Renovations and Replacements to the extent possible.

3. Prior to the completion of each Feasibility Study for each Renovation, City Schools and the Authority will consult with BOPA and PAC to assess the potential future use and condition of existing City-owned public art at each project.

**C. Cooperative Use Space**

1. City review of city-wide educational specifications and design standards will focus on those that impact community development, including community access to and recreational uses of Renovations and Replacements.

2. The final Master Educational Specification and Design Guideline documents for each Renovation and Replacement will include:

- a. Cooperative Use Space in addition to education program space, as appropriate; and
- b. Efficient design for Cooperative Use Space and associated public access to shared spaces to maximize benefits for City Schools, the City, and neighborhood residents.

3. Notwithstanding the provisions in this § 2.C, the City and City Schools agree to take no action that would adversely affect the tax-exempt status of the Bonds.

**3. TEN-YEAR PLAN AMENDMENTS FOR CHANGES IN PROJECTS**

**A.** City Schools shall comply with the timing and process for submitting proposed amendments to the 10-Year Plan as set forth in the Timeline that is attached as **Exhibit 3** and incorporated by reference.

**B.** City Schools' description of proposed amendments to the 10-Year Plan shall consist of a written analysis that includes:

1. Building, program, and community analyses;
2. Additional district or city-wide changes that will impact facility usage; and
3. Conformity with the Utilization Plan outlined in §12 of this MOU.

**C.** City Schools shall submit proposed 10-Year Plan amendments, with written analyses and written statements of impact (if any) on the expected Closures of School Buildings set forth on **Exhibit 6** to this MOU, for review by representatives of the following:

1. The Mayor's Office;
2. City Planning;
3. The Authority; and
4. The IAC.

**D.** The scope of the Authority's review power over proposed 10-Year Plan amendments will depend upon the nature of the proposal:

1. If an amendment relates to a Replacement, then the Authority shall have the right to review and approve the proposed amendment. If the Authority does not approve a proposed amendment relating to a Replacement, it may decline to fund the project set forth in the amendment after providing written justification of its decision. The Authority's decision shall be appealable to the Executive Committee in accordance with the dispute resolution process set forth in § 15.B of this MOU.

2. If an amendment relates to a Renovation, then the Authority shall have the right to review and comment on the proposed amendment.

**E.** The Mayor's Office, City Planning, the Authority, and the IAC will notify City Schools in writing of any objections or exceptions to the proposed amendments.

**F.** City Schools shall take into account any comments by the Mayor's Office, City Planning, the Authority, and the IAC, when City Schools submits proposed amendments to the School Board for review and decision.

**G.** Before the School Board decision, City Schools will share proposed amendments to the 10-Year Plan with the public in mid-November of any given year and the School Board will convene a public hearing.

1. Time limits on the submission of oral or written testimony and data shall be clearly defined in the notification of the School Board's public hearing.

2. The School Board will consider public input and recommendations prior to its final vote on any amendment to the 10-Year Plan.

**H.** The School Board will review any proposed 10-Year Plan amendments, and reject, modify, or approve them as final amendments by mid-December of any given year.

**I.** Any 10-Year Plan amendments approved by the School Board will then be reflected in the July EFMP and the October CIP submissions.



#### **4. IAC AND BPW PROCESSES**

##### **A. General Procedures**

1. City Schools shall update the IAC facility database upon substantial completion of each 10-Year Plan Project and for each School Building designated as an adjacent school.
2. For Replacement projects constructed by the Authority, IAC regulations with respect to procurement, change orders, and State payments do not apply.
3. For Renovation projects constructed by City Schools, project procurement shall be in accordance with COMAR 23.03.02, except that IAC regulations with respect to change orders and State payments do not apply.
4. The IAC shall develop procedures to record the close-out of the 10-Year Plan Projects.
5. Reconsideration of decisions of the IAC related to 10-Year Plan Projects may be requested in accordance with the IAC reconsideration process. If the IAC rejects a request for reconsideration, then the dispute resolution procedures set forth at §15.B of this MOU shall apply.

##### **B. Educational Facilities Master Plan ("EFMP")**

1. Annually, by the date the IAC specifies, City Schools shall submit to the IAC an EFMP approved by the School Board.
2. The EFMP shall reflect amendments to the 10-Year Plan approved by the School Board in the preceding calendar year.
3. The EFMP shall include community development goals to maximize the benefits of the investments in the 10-Year Plan Projects.
4. The School Board will report projected and proposed system-wide Utilization Rates for the next 5, 7, and 10 years as part of the annual EFMP.
5. The IAC or its designee shall:
  - a. Review the EFMP; and

- b. Notify City Schools in writing of any clarifications or revisions needed to the EFMP.

**C. 10-Year Plan Project Submissions**

Beginning in calendar year 2013, requests for IAC Approval of 10-Year Plan Projects will be submitted at the same time as, but separately from, the City Schools' annual CIP submissions. The requests shall:

1. Be submitted in calendar year 2013 by City Schools, with approval from the School Board, for IAC Approval of 10-Year Plan Projects for the next fiscal year, and then annually thereafter by a date the IAC specifies; and
2. Be reviewed by the IAC for concurrence between the 10-Year Plan Projects submission and the 10-Year Plan amendments approved by the School Board in the preceding calendar year.

**D. Design Review**

1. A 10-Year Plan Project cannot proceed to further stages of Design or to Construction until it receives approval of the Enhanced Approval Package submission from the IAC or its designee.
2. For Replacement projects undertaken by the Authority, schematic and design development documents shall be submitted to and reviewed by the IAC or its designee for confirmation of adherence to the educational specifications approved as part of the Enhanced Approval Package.
3. For Renovation projects undertaken by City Schools, the IAC or its designee shall approve design development and construction documents in accordance with applicable regulations and procedures.
4. If the IAC or its designee does not approve a schematic or design development document submission for a Renovation project, it shall refer the submission for resolution through the dispute resolution process set forth in §15.B of this MOU.

**E. IAC and BPW Approvals**

1. IAC Approval is required before a 10-Year Plan Project can proceed. After IAC Approval, projects will be submitted to the Board of Public Works as follows:
  - a. The Authority will submit Replacements to the BPW for approval at four (4) stages:

1. Bond issuance;
2. Design contract;
3. Pre-Construction contract; and
4. Construction modification (if applicable).

- b. The Authority will submit Renovations to the BPW for approval at the stage of Bond issuance. Design and construction contracts for Renovations will be subject to approval by the School Board and the Authority.

2. Subject to the limitation in §5 of this MOU, the IAC may rescind approval of a 10-Year Plan Project if there is a material change in any of the following factors used to determine the original approval prior to Construction, and subject to the IAC appeal process:

- a. Changes in enrollment projections;
- b. Changes in educational program;
- c. Changes in the surplusings of adjacent schools;
- d. Changes in Utilization Rate.

3. IAC will not rescind approval if there is a material change to any of the factors listed above after Construction has commenced, but it shall include the change of justification in the Annual Report, and it may disapprove future proposed projects based on such material changes.

## **5. PROCUREMENT**

### **A. Replacements**

1. The Authority's procurement policies and procedures shall apply to:
  - a. All procurements for the Design and Construction of Replacements; and
  - b. Any change orders, bid protests, or contract claims related to the Design and Construction of Replacements.

2. IAC procedures and BPW regulations used by IAC with respect to procurement, change orders, and State payments shall not apply to Replacements undertaken by the Authority.

3. All Replacements shall comply with the prevailing wage rate requirements that would apply to similar State-supported projects.

**B. Renovations**

1. City Schools shall procure the Design and Construction of all Renovations in accordance with School Board procurement regulations DJA-RA, IAC procedures, and relevant BPW regulations set forth in COMAR 23.03.02.03, except for contract approvals, change orders, and State payments.

2. All Renovations shall comply with the prevailing wage rate requirements that would apply to similar State-supported projects.

**C. Policies and Procedure**

Copies of the Authority's procurement policies and procedures and City Schools' procurement policy and regulations, all of which may be amended and supplemented from time to time, are attached as **Exhibits 4 and 5**, respectively, and are incorporated by reference.

**6. BALTIMORE CITY'S PLEDGE**

**A. Pledged Funding**

Beginning on July 1, 2013 and continuing until the Bonds that have been issued to finance the 10-Year Plan Projects are no longer outstanding and unpaid, the City pledges, subject to annual appropriation, the following funds solely to the Financing Fund:

1. All revenues and receipts from the Beverage Container Tax; and
2. Ten percent (10%) of the Video Lottery Facility Rent.

**B. Deposit of Pledged Funding**

The pledged funds, together with the Table Games Proceeds required by §10-645(G)(1)(II) of the Economic Development Article of the Code, shall be deposited into the Financing Fund on a semi-annual basis, on or before November 1 and May 1 of each

year beginning in Fiscal Year 2014 and continuing thereafter until the Bonds are no longer outstanding and unpaid.

**C. Excess Funding**

1. The Authority may transfer excess funds to the Facilities Fund at any time to be used by the Authority if the total amount of Beverage Container Taxes, Video Lottery Facility Rent, and Table Games Proceeds deposited into the Financing Fund during any semi-annual period exceeds the amounts required under §10-645(G)(2) of the Economic Development Article of the Code.

2. From any excess funds transferred to the Facilities Fund in accordance with §6.C.1, above, the Authority shall retain up to Two Million Five Hundred Thousand Dollars (\$2,500,000) in any given year, with a cumulative maximum of Twenty Million Dollars (\$20,000,000), as a reserve to pay any future shortfall between the amount required to be deposited by the City into the Financing Fund during any semi-annual period and the amount actually deposited.

3. If the total of excess funds transferred to the Facilities Fund in accordance with §6.C.1, above, exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000) in any given year, or the cumulative maximum reserve of Twenty Million Dollars (\$20,000,000), then the Authority may use the excess amounts for the purposes permitted by §10-657(C) of the Economic Development Article of the Code.

4. Beginning on July 1, 2014, and on July 1 of each year thereafter, the City shall provide the Executive Committee with revenue projections for the Beverage Container Taxes, Video Lottery Facility Rent, and Table Games Proceeds for the next five (5) years.

5. Based on the revenue projections for the Beverage Container Taxes, Video Lottery Facility Rent, and Table Games Proceeds, the Executive Committee shall have the right, in its sole discretion, to increase the required reserve amount to be held in the Facilities Fund at any time.

6. Three (3) years prior to the final maturity of the Bonds, the Executive Committee shall have the right to use a portion of the reserve (as defined in § 6.C.2, above) held in the Facilities Fund, less the amount that the Executive Committee determines to continue to hold for projected under attainment in the final two (2) years, for the purposes permitted by §10-657(C) of the Economic Development Article of the Code.

## **7. COORDINATING COMMITTEE**

**A.** The Coordinating Committee, comprised of representatives of the City (Mayor's Office), City Schools, the Authority, City Housing, City Parks and Recreation and City Planning, will work, in accordance with the 10-Year Plan, to maximize the mutual benefits of the investments in 10-Year Plan Projects and community revitalization efforts within and across City neighborhoods.

**B.** The Coordinating Committee will meet at least quarterly.

**C.** City Schools and the City will coordinate the timing, location, and scope of the school facility investments and community development efforts to support the City's revitalization and stabilization goals as appropriate.

**D.** Discussion at the quarterly meetings may include, but is not limited to, the following topics:

1. Coordination of the construction of Renovations and Replacements with City-sponsored neighborhood redevelopment efforts;

2. The potential for use of school and community building sites by both City Schools and the broader community to support community development efforts;

3. Citywide or specific school-level education specifications and design standards that impact community development, such as community access, recreational uses, and sustainability;

4. Location of School Sites that would benefit both City Schools and planned revitalization efforts;

5. The possibility of locating other City facilities on or adjacent to School Sites, including but not limited to, recreation facilities, community centers, libraries, health facilities, and senior centers;

6. Community and stakeholder engagement for construction projects relevant to community development;

7. The identification and use of vacant School Buildings consistent with City Schools' annual utilization plan and the potential reuse of surplus or vacated School Buildings and facilities by the City and/or others in accordance with § 10 of this MOU;

9.16.13

8. Input on each Feasibility Study for Renovations and Replacements during each study's preparation phase, and the opportunity for review and comment before each Feasibility Study is finalized;

9. Proposed changes and amendments to the 10-Year Plan;

10. Development of funding strategies to implement improvements not eligible for financing under the Bonds; and

11. Other topics deemed appropriate by the Coordinating Committee.

## **8. COMMUNITY AND RECREATIONAL SPACE OPPORTUNITIES**

**A.** For 10-Year Plan Projects, School Buildings shall be designed to allow for recreational opportunities for the community and other Cooperative Use Space.

**B.** Recreational opportunities for the community and other Cooperative Use Space may include, but are not limited to:

1. Athletic fields and tracks;
2. Playgrounds;
3. Game courts;
4. Gymnasiums;
5. Pools and associated locker rooms;
6. Multi-purpose designated and resource rooms;
7. Cafeterias;
8. Libraries; and
9. Bathrooms.

**C.** The multi-purpose designated rooms shall be made available for community meetings and events as provided in a separate agreement between the City and City Schools.

**D.** Decisions regarding recreational opportunities for the community and other Cooperative Use Space at each 10-Year Plan Project will be informed by community input and by discussions between the City, City Schools, and the Authority.

**E.** Decisions regarding recreational opportunities for the community and other Cooperative Use Space at each 10-Year Plan Project shall be made on a case-by-case basis, and be reflected in each Feasibility Study, Enhanced Approval Package, and subsequent design submission as agreed to by the Parties.

**F.** The City agrees that any direct and ancillary costs for the current operation of any such program under the auspices of City Recreation and Parks shall remain the responsibility of the City.

**G.** The City and City Schools agree to enter into a separate MOU to further define the parameters of after-hours property use, including but not limited to:

1. Access;
2. Operations;
3. Costs;
4. Security;
5. Liability insurance;
6. Permit processes; and
7. Maintenance.

**H.** Notwithstanding the provisions in this § 8 regarding the use of space in the 10-Year Plan Projects, the City and City Schools agree to take no action that would adversely affect the tax-exempt status of the Bonds.

## **9. UDARP ARCHITECTUAL PLAN REVIEW AND PERMIT PROCESS**

**A.** The architectural plans for the construction of all Renovations and Replacements shall be submitted to the Baltimore City Planning Department's Urban Design and Architectural Review Panel ("UDARP") for review and comment on both schematic and final Design.

1. Submittals and presentations will comply with current UDARP requirements as published on the City Planning website.



2. Submittals shall be presented at the following design stages:

- a. Initial presentation will be made at approximately 30% Design completion;
- b. Final presentation will be made at approximately 90% Design completion.

3. A follow-up presentation will be made to UDARP if significant changes are proposed to a School Building, School Site, or site landscaping following the 30% Design presentation.

4. City Schools and the Authority will work with City Planning to ensure that all necessary plan reviews are coordinated with appropriate City agencies. Plan reviews include, but are not limited to:

- a. Site Plan Review;
- b. Forest Conservation requirements;
- c. Critical Area requirements;
- d. Flood Plain requirements; and
- e. Storm Water Management requirements.

**B.** The applicable building permit process for all Renovations and Replacements will be as follows:

1. For Renovations conducted by City Schools, the City's process shall apply. The City agrees to waive the permit fees on City Schools' Renovations.

2. For Replacements or Renovations conducted by the Authority, the Authority's process shall apply per §10-620(e) of the Economic Development Article of the Code. The Authority will consult with the City for building code review and comment on plan submissions and project inspections, as needed.

## 10. SCHOOL CLOSURES

### A. General Process

1. Pursuant to and in compliance with School Board Policy FCA and COMAR 13A.02.09.01, City Schools shall prepare the necessary study whenever the closure of a school is proposed.

2. Consistent with the requirements of § 4-115 of the Education Article of the Code, no later than thirty (30) days after receipt of the City Schools' study, City Planning shall provide a recommendation with respect to the proposed Closure of a School Building. The recommendation will be based on factors that may impact or contribute to community development goals derived from the City Comprehensive Master Plan, recent neighborhood planning efforts encompassing or adjacent to the subject site, knowledge of community association or other stakeholders' interests, and knowledge of the needs of public agencies. The School Board shall consider City Planning's recommendations before taking final action on the Closure of a School Building. If no recommendation is submitted by City Planning within thirty (30) days, then the course of action recommended in the City Schools' study will be deemed to be accepted by the City.

3. City Schools has compiled a list of the School Programs and School Buildings that it expects to close, and their dates of expected closure, under the Funded 10-Year Plan, which list is attached as **Exhibit 6** and incorporated by reference. Based on the information available as of the date of this MOU, the Parties have further set forth on **Exhibit 6** whether tax-exempt debt will remain outstanding on the dates provided by City Schools for the Closures of the School Buildings.

4. At least sixty (60) days prior to making a final decision to proceed with the Closure of a School Building, the School Board shall notify the Authority, the City, the IAC, and the Director of Debt Management for the State Treasurer's Office ("STO") of the proposed closure. The City and STO shall have forty-five (45) days from the date of receipt of written notice to conduct their analysis of tax law implications and other financial issues presented by each Closure of a School Building, and each shall provide all Parties with separately completed checklists for each such closure in a form acceptable to the Executive Committee.

5. City Planning may make specific recommendations as to the development potential of a School Building or School Site to be closed and the highest and best future use of each. City Planning may request that School Buildings and/or School Sites be transferred to the City.

6. The checklists for the Closure of School Buildings from the City and STO and the recommendations of City Planning will be sent to the School Board for consideration before making a final decision to retain a property for an educational use or

to transfer the property back to the City for disposition. Any change in use of a School Building will be made with paramount consideration of the Funded 10-Year Plan and applicable federal tax laws.

7. After the School Board gives final approval for the Closure of a School Building, it shall then begin the process of transferring the School Building for surplus, as provided by §§4-115 and 9-111 of the Education Article of the Code, COMAR 23.03.02, and Board Policy FCA and FCA-RA. Any School Building transferred to the City shall be in the same structural and operational condition as existing when last occupied by students. The School Board shall also provide all available floor plans, system schematics, and other relevant building documents to the City at the time of transfer.

## **B. Financial Issues**

1. Upon the Closure of a School Building, to the extent required by State law, the City shall reimburse the State for any outstanding State debt service on the School Building, in accordance with §5-308 of the Education Article of the Code. The City may request flexibility from the Board of Public Works in the terms of such reimbursement, to the extent feasible and legally permissible.

2. Continued reporting following the Closure of a School Program or the Closure of a School Building shall be required as follows:

- a. Retained Facilities. Beginning on June 30, 2014 and continuing on each June 30 thereafter, the School Board shall report to the City and the STO on the use of any School Building that the School Board retains after the Closure of a School Program, including, but not limited to, whether the retained School Building is used by a charter school. The report shall be in a form acceptable to the Executive Committee.
- b. Transferred Facilities. Beginning on June 30, 2014 and continuing on each June 30 thereafter, the City shall report to the School Board and the STO on the use of any School Building that the City retains after it has been closed by the School Board and transferred to the City. The report shall be in a form acceptable to the Executive Committee.
- c. Subsequent Changes in Use. In addition to the reporting requirements set forth above, the School Board and the City shall each give written notice of any change in the dedicated

use of a School Building that has been closed or transferred to the City at least thirty (30) days prior to entering into any legally binding agreement that involves a change in the use of the School Building, including, but not limited to, an agreement to use the School Building as a charter school. Written notice shall be in a form acceptable to the Executive Committee and shall be provided as follows:

<u>If building is:</u>	<u>Then, notice to:</u>
Retained by School Board	STO and City
Transferred to City	STO and School Board

- d. Reporting Period. The reporting requirements set forth herein shall apply to all School Buildings within the control of the City or City Schools, respectively, so long as any School Board, City, or State tax-exempt bonds remain outstanding on the subject School Buildings.

### C. Delay or Failure to Close

1. The Authority shall have the right to withhold funding for future Renovations or Replacements (which are not yet in Construction) if the School Board fails to proceed with the Closure of a School Program or the Closure of a School Building as reflected on Exhibit 6, unless: (i) in the case of a delay in the Closure of a School Program or the Closure of a School Building, the School Board provides justification acceptable to the Authority; or (ii) in the case of a decision not to proceed with the Closure of a School Program or the Closure of a School Building, the School Board provides justification acceptable to the Authority that includes the substitution of another closure with subsequent approval of an amendment to the 10-Year Plan to be incorporated in accordance with the School Board's timeline for 10-Year Plan Amendments as set forth on Exhibit 3.

2. In the event of its acceptance of a delay or failure to close as set forth in this §10.C, the Authority will update Exhibit 6 accordingly, without any necessary amendment to this MOU. Any such updated version of Exhibit 6 shall become a part of this MOU, and copies thereof shall be provided to all Parties and the STO.

## 11. COMPREHENSIVE AND BUILDING MAINTENANCE PLANS

### A. Comprehensive Maintenance Plan General Provisions

City Schools shall develop, for approval by the IAC, a Comprehensive Maintenance Plan ("CMP") for preventative and ongoing maintenance of all School

Buildings, which shall provide for sufficient funding to implement the CMP. The following requirements shall apply to the CMP:

1. The CMP shall be a written plan approved by the School Board that describes a strategy for maintaining all School Buildings and for achieving progress toward the Metrics that are described below.
2. The CMP shall ensure that Maintenance is performed for all School Buildings for which City Schools has operational responsibility.
3. The CMP shall apply to all School Buildings, which include:
  - a. The 10-Year Plan Projects under the Act;
  - b. All existing School Buildings for which the School Board has operational responsibility; and
  - c. All other School Buildings that the School Board replaces or funds improvements for through the CIP.
4. The CMP will be submitted for IAC Approval, with comment by the Authority, by December 15, 2013.
5. The CMP shall be updated annually in accordance with the BPW Regulations (COMAR 23.03.02) and shall be submitted annually by October 15 of each year.

**B. Required Content of CMP**

At a minimum, the CMP must demonstrate specific staffing, budget, and organizational components to make significant improvement over the five (5) years following the date of approval of the CMP by the IAC, as measured by the Metrics agreed to by the IAC and the School Board in § 11.E, below. The content of the CMP shall be as provided in Exhibit 7.

**C. Building Maintenance Plan**

1. The CMP shall contain a template or templates for the Building Maintenance Plan ("BMP") of individual new, renovated, and existing School Buildings.
2. City Schools shall develop a BMP for the entire School Building, inclusive of custodial requirements, during the Design phase of any project in or about a School Building for which City Schools has operational responsibility, including:
  - a. Replacement schools;

- b. Renovations (major or systemic); and
  - c. Science classroom renovations.
- 3. The BMP must include at a minimum:
  - a. The staffing plan for the School Building;
  - b. The budget required to support the BMP; and
  - c. Custodial requirements.
- 4. The BMP submitted shall be in accordance with the appropriate template.
- 5. The BMP is supplemental to and complementary to the Operations and Maintenance (O&M) manuals that are required as a condition of the contract.
- 6. At substantial completion of a 10-Year Plan Project, the BMP will be finalized as modified per the commissioning agent's requirements and will be submitted to the Authority for review and comment.
- 7. After the initial submission of the BMP, the IAC will review the BMP during the course of annual maintenance inspections of major new, replacement and major renovation projects that are funded through the CIP.

**D. School Building Maintenance Performance Metrics**

- 1. The CMP shall contain specific Metrics (as defined in §11.E, below) for the system-wide maintenance and performance of all School Buildings.
- 2. Within six (6) months of approval of the CMP by the IAC, City Schools will:
  - a. Establish a format and annual assessment of the Metrics; and
  - b. Establish a multiple-year projected budget to achieve progress towards the Metrics.
- 3. The IAC, with comment from the Authority, must approve the Metrics and the annual assessment format.

4. The School Board will submit an initial report on achievement of the Metrics to the Parties within twelve (12) months of the approval of the CMP.

5. City Schools will assess the Metrics annually no later than June 30<sup>th</sup>, and a report on the progress toward attainment of the Metrics shall be included in the CMP submitted to the IAC in accordance with COMAR 23.03.02.18.

6. City Schools' annual maintenance budget shall include funds sufficient to achieve progress toward the attainment of the Metrics.

7. Progress toward attainment of the Metrics shall be a factor considered by the IAC in the review of 10-Year Plan Projects for approval and the recommended approval of future CIP projects, consistent with COMAR 23.03.02.03.B(1) and 23.03.02.03.B(2). The IAC will assess progress toward attainment of Metrics in the Annual Report submitted by the Parties.

#### **E. Metrics**

City Schools shall measure and report to the STAT Committee for inclusion in the STAT reporting program the progress toward attainment of the following metrics (the "Metrics"):

1. Staffing parameters, measured as:
  - a. Target staffing and organizational structure.
  - b. Target square footage per FTE for various categories of work (HVAC, roofing, electrical, etc.).
2. Work order parameters, measured as:
  - a. Turn-around time for work orders in various categories (HVAC, roof leak, electrical, etc.).
  - b. Number of outstanding work orders permissible at any time.
  - c. Work orders received and completed, measured as both raw data and as percentages.
3. Inspection parameters:
  - a. Routine scheduled tours of all School Buildings by maintenance teams.

- b. Roofing inspections.
  - c. Other inspections: HVAC, boilers, bleachers, etc., as defined in Standard Operating Procedures.
3. Implementation of a CMMS system:
- a. In Replacement and Renovations, including all necessary staffing and computer resources.
  - b. In all other School Buildings, as budget and staffing permit.
  - c. Ratio of scheduled to unscheduled maintenance work orders.
  - d. Percentage of major building systems operating within industry age standards.
  - e. Deferred maintenance backlog (as percentage of total building plant value).
  - f. Other metrics, as agreed upon between City Schools and the IAC.

**F. Release of Construction Funding**

1. The Authority will release Construction funds for a specific 10-Year Plan Project, taking into account the project schedule, after:
- a. The BMP provided by City Schools for the subject school is received and approved by the IAC with comment from the Authority; and
  - b. The maintenance Metrics have been established and the annual CMP that has been submitted as required by § 11.D.5, above, demonstrates progress acceptable to the IAC with comment by the Authority.
2. Any dispute regarding the release of Construction funds shall be resolved in accordance with the dispute resolution procedures set forth at §15.A of this MOU.



## **12. SCHOOL UTILIZATION PLAN**

### **A. General**

1. A primary goal of the 10-Year Plan is to increase the average Utilization Rate of School Buildings upon completion of the 10-Year Plan Projects and the closing and surplus of existing School Buildings.

2. The School Board will establish both a final Utilization Rate target to be met upon completion of the 10-Year Plan Projects, as well as intermediate Utilization Rate targets to be met at intervals to be agreed upon the Parties by December 31, 2013.

3. The intermediate and final Utilization Rate targets must be approved by the IAC.

4. The IAC and City Schools will collaborate on Utilization Rates as outlined in §12.B, below.

5. Future IAC project approvals may be withheld if projected Utilization Rates do not meet the established Utilization Rate targets.

### **B. Utilization Plan**

1. City Schools and the IAC shall jointly agree on the following:

a. The factors that will be included in the annual calculation of the Utilization Rate.

b. Utilization Rate shall be calculated annually in two (2) ways: (i) including Swing Space; and (ii) excluding Swing Space.

c. A methodology for designating certain schools as "adjacent" to a School Building submitted for IAC Approval under the 10-Year Plan or CIP.

1. City Schools shall record these adjacencies in the IAC facilities inventory database.

2. City Schools shall update the database each year no later than June 30.

- d. Projected 5, 7, and 10 year kindergarten to grade 12 total enrollments each spring as required pursuant to COMAR 23.03.02.02.
2. City Schools shall provide projected 5, 7, and 10 year prekindergarten total enrollments each summer.
3. City Schools shall track past, existing, projected, and proposed, system-wide school Utilization Rates based on agreed upon:
  - a. Total enrollment projections for prekindergarten to grade 12;
  - b. State-Rated Capacities of all buildings for which the School Board is responsible; and
  - c. Current Construction project schedules.
4. City Schools will report projected and proposed system-wide Utilization Rates for the next 5, 7, and 10 years as part of the annual EFMP.
5. The IAC shall review and comment annually on the projected and proposed school Utilization Rates reported in the EFMP.
6. The IAC will incorporate the School Board's attainment of the Utilization Rate targets as a factor in the approval of 10-Year Plan Projects and the recommendation of CIP projects that affect capacity.

#### **C. School Board Review**

1. The School Board shall review facility utilization issues on an annual basis, as part of the 10-Year Plan amendment process described in Section 3, above.
2. The School Board will make necessary adjustments towards meeting the Utilization Rate targets.
3. Progress on achieving the Utilization Rate targets will be included and set forth in the Annual Report submitted by the Parties.

### **13. STAT REPORTING PROGRAM**

#### **A. General**

The STAT reporting program for the Funded 10-Year Plan will be a performance measurement and management tool to make government more efficient through a process of continually evaluating and refining State performance.

#### **B. Software Program**

1. The Authority will procure a comprehensive Project Management Software Program ("PMSP") that will:

- a. Assist tracking and reporting the status of:
  - 1. Schedule;
  - 2. Budget;
  - 3. Contracts;
  - 4. Procurements;
  - 5. Change Orders;
  - 6. Payments;
  - 7. Contingency;
  - 8. MBE participation; and
  - 9. Project documentation.
- b. Assist tracking and reporting during the following stages of the 10- Year Plan Projects:
  - 1. Planning/Pre-Design
    - i. Educational Specifications, Feasibility Studies and Schematic Design Schedules; and
    - ii. Budget/Cost Modeling.
  - 2. Replacements managed by the Authority
    - i. Design;
    - ii. Bidding Phases;
    - iii. Construction; and
    - iv. Warranty/Maintenance.

3. Renovations managed by the School Board
  - i. Design;
  - ii. Bidding Phases;
  - iii. Construction; and
  - iv. Warranty/Maintenance.
- c. Allow for real time snapshots of project status and reporting capability based on parameters established per project (i.e., weekly, monthly, quarterly, annually).
- d. Be available for access and/or use by the Parties.
2. City Schools will be included as a PMSP selection committee member.

**C. STAT Committee**

1. A STAT Committee will be comprised of representatives from each Party and chaired by the Authority.
2. The STAT Committee shall hold meetings monthly (or as otherwise agreed by all Parties) to review the data in the PMSP, once selection of design consultants for 10-Year Plan Projects is complete.
3. All Parties will jointly determine the format and timing of the reports to be provided in advance of each monthly meeting of the STAT Committee.
4. At least two (2) days prior to each meeting of the STAT Committee, the Authority will deliver a set of standard reports on the status of progress in the areas outlined above in §§ 13.B.1.a and 13.B.1.b to all Parties.
5. If a Party seeks information that is not available in the standard reports or otherwise accessible via the PMSP, the Parties agree to use their best efforts to provide that information along with the standard reports in a reasonable amount of time but at least two (2) days prior to the next meeting of the STAT Committee.
6. The STAT Committee will review the data and updates in the PMSP.
7. The STAT Committee will review the data of Baltimore City resident employment and work-based student learning opportunity engagement.

8. The STAT Committee meetings shall be a forum for the Parties to raise any questions or issues regarding the management and/or financing of the 10-Year Plan Projects.

9. Each Party shall ensure the attendance of appropriate staff representatives who will be able to respond substantively to questions and issues at the meetings of the STAT Committee.

10. The STAT Committee will report status updates regularly to the Executive Committee.

11. As work progresses on the 10-Year Plan Projects, the Parties may determine that there are other areas not outlined above that shall be included in the standard, periodic reporting.

## **14. INDEMNIFICATION AND INSURANCE**

### **A. Prior to Completion of Projects**

#### **1. Indemnification**

Contracts for the Construction of any Renovation or Replacement shall require the contractors to defend, indemnify, and hold harmless the School Board, City Schools, the City, the Authority, the State, and each of their architects/engineers, elected/appointed officials, employees, and agents from and against any and all claims, demands, damages, actions, suits, or proceedings of any kind whatsoever for damages, losses, liabilities, liens, or costs of any kind or type (including reasonable attorneys' fees as and when incurred) (collectively, the "Claims") that are caused by or arise from any direct or indirect, willful or negligent, act or omission of the contractor, its officials, employees, and agents, *unless* such Claims are the sole result of intentional conduct or gross negligence by the Party seeking to enforce this right of indemnification.

#### **2. Insurance**

During the Construction of any Renovation or Replacement, the following insurance shall be required of all architects, engineers, and contractors, as applicable: Professional Liability Errors and Omissions, Commercial General Liability, Commercial Umbrella/Excess Liability, Workers' Compensation, Commercial Automobile Liability, Environmental Liability, and Builders' Risk. Coverage limits shall be established on a project-by-project basis, subject to the review and approval of the Authority. All parties with an insurable interest in the Renovation or Replacement (i.e., the City, the Authority, and City Schools) shall be covered by endorsement as additional insureds, and

requirements as to notice of cancellation, acceptability of insurers, verification of coverage, and the inclusion of subcontractors as insureds shall be determined on a project-by project basis, subject to the review and approval of the Authority. Any and all amounts paid to any Party under such policies for damages or loss to a Funded 10-Year Plan Project shall be deposited into the Facilities Fund and used for restoration or reconstruction of the applicable Renovation or Replacement. During the Construction of any Replacement, the Authority shall also be named an additional insured with respect to any property insurance covering any portion of the School Site on which the Replacement is being constructed.

### **3. Project-by-Project Review and Comment**

City Schools and the City shall have the right to review and comment on the insurance requirements set forth in §14.A.2, above, in accordance with their assessment of the scope of work, and the size and cost of the specific project involved.

### **B. Post Completion of Projects**

Upon receipt of approvals from Life Safety Inspections and written notice from the Authority that the performance under a contract for the Construction of a Replacement has been achieved (the "Completion Date"), City Schools shall assume immediate responsibility for the operation, management, and maintenance (both preventative and ongoing) of the Replacement, in accordance with the standards and requirements set forth in §11 of this MOU.

### **1. Indemnification**

As of the Completion Date of a Renovation or Replacement, City Schools shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the State, the Authority, the City, and their architects, agents and employees, from and against any and all claims, demands, damages, actions, suits or proceedings of any kind whatsoever for damages, losses, liabilities, liens, or costs of any kind or type (including reasonable attorneys' fees as and when incurred) (collectively, the "Claims") that are caused by or arise from (i) performance under a Design or Construction contract; (ii) Construction or tear-down activities at a School Site; or (iii) any occurrence within a School Site, whether or not proximately caused by or attributable to any act or omission by the State, the Authority, the City, or their architects, agents, or employees, *unless* such act or omission by the State, the Authority, the City, or their architects, agents, or employees was intentional or the result of the gross negligence of any of them. The terms of this subsection shall extend to any Claim for actual or threatened bodily injury, sickness, disease or death and to any Claim for actual or threatened injury to or destruction of property including the loss of use resulting therefrom, and including but not limited to purely economic loss.

## 2. Insurance

City Schools shall procure and maintain the following insurance coverage (or any higher or broader coverage), to be effective as of the Completion Date of each Renovation and Replacement and to continue throughout the period of use of each Renovation and Replacement.

- a. **Property Insurance.** Each Renovation and Replacement shall be covered against loss, damage, or destruction under the All-Risk Master Commercial Property Insurance Policy, the City Property Insurance Fund, the Self-Insurance Fund and any other insurance or excess insurance policies maintained or administered by the Office of Risk Management in the Department of Baltimore City (the "Office of Risk Management"), in accordance with Subtitles 10 and 12 of Article 5 of the Baltimore City Code. City Schools shall take all action necessary to ensure that each Renovation and Replacement is added as a covered property under all policies and insurance funds, as of the Completion date for each Renovation or Replacement. Commercial Property insurance policies applicable to the Renovations and Replacements shall meet the following requirements:

- i. Commercial Property coverage shall be written on an all-risk policy to include flood and earthquake losses;
- ii. Commercial Property coverage shall be written on a "replacement cost" basis in the amount that it would cost to rebuild the same building as of the time of loss;
- iii. The value of each Renovation and Replacement shall be adjusted annually to reflect updated replacement costs for Commercial Property coverage;
- iv. The self-insured property deductible shall be in an amount that City Schools can afford to pay in the event of a loss;
- v. Commercial Property coverage shall be procured from a carrier that is rated "A-" or

above by A.M. Best, or a comparable ratings institution; and

- vi. City Schools shall comply with any property improvement recommendations that the Commercial Property insurance carrier may make over the life of the insured building.
- b. **Liability Insurance.** Each Renovation and Replacement shall be covered against third-party general liability and any other categories of claims and losses consistent with the insurance and risk management program purposes of the Self-Insurance Fund and any other insurance or excess insurance policies maintained or administered by the Office of Risk Management, in accordance with Subtitle 12 of Article 5 of the Baltimore City Code. City Schools shall take all action necessary to ensure that each Renovation and Replacement is included and/or added as a covered property under the Self-Insurance Fund and any other available insurance or excess insurance policies, as of the Completion date for each such project.
- c. **Proof of Coverage.** Prior to the use or occupancy of any portion of a Renovation or Replacement, City Schools shall provide the Authority with written proof, issued by the Office of Risk Management, of the School Board's and City Schools' good standing, coverage and participation under the insurance funds and policies set forth in this §14. Annual certificates of insurance, updated to include the current financial ratings of the applicable carriers, shall be provided by City Schools to the Authority.
- d. **Continuous Coverage.** City Schools shall make all required payments to the City in accordance with the Memorandum of Understanding Concerning Self-Insurance, dated July 1, 2006, by and between the City and City Schools, in order to maintain continuous coverage under the funds and policies set forth in this §14. The coverage afforded by the funds and policies set forth in this §14 shall not be cancelled or materially changed in any respect (by the City or the insurer) unless at least ninety (90) days' prior written notice is provided to the Authority. Upon receipt of any notice of cancellation or material change, the Authority shall have the right to determine if the cancellation or change results in a



failure to meet commercially reasonable standards for insuring against losses potentially arising from the Renovations and Replacements. In the event of such determination, the Authority may require City Schools to secure additional or other amounts of insurance coverage, upon thirty (30) days' prior written notice.

## **15. DISPUTE RESOLUTION**

### **A. Disputes Regarding Funding, Scheduling, Procurements**

Resolution of any disputes pertaining to or having an impact on project budget, financing, and/or scheduling, shall occur as follows:

1. **Procurements**: All bid protests and third-party procurement claims related to any Replacement projects shall be resolved by the Authority pursuant to its Procurement Policies and Procedures. All bid protests and third-party procurement claims related to any Renovation projects shall be resolved by City Schools, with review and comment by the Authority, in accordance with the School Board's Procurement Policies and Procedures.

2. **Project Budget, Financing, and Scheduling**: The Authority shall review and decide all disputes that pertain to or have an impact on project budget, financing, and/or scheduling of Renovation or Replacement projects, as follows:

- a. Such disputes or claims may be submitted by any Party at any time to the Authority.
- b. The Authority shall provide a timely written decision on any such disputes or claims.
- c. The CEO of City Schools shall have the right to appeal to the Board of the Authority from any written decision provided pursuant to § 15.A.2.b, above. Any such appeal shall be in writing and shall identify the nature of the dispute and the relief sought. City Schools may include a request for a hearing before the Board of the Authority in its written notice of appeal. The Board of the Authority will provide a prompt written decision on the appeal, which decision shall be final and not subject to further appeal.

**B. All Other Disputes**

Unless a review process is otherwise specifically set forth in this MOU (e.g., §§ 4, 5, 10, 11 and 15.A), the resolution of all other disputes between or among the Parties shall be determined by the Executive Committee, as follows:

1. A Party seeking resolution of a dispute shall submit a written claim to the Executive Committee, describing the dispute and providing any relevant information and/or documents.

2. Provided that a written claim of dispute is received at least five (5) days in advance, then the Executive Committee shall consider the dispute at the first regularly scheduled Executive Committee meeting following receipt of the written claim. If the written claim of dispute is received by the Executive Committee fewer than five (5) days in advance of a scheduled meeting, then the Executive Committee may consider the dispute at the next subsequently scheduled meeting.

3. The Executive Committee shall attempt to resolve the dispute by way of a unanimous vote at a regularly scheduled meeting. If the Executive Committee is unable to reach a unanimous decision within five (5) business days after the meeting at which a dispute has been considered, then the claim of dispute shall be re-submitted at the next scheduled meeting, at which point resolution shall be determined by majority vote of the Executive Committee. Any such decision by the Executive Committee shall be final.

4. If the Executive Committee is unable to render a decision via majority vote at the second hearing on the claim of dispute, then the claim of dispute shall be forwarded to the State Superintendent of Schools for resolution. Any such decision of the State Superintendent of Schools shall be final and not subject to further appeal.

**III. MISCELLANEOUS**

1. This MOU shall be effective upon execution by all Parties and approval by the Board of Public Works, and it shall remain in effect until the Bonds are no longer outstanding and unpaid or all Parties agree to terminate the MOU.

2. The City, the School Board, and the IAC understand that the Authority intends for the interest on the Bonds to be exempt from federal income taxation under Section 103 of the Internal Revenue Code. Neither the City nor the School Board nor the IAC will perform, or permit to be performed, any act that would adversely affect

the tax-exempt status of the interest on the Bonds, or fail or refuse to perform any act, the result of which failure or refusal would adversely affect such tax-exempt status. Each of the City, the School Board, and the IAC agrees that it will cooperate fully with the Authority in maintaining the tax-exempt status of the Bonds including, without limitation, entering into tax certificate and compliance agreements upon the issuance of each series of Bonds, the performance of post-issuance compliance monitoring, and the submission of annual compliance reports to the Authority.

3. Upon reasonable advance notice, each Party, or its auditor or designee, shall have the right, upon request and during normal business hours, to examine the books and records of each Party which relate to the use, expenditure, or accounting of any disbursements from the Bond proceeds, the Facilities Fund, or the Financing Fund.

4. On an annual basis, the Authority will perform agreed upon procedures relating to all expenditures by the Authority from the Bonds, the Facilities Fund, and the Financing Fund.

5. Any of the Parties may request amendments to this MOU if any change in law or circumstance impacts the implementation of the Act or this MOU. Except for as provided in §10.C.2, above, any amendment to this MOU must be in writing, executed by all Parties, and approved with the same formality as that approval required for this MOU. Approved amendments will become a part of this MOU as if they had been original terms and conditions of the MOU.

6. If any of the provisions in this MOU is found by a court of competent jurisdiction to be void or unenforceable, then that provision shall be deemed to be deleted and the remaining provisions of this MOU shall continue in full force and effect.

7. If the Authority should undertake a Renovation as defined in this MOU, all Parties agree that the provisions and procedures set forth in this MOU with respect to the Authority's Design and Construction of a Replacement shall govern and apply to the Authority's Renovation.

8. This MOU shall inure to and be binding upon the Parties hereto, their respective agents, successors, and assigns. No Party shall assign its interests in this MOU without the prior written consent of all Parties.

9. This MOU and the rights and responsibilities of the Parties hereto shall be governed in accordance with Maryland law.

10. The Parties to this MOU shall retain all documents and records pertaining to each of the 10-Year Plan Projects until the later of: (a) three (3) years after the expiration of any warranty period applicable to each Renovation or Replacement; or

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(b) the date that destruction of the documents and records is permitted pursuant to the Party's established document retention policy.

11. This MOU shall not be construed to provide a private right of action for or by any person or entity that is not a Party to this MOU.

12. The headings used in this MOU are for convenience only and shall not control or affect the meaning or construction of any of the provision of this MOU.

13. If the context of this MOU requires, words or terms used in the singular shall be deemed to be plural, and vice versa.

14. All notices required in this MOU shall be in writing and shall be made by hand delivery, by certified mail return receipt requested, or by next-business-day delivery/signature required messenger or courier service. Notices shall be given as follows:

**If to the AUTHORITY:**

Name: Gary McGuigan, LEED AP  
Title: Project Executive  
Maryland Stadium Authority  
The Warehouse at Camden Yards  
333 West Camden Street, Suite 500  
Baltimore, Maryland 21201-2435  
Phone: 410-333-1560  
Email: [gmcguigan@mdstad.com](mailto:gmcguigan@mdstad.com)

with a copy to:

Name: Cynthia M. Hahn  
Title: Assistant Attorney General  
Office of the Attorney General  
200 Saint Paul Place, 20<sup>th</sup> Floor  
Baltimore, Maryland 21202  
Phone: 410-576-6319  
Email: [chahn@oag.state.md.us](mailto:chahn@oag.state.md.us)

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**If to the IAC:**

Name: David Lever  
Title: Executive Director  
Interagency Committee on School Construction  
200 W. Baltimore Street  
Baltimore, Maryland 21202  
Phone: 410-767-0610  
Email: [dlever@msde.state.md.us](mailto:dlever@msde.state.md.us)

with a copy to:

Name: Elliott Schoen  
Title: Assistant Attorney General  
Office of the Attorney General  
200 Saint Paul Place, 19<sup>th</sup> Floor  
Baltimore, Maryland 21202  
Phone: 410-576-6453  
Email: [eschoen@oag.state.md.us](mailto:eschoen@oag.state.md.us)

**If to the CITY:**

Name: Stephanie Rawlings Blake  
Title: Mayor  
Mayor and City Council of Baltimore  
100 N. Holliday Street, 2<sup>nd</sup> Floor  
Baltimore, Maryland 21202  
Phone: 410-396-3835  
Email: [mayor@baltimorecity.gov](mailto:mayor@baltimorecity.gov)

with a copy to:

Name: George A. Nilson  
Title: City Solicitor  
Baltimore City Law Department  
100 N. Holliday Street, Suite 101  
Baltimore, Maryland 21202  
Phone: 410-396-7359  
Email: [george.nilson@baltimorecity.gov](mailto:george.nilson@baltimorecity.gov)

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**If to CITY SCHOOLS or the SCHOOL BOARD:**

Name: Tisha S. Edwards  
Title: Interim Chief Executive Officer  
Baltimore City Public Schools  
200 E. North Avenue, Room 405  
Baltimore, Maryland 21202  
Phone: 410-396-8803  
Email: [tsedwards@bcps.k12.md.us](mailto:tsedwards@bcps.k12.md.us)

with a copy to:  
Tammy L. Turner, Esq.  
Chief Legal Counsel  
Baltimore City Public Schools  
200 E. North Avenue, Room 405  
Baltimore, Maryland 21202  
Phone: 410-396-8542  
Email: [tlturner@bcps.k12.md.us](mailto:tlturner@bcps.k12.md.us)

Any Party may change its address or recipients for notices by providing the other Parties with written notice, to be effective upon receipt.

15. This MOU may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

***The remainder of page intentionally left blank.***

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IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed on its behalf by its duly authorized representatives, the day and year first above written.

WITNESS:

**MARYLAND STADIUM AUTHORITY,  
a body politic and corporate and a public  
instrumentality of the State of Maryland**

\_\_\_\_\_ BY: \_\_\_\_\_(SEAL)

Approved as to form and legal sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Name:

Assistant Attorney General

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**MAYOR AND CITY COUNCIL OF  
BALTIMORE**

\_\_\_\_\_ BY: \_\_\_\_\_ (SEAL)

Approved as to form and legal sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Name:  
Chief Solicitor  
City of Baltimore

Approved by the Board of Estimates this \_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Clerk

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9.16.13

**BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS**

\_\_\_\_\_ BY: \_\_\_\_\_(SEAL)

Approved as to form and legal sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_, 2013:

\_\_\_\_\_  
Name:

Assistant General Counsel

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9.16.13

**INTERAGENCY COMMITTEE ON  
SCHOOL CONSTRUCTION**

\_\_\_\_\_ BY: \_\_\_\_\_(SEAL)

Approved as to form and legal sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_, 2013:

\_\_\_\_\_  
Name:

Assistant Attorney General

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**BOARD OF PUBLIC WORKS OF THE  
STATE OF MARYLAND**

BY: \_\_\_\_\_ (SEAL)  
MARTIN O'MALLEY, GOVERNOR

ATTEST:

\_\_\_\_\_  
Sheila C. McDonald  
Executive Secretary  
Board of Public Works

BY: \_\_\_\_\_ (SEAL)  
NANCY K. KOPP, TREASURER

BY: \_\_\_\_\_ (SEAL)  
PETER FRANCHOT, COMPTROLLER

STATE OF MARYLAND, COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that, on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared MARTIN O'MALLEY, Governor, NANCY K. KOPP, Treasurer, and PETER FRANCHOT, Comptroller, constituting the Board of Public Works of the State of Maryland, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within Interagency Agreement, who signed the same in my presence and acknowledged that they executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

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Approved by the Board of Public Works of the State of Maryland at a meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2013 as Item No. \_\_\_\_ on the \_\_\_\_\_ Agenda.

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**EXHIBIT LIST**

1. Responsibility Chart for Replacements (w/key)
2. Responsibility Chart for Renovations (w/key)
3. Timeline for 10-Year Plan Amendments, EGO Report, COMAR, Renewal Process  
Annual Calendar from July 1 – June 30 (w/key)
4. Authority Procurement Policies
5. School Board Procurement Policies
6. List of Expected Closures of School Buildings
7. Maintenance Plan Appendix

# **EXHIBIT 1**

**MSA/BCPS/PSCP/Balt City  
Responsibility Matrix  
New School Construction**

No.	ITEM	MSA	BCPS	IAC/PSCP	Balt City
<b>A.</b>	<b>Develop Program/Project Scope</b>				
1	Program/EdSpec	Review & Comment	Develop & Approve	Review & Approve	Review & Comment
2	Feasibility Studies	Review	Develop & Approve	Review & Comment	Review & Comment
3	Community Meetings/Input	Assist	Conduct		Notify
3a	Work Based Learning Collaborative	Establish & Participate	Establish & Participate		Establish & Participate
3b	Woman and Minority Owned Business Collaborative	Execute, Oversight and Participate	Participate		Participate
4	Project Justification	Review	Develop	Approve	Notify
5	Enhanced Approval Package	Approve	Develop & Approve	Approve	Approve
<b>B.</b>	<b>Budget</b>				
1	Design, Construction, & FFE Cost Estimates (begin at Feasibility submission/approval)	Develop & Manage	Review	Review	
2	Funding	Execute	Contribute	Notify	Contribute
<b>C</b>	<b>Schedule</b>				
1	Schedules for Procurements, Design, Cost Estimates, Construction	Develop & Manage	Review & Comment	Notify	Notify
<b>D.</b>	<b>Procurement</b>				
1	Architectural/Engineering (A/E)	Lead and Approve	Participate & Comment		
2	Construction Management (CM)	Lead and Approve	Participate & Comment	Notify	
3	Program Manager	Lead and Approve	Participate & Comment		
4	Commissioning Agent (Cx)	Lead and Approve	Participate & Comment		
<b>E.</b>	<b>Design and Construction Administration</b>				
1	Design and Construction Services	Manage	Review and Comment		
2	Surveys (Alta, etc...)	Review and Comment	Provide Site Development Ready		Review & Comment
3	Testing/Inspection	Manage	Review and Comment		
4	Design and Owners Meetings	Lead	Attend	Attend	
5	Life Cycle Costs	Develop	Review and Comment		
6	Building Permits	N/A			
7	Fire Marshal Design Review/Inspections	Lead	Review and Comment		Review and Comment/Inspect
8	Project Status Reporting (budget, schedule, quality, etc...)	Prepare and Issue	Participate	Review	Participate

**MSA/BCPS/PSCP/Balt City  
Responsibility Matrix  
New School Construction**

No.	ITEM	MSA	BCPS	IAC/PSCP	Balt City
E.	<b>Design and Construction Administration (cont)</b>				
9	Design Submissions (e.g., SD, DD, CD)	Develop/Confirm & Approve	Review & Comment	Review & Comment	DOP Review & Comment 30/90% design stages
9a	Design Submissions (SD/DD) to IAC for verification of Program/Ed Spec	Manage	Review & Comment	Review & Comment	
10	Develop FFE Program	Review & Comment/Manage	Develop and submit by Design Development Phase		
11	Approvals from MDE, FCP, ARB, MHT, and others AHJ's as required	Obtain	Review and Comment		Assist
12	Changes to the Program (no schedule or cost impacts as determined by MSA)	Review and Execute	Request	Review and Comment	
13	Changes to the Program (schedule/cost impact as determined by MSA)	Review/Approve	Request	Review and Comment	
14	Changes to Estimate (i.e. VE or other issues)	Review and Approve	Participate, Review and Comment	Review	
15	Certificate of Payments	Review and Approve	Participate, Review and Comment		
16	Change Orders	Review and Approve	Review	Review	
17	Contract Claims/Termination	Negotiate/Manage	Notify, Review and Comment	Notify	
18	MBE Compliance	Establish, Review and Approve	Review	Review	Participate
19	Prevailing Wage	Establish, Review and Approve	Review	Review	
20	Punch List	Develop and Issue	Participate, Review and Comment		
21	Substantial/Final Completion	Develop and Issue	Participate and Comment	Review	
22	Maintenance Plan	Review	Develop Program, Submit	Approve	



**MSA/BCPS/PSCP/Balt City  
Responsibility Matrix  
New School Construction**

No.	ITEM	MSA	BCPS	IAC/PSCP	Balt City
23	Maintenance Plan Execution	Review and Comment through Warranty Period	Assume upon substantial Completion/Occupancy	Inspect and Comment	
24	Warranty	Assist thru Builder's Warranty Expiration	Contact and Report issue(s)		

## **Terminology**

"Approve" means the authority of a party to approve a submission, document, procedure or contract before further action may be taken.

"Assist" means the responsibility of a party to assist the party that conducts or manages an event or series of events or a management process related to the execution of subject projects.

"Assume" means the authority of a party to take over responsibility for the further management of a facility.

"Attend" means the authority of a party to be present at a meeting or process that is led or managed by another party.

"Comment" means the authority of a party to submit comments that must be taken into account by the submitting party.

"Conduct" means the authority of a party to initiate, schedule, organize, and record an event or series of events .

"Confirm" means the authority of a party to inspect submissions for conformance to previous agreements .

"Contact" means the responsibility of a party to communicate an issue with another party.

"Contribute" means the authority of a party to provide funding in support of subject projects.

"Develop" means the authority of a party to initiate, develop, and finalize a submission, document, or procedure.

"Establish" means the authority of a party to develop a framework for a process or procedure .

"Execute and Oversight" means the authority of a party to issue bonds for the purposes of undertaking projects and to monitor, record, and manage all aspects of the transaction, subject to the authority of the Board of Public Works.

"Inspect" means the authority of a party to inspect the works as needed, without prior approval of the party authorized to Manage the project.

"Issue" means the responsibility of a party to distribute documentation of materials to all relevant parties .

"Lead" means the authority of a party to initiate, schedule, and organize the procurement of a service with the assistance of other parties.

"Manage" means the authority of a party to initiate, schedule, organize, record, and make significant decisions on a process related to the execution of subject projects, with or without the assistance of other parties, and subject only to rights of comment and approval by other parties.

[or: "Manage" means the authority of a party to procure, contract for and administer the planning, architectural/engineering, construction, commissioning, and other services required to execute a subject project.

[or: "Manage" means the authority of a party to procure, contract for the planning, architectural/engineering, construction, commissioning, and other services required to execute a subject project and to administer the execution of the project.]

"Negotiate" means the authority of a party to enter into discussion with vendors on matters of cost and price and to achieve resolution of contractual issues, subject only to rights of comment and approval by other parties.

"Notify" means the authority of a party to receive notification of an event or series of events or of a process related to execution of subject projects.

"Obtain" means the responsibility of a party to gain access to documents or services.

"Participate" means the authority of a party to review and comment on the procurement of a service.

"Party" means the Baltimore City Board of School Commissioners, the Government of the City of Baltimore, the Board of the Maryland Stadium Authority, or the Interagency Committee on School Construction.

"Prepare" means the responsibility of a party to develop documentation and distribute it to all relevant parties.

"Provide" means the responsibility of a party to deliver documents or services to other parties .

"Request" means the authority of a party to initiate an inquiry to be conducted by another party.

"Review" means the authority of a party to receive and study a submission, document, or procedure.

"Submit" means the responsibility of a party to provide documentation to another party or to a governmental entity.

## **EXHIBIT 2**

MSA/BCPSP/SCP/Balt City  
Responsibility Matrix  
Renovation Projects

No.	ITEM	MSA	BCPS	IAC/PSCP	Balt City
<b>A. Develop Program</b>					
1	Program/EdSpec	Review & Comment	Develop & Approve	Review & Approve	Review & Comment
2	Feasibility Studies	Review	Develop & Approve	Review & Comment	Review & Comment
3	Community Meetings/Input	Assist	Conduct		Notify
3a	Work Based Learning Collaborative	Establish & Participate	Establish & Participate		Establish & Participate
3b	Woman and Minority Owned Business Collaborative	Execute, Oversight and Participate	Participate		Participate
4	Project Justification	Review	Develop	Approve	Notify
5	Enhanced Approval Package	Approve	Develop & Approve	Approve	Approve
<b>B. Schedule</b>					
1	Schedules for Procurements, Design Cost	Review & Approve	Develop & Manage	Review	Notify
<b>C. Budget</b>					
1	Design, Construction, & FFE Cost Estimates	Participate & Approve	Develop & Manage	Review	
2	Funding	Execute & Oversight	Contribute	Review	Contribute
<b>D. Procurement</b>					
1	Architectural/Engineering (A/E)	Participate & Approve	Lead & Approve		
2	Construction Management (CM)	Participate & Approve	Lead & Approve	Review	
3	Program Manager	Participate & Approve	Lead & Approve		
4	Commissioning Agent (Cx)	Participate & Approve	Lead & Approve		
<b>E. Design and Construction Administration</b>					
1	Design and Construction Services	Review & Inspect	Manage	Review & Comment	
2	Surveys (Alta, etc...)	Review & Comment	Provide Site Development Ready		Review & Comment
3	Testing/Inspection	Review & Comment	Manage		
4	Design and Owners Meetings		Lead		

**MSA/BCPS/PSCP/Balt City  
Responsibility Matrix  
Renovation Projects**

No.	ITEM	MSA	BCPS	IAC/PSCP	Balt City
E.	Design and Construction Administration (cont)				
5	Life Cycle Costs	Review & Comment	Develop		
7	Building Permits		Obtain		Permit/Inspection fee waived as project partner
6	Fire Marshal Design Review/Inspections		Lead		Review & Approve/ Inspect & Approve
8	Project Status Reporting (budget, schedule, quality, etc...)	Review	Prepare & Issue	Review	
9	Design submissions (e.g., SD, DD, CD)	Review & Comment	Develop & Approve	Review & Approve	DOP Review & Comment 30/90% design stages
9a	Design Submissions (SD/DD) to IAC for verification of Program/Ed	Review & Comment	Manage	Review & Approve	
10	Develop FFE Program	Review & Approve	Develop & Manage	Review & Comment	
11	Approvals from MDE, FCP, ARB, MHT, and others AHJ's as required	Review & Comment	Obtain		Assist
12	Changes to the Program (no schedule or cost impacts as determined by MSA)	Review & Execute	Request	Review & Comment	
13	Changes to the Program (schedule/cost impact as determined by MSA)	Review/Approve	Request	Review and Comment	
14	Changes to Estimate (i.e. VE or other issues)	Review & Approve	Participate, Review, & Comment	Review	
15	Certify Payments	Review and Approve	Review & Approve		
16	Change Orders	Review & Approve	Prepare & Approve		
17	Contract Claims/Termination	Notify, Participate, Review and Comment	Negotiate/Manage	Notify	
18	MBE Compliance	Participate, Review, & Approve	Establish, Manage, & Approve	Review	Participate
19	Prevailing Wage	Participate, Review, & Approve	Establish, Manage, & Approve	Review	
20	Punch List	Participate, Review, & Comment	Develop & Issue		
21	Substantial/Final Completion	Develop, Issue, & Approve	Approve	Review	
22	Maintenance	Review and Comment Through Warranty	Develop Program. Assume upon Substantial Completion and/or	Review & Comment	
23	Warranty	Assist thru Builder's Warranty Expiration	Contact and Report issue(s)		

## **Terminology**

"Approve" means the authority of a party to approve a submission, document, procedure or contract before further action may be taken.

"Assist" means the responsibility of a party to assist the party that conducts or manages an event or series of events or a management process related to the execution of subject projects.

"Assume" means the authority of a party to take over responsibility for the further management of a facility.

"Attend" means the authority of a party to be present at a meeting or process that is led or managed by another party.

"Comment" means the authority of a party to submit comments that must be taken into account by the submitting party.

"Conduct" means the authority of a party to initiate, schedule, organize, and record an event or series of events .

"Confirm" means the authority of a party to inspect submissions for conformance to previous agreements .

"Contact" means the responsibility of a party to communicate an issue with another party.

"Contribute" means the authority of a party to provide funding in support of subject projects.

"Develop" means the authority of a party to initiate, develop, and finalize a submission, document, or procedure.

"Establish" means the authority of a party to develop a framework for a process or procedure .

"Execute and Oversight" means the authority of a party to issue bonds for the purposes of undertaking projects and to monitor, record, and manage all aspects of the transaction, subject to the authority of the Board of Public Works.

"Inspect" means the authority of a party to inspect the works as needed, without prior approval of the party authorized to Manage the project.

"Issue" means the responsibility of a party to distribute documentation of materials to all relevant parties .

"Lead" means the authority of a party to initiate, schedule, and organize the procurement of a service with the assistance of other parties.

"Manage" means the authority of a party to initiate, schedule, organize, record, and make significant decisions on a process related to the execution of subject projects, with or without the assistance of other parties, and subject only to rights of comment and approval by other parties.

[or: "Manage" means the authority of a party to procure, contract for and administer the planning, architectural/engineering, construction, commissioning, and other services required to execute a subject project.

[or: "Manage" means the authority of a party to procure, contract for the planning, architectural/engineering, construction, commissioning, and other services required to execute a subject project and to administer the execution of the project.]

"Negotiate" means the authority of a party to enter into discussion with vendors on matters of cost and price and to achieve resolution of contractual issues, subject only to rights of comment and approval by other parties.

"Notify" means the authority of a party to receive notification of an event or series of events or of a process related to execution of subject projects.

"Obtain" means the responsibility of a party to gain access to documents or services.

"Participate" means the authority of a party to review and comment on the procurement of a service.

"Party" means the Baltimore City Board of School Commissioners, the Government of the City of Baltimore, the Board of the Maryland Stadium Authority, or the Interagency Committee on School Construction.

"Prepare" means the responsibility of a party to develop documentation and distribute it to all relevant parties.

"Provide" means the responsibility of a party to deliver documents or services to other parties .

"Request" means the authority of a party to initiate an inquiry to be conducted by another party.

"Review" means the authority of a party to receive and study a submission, document, or procedure.

"Submit" means the responsibility of a party to provide documentation to another party or to a governmental entity.



## EXHIBIT 3

### **EXHIBIT 3**

<b>Timeline for 10-Year Plan Amendments, EGO Report, COMAR, Renewal Process Annual Calendar from July 1 – June 30</b>	
Performance data becomes available (MSA, HSA, grad rates, etc.)	July-August
Renewal applications submitted by schools	Early September
Internal Data and Recommendation Review – EGO, COMAR, 10-Year Plan, Renewal	September- October
CIP Due to State – aligns with 10-Year Plan	Early October
Notice to Authority, City, IAC, and STO of potential changes in 10-Year Plan	Mid October Date must allow for at least 60 days between receipt of notice and School Board vote
Internal School Board Work Sessions	Middle - End of October
Brief Advisory Group, Elected Officials, and MOU Parties	2 weeks prior to public announcement
Public Announcement - Recommendations presented to School Board at public meeting for: 10-Year Plan Amendments, EGO report, COMAR closures and Renewal Recommendations	Mid-November
School-based COMAR sessions held by COS, EDs, and ONI and school level meetings	Within 2 weeks of announcement
Special Board session to allow for public comment from school communities	Two dates between release and vote
CIP Revisions are due to the State	End of November
City and STO report on any outstanding debt remaining on School Buildings subject to changes in 10-Year Plan	End of November Date must be 45 days from receipt of notice of potential change in 10-Year Plan
School Board votes on 10-Year Plan Amendments, EGO Report and renewal recommendations	Mid-December Date must allow for at least 30 days between the recommendation announcement and School Board vote in order to fulfill COMAR requirements
CEFMP due to State – aligned with 10-Year Plan Amendments	End of June

**Key:**

**CEFMP** – Comprehensive Educational Facilities Master Plan

**CIP** – Capital Improvement Plan

**COS** – Chief of Staff

### **EXHIBIT 3**

**EDs** – Executive Directors. EDs lead Network teams that offer support to City Schools and programs.

**EGO** – Expanding Great Options. EGO is the process City Schools uses to manage its portfolio of schools. Through EGO, City Schools conducts an annual review of its schools and programs, reviewing academic performance within the context of enrollment trends, facility needs, the range of options for families in a given geographic area and opportunities for new school creation.

**HSA** – High School Assessments

**MSA** – Maryland State Assessments

**ONI** – Office of New Initiatives. ONI works closely with the Chief Executive Officer, Chief Academic Officer, and Cabinet in the planning and analysis for school creation. ONI oversees the application process and start-up of new Baltimore City Public Schools (charter, contract, and Transformation Schools).

**STO** – Director of Debt Management for the State Treasurer's Office

## EXHIBIT 4

**MARYLAND STADIUM AUTHORITY  
RESOLUTIONS  
PROCUREMENT POLICIES AND PROCEDURES**

WHEREAS, the Maryland Stadium Authority desires to formalize its policies and procedures with respect to procurement; and

WHEREAS, the goals of The Maryland Stadium Authority are to:

- A. Provide public confidence in the Authority's procurement procedures;
- B. Ensure the fair and equitable treatment of all persons who deal with the Authority;
- C. Provide economy in the Authority's procurement activities and maximize to the fullest extent the purchasing power of the Authority;
- D. Meet the Minority Business Goals as established by the State of Maryland;
- E. Provide safeguards for the maintenance of a procurement system of quality and integrity; and
- F. Complete projects on time and within budget.

NOW, THEREFORE, BE IT RESOLVED, that the Maryland Stadium Authority will utilize a fair and equitable competitive process in soliciting and awarding procurement contracts. Solicitations will be tailored for each project to obtain the best value for the State, taking into account all factors which the Authority determines to be important for a particular procurement, such as price, key personnel and staff, Minority Business Enterprise participation, schedule, and/or bidder's capability to perform the work and performance history. The Authority recognizes that certain projects are very time sensitive and must be completed on time so as to meet significant deadlines and budget limitations, that certain projects are funded by private and/or multiple sources of public money and the procurement will have input from such funding partners, and that the Authority has certain obligations to its private tenants. In furtherance of these goals and considerations, the Authority adopts the following Procurement Policies and Procedures:

**1) DEFINITIONS**

The following terms have the meanings indicated:

- (a) "Authority" means the Maryland Stadium Authority.
- (b) "Change Order" means a written order by the Procurement Officer or designee directing the bidder to make changes to the work.
- (c) "Contract amount" means the value of the entire contract, including any option years.

- (d) "Days" are calendar days. If a deadline falls on a weekend or State holiday, the deadline will be extended to the next business day.
- (e) "Executive Director" means the Executive Director of the Maryland Stadium Authority.
- (f) "Minority Business Enterprise" (MBE) is defined in COMAR 21.01.02.01B(54). All MBEs must be certified pursuant to COMAR 21.11.03.15.
- (g) "Procurement Officer" means the person(s) designated as Procurement Officer by the Executive Director with approval by the Authority to administer Authority Procurement Contracts.
- (h) Proposal:
  - 1. "Proposal" means the response by an offeror to a solicitation to obtain supplies, services, or construction.
  - 2. "Proposal" may include, without limitation, an offeror's price, description of technical expertise, work experience, and other information requested in the solicitation.
- (i) "Responsible" means a person or entity who has the capability in all respects to dutifully perform fully the contract requirements with the integrity and reliability that ensure good faith performance.
- (j) "Responsive" means a bid or offer submitted in response to a solicitation that conforms in all material respects to the requirements contained in the solicitation.
- (k) "Services" means the rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance.
- (l) "Supplies" means all tangible personal property, including furniture, commodities, equipment, leases of equipment, and insurance, including any incidental services.
- (m) "Authority Procurement Contract" means a procurement identified in paragraph 2, below.

## **2) AUTHORITY PROCUREMENT CONTRACTS**

- A. The following contracts are covered by these guidelines:
  - 1. **Professional Services**, including Architecture/Engineering, Construction Management, Financial Advisory Services and Bond Counsel.

2. **Construction**, including Contracts for At Risk Construction Managers and Trade Contractors.
  3. **Supplies**
  4. **Non-professional services**, including on-call contracts for staff to supplement Authority staff.
- B. These policies and procedures do not apply to the following:
1. Contracts with or procurements from:
    - (a) A State agency or unit,
    - (b) A political subdivision of the State,
    - (c) An agency of a political subdivision of the State,
    - (d) A government, including the government of another state or the United States,
    - (e) An agency or political subdivision of a government, or
    - (f) A bistate, multistate, bicounty, or multicounty governmental agency;
  2. Acquisition of real property or a permanent or temporary interest in real estate;
  3. Disposal of real or personal property;
  4. Contracts for confidential professional services in connection with threatened or pending litigation;
  5. Energy contracts, which are agreements for the provision of energy services in which a person or entity agrees to design, install, finance, maintain or manage energy efficiency of a building or facility in exchange for an investment in the facility; or
  6. Agreements with professional sports teams.

### **3) METHODS OF PROCUREMENT**

- A. All Authority procurement contracts shall be awarded by one of the following methods:
1. Competitive sealed bidding;
  2. Competitive sealed proposals;

3. Expedited procurement, when permitted by subsection D, below;
4. Small procurements, when permitted by subsection E, below; or
5. Noncompetitive negotiations:
  - (a) Sole Source, when permitted by F-1, below,
  - (b) Emergency, when permitted by F-2, below.

**B. Competitive Sealed Bids**

1. The Authority may require prequalification of bidders.
2. Bids shall be submitted in a sealed envelope marked with the bidder's name. All bids will be publicly opened at the time and place stated in the request.
3. The Authority shall award the contract with reasonable promptness after the date of bid opening to that person or entity with the lowest bid which is both responsible and responsive.
4. All bids may be rejected if the Authority determines that it is in the public interest to do so.

**C. Competitive Sealed Proposals**

1. No special form or procedure is prescribed for procurement by competitive sealed proposal. A request for proposals shall describe the procurement in sufficient detail to provide an understanding of what is required, but should not be unnecessarily restrictive so as to preclude or limit competition. The request shall state applicable dates for submission of the proposal and any other information necessary and useful, including the evaluation criteria. The evaluation criteria may include price and technical criteria, as appropriate.
2. Precautions shall be taken to avoid prejudice in all selections, and to assure that a fair and reasonable price is obtained. This selection does not preclude the Authority from making an award when the Authority receives only one proposal after advertising.
3. The Authority may conduct oral negotiations before or after the receipt of proposals. The purpose of the negotiation is to promote understanding of the Authority's requirements and the offerors' proposals and to facilitate arrival at a contract that is most advantageous to the Authority. The Authority may require offerors to submit best and final offers after negotiations.



4. The Authority shall make an award to the offeror whose proposal or, if applicable, best and final offer, after giving effect to the understanding gained during negotiation, is determined to be most advantageous to the Authority.
  5. The Authority may abandon a procurement by competitive proposal if it is determined by the Procurement Officer and the Executive Director to be in the public interest to do so.
  6. The Procurement Officer, Executive Director, the Authority, and the Board of Public Works (if a Construction Contract) shall approve the selected proposal.
- D. **Expedited Procurements:** This method may be used only in the limited circumstances described below.
1. Before using an expedited procurement, the following conditions must be met:
    - (a) The Procurement Officer makes a written determination that the use of this method is necessary:
      - (i) to avoid the late opening of a facility;
      - (ii) to meet commitments to private tenants with regard to the opening each season of an athletic facility; or
      - (iii) to complete unanticipated repairs to an athletic facility that must be completed between scheduled games; or
      - (iv) to complete time-critical feasibility and impact studies for new projects.
    - (b) The Procurement Officer prescribes a procurement methodology, including justification of any noncompetitive solicitation.
    - (c) The Executive Director approves the use of the expedited method for the particular procurement and the procurement methodology.
    - (d) The Authority has received prior notice of the intent to use the expedited method and the proposed procurement methodology.]
  2. Competitive solicitation of bids or offers shall be the preferred method of making an expedited procurement, and may include public notice in a newspaper or trade publication, notice by posting on the Authority's website or on the eMaryland Marketplace website, or direct solicitation from persons who are believed to be qualified to perform the contract.
  3. A noncompetitive source selection may be made if the time available is insufficient to permit a competitive solicitation or some other reason precludes the use of competitive solicitation.

4. The use of expedited procurement methods, including a description of the number of bids or offers received, and the prices submitted, shall be reported to the Authority on a regular basis.

**E. Small Procurements - Authority Procurement Contracts for less than \$50,000 may be procured under this provision.**

1. For contracts less than \$10,000, competition is preferred, but not required.
2. For contracts between \$10,000 and \$50,000, competition shall be sought to the extent practicable, as determined by the Procurement Officer, considering such factors as availability of vendors, dollar value of the procurement, cost of administering the procurement, time available to complete the procurement, including delivery time, and sound business judgment.

**F. Non-competitive Procurements:**

1. Procurement contracts of less than \$50,000, should be made as described in subsection E, above, rather than under the provisions of this subsection.
2. **Sole Source Procurement**
  - (a) **Condition for Use -** Sole source procurement is not permissible unless a requirement is available from only a single vendor.
  - (b) The determination as to whether a procurement shall be made as a sole source shall be made by the Procurement Officer, in writing, and must state the basis for the decision. The Procurement Officer's determination must be approved by the Executive Director and reported to the Authority.
3. **Emergency Procurement**
  - (a) **Application -** The Executive Director may award an emergency contract by means other than competitive sealed bid or competitive proposal.
  - (b) **Scope -** Emergency means a sudden and unexpected occurrence or condition which the Executive Director could not reasonably foresee and which requires action to avoid or to mitigate damage to the environment or to health, safety, or welfare. An emergency procurement is limited to the procurement of only those items necessary to avoid or to mitigate the damage to the environment or to health, safety, or welfare.
  - (c) The use of an Emergency Procurement shall be reported as expeditiously as possible to the Authority.

**4) PROJECTS WITH SIGNIFICANT NON-STATE FUNDS**

The Authority may approve exceptions to these policies for projects involving significant non-State funds with a written justification by the Executive Director that the exception is reasonable and necessary to carry out the objectives of these policies.

**5) CONTRACT TERM LIMITATION**

Term contracts, that is contracts for a duration of time, are limited to a maximum initial term of three years, with renewal options for a maximum total of five years.

**6) MINORITY BUSINESS ENTERPRISES (MBE)**

The Authority seeks to encourage the use of MBE firms on all projects, either as prime contracts, consultants, subcontractors, subconsultants, or suppliers, etc., and to meet the MBE goals established by the State of Maryland. To fulfill this goal, the following actions should be taken in connection with Authority Procurement Contracts:

- A. Prior to and during the procurement of construction contracts, Authority representatives should consider:
  - 1. Meeting with the MBE office of the local jurisdiction and MDOT;
  - 2. Meeting with and/or providing information regarding a project to local MBE groups;
  - 3. Holding and attending advertised MBE outreach programs; and
  - 4. Assisting contractors, consultants, etc., in locating potential MBE subcontractors or consultants.
- B. The Authority is bound by State Finance & Procurement Code, Title 14, Subtitle 3, Minority Business Participation, and shall follow all requirements stated therein.

**7) ADVERTISING**

- A. The Authority shall advertise its solicitations for Competitive Sealed Bids and Competitive Sealed Proposals.
- B. The Authority shall advertise, to the extent practicable, its expedited procurement solicitations.
- C. The eMaryland Marketplace website is the preferred advertising venue, but other venues, including the Authority's website, may be used where appropriate.

**8) CONFLICT OF INTEREST**

Members of the Authority, the Executive Director, and Authority staff are subject to the State ethics law and its provisions dealing with conflict of interest. Members of the Authority, the

Executive Director, and Authority staff may not accept or receive, directly or indirectly, any money, property, or other benefit from any person or entity doing business with, or interested in doing business with, the Authority. Members of the Authority, the Executive Director, and Authority staff may not have any financial interest in any firm or company doing business with the Authority, or in any contract to which the Authority is a party. Any exception to this policy requires the approval of the State Ethics Commission.

**9) CONTRACT APPROVAL AUTHORITY**

- A. All contracts of \$50,000 or more must be approved by the Authority, prior to execution, except in the case of Emergency procurements. The use of Emergency Procurements shall be reported to the Authority as expeditiously as possible following award. All contract modifications over \$50,000 must be reported regularly to the Authority.
- B. The award of contracts and the issuance of contract modifications between \$10,000 and \$50,000 must be approved prior to award by the Executive Director. The award of contracts and the issuance of contract modifications between \$10,000 and \$50,000 must be reported regularly to the Authority.
- C. The Procurement Officer is authorized to award contracts and approve contract modifications for \$10,000 or less.

**10) BID PROTESTS**

- A. Time Restrictions.
  - 1. A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be submitted to the Procurement Officer before bid opening or the closing date for receipt of initial proposals.
  - 2. In all other cases, protests shall be submitted to the Procurement Officer not later than seven days after the basis for protest is known, or should have been known, whichever is earlier.
  - 3. A protest received by the Procurement Officer after the time limits of subsections 1 and 2 above may not be considered and shall be denied as untimely.
- B. Form and Content of Bid Protests.

The written protest shall include as a minimum the following content:

  - 1. The name and address of the protestor;
  - 2. Appropriate identification of the procurement and, if a contract has been awarded, its number if known;

3. A statement of the reasons for the protest; and
4. Supporting exhibits, evidence, or documents to substantiate the reasons for the protest.

**C. Authority Determination and Finding.**

1. After a protest is filed, the Procurement Officer shall consider the protest, all supporting documentation, and any submissions from other bidders or offerors. This consideration is not a contested hearing subject to Title 10, Subtitle 2 of the State Government Article. After such consideration, the Procurement Officer must make a determination and finding regarding the protest.
2. For contracts valued at less than \$10,000, the Procurement Officer may make the determination and finding without consultation with the Executive Director.
3. For contracts valued at \$10,000 or more, the Procurement Officer shall provide a proposed determination and finding to the Executive Director. The Executive Director shall consider the protest and shall issue the determination and finding.
4. The determination and finding shall be forwarded to the protestor by certified mail, return receipt requested, or by any other method (such as facsimile transmission) which provides evidence of receipt.

**D. Appeal.**

1. The protestor may appeal the determination and finding to the Authority within seven days after receipt. The appeal must be in writing and must include a copy of the protest and the determination and finding. In addition, the appeal must contain all grounds for disagreement with the determination and finding. Appeals not received within seven days after receipt by the protestor shall be dismissed as untimely.
2. If the protestor desires a hearing on its protest, a request for a hearing must be made, in writing, at the time of the appeal. If a timely request for a hearing is received, the Authority will conduct a hearing in accordance with Title 10, Subtitle 2 of the State Government Article. In accordance with State Government Article §10-205, the Authority may delegate its authority to conduct this hearing to the Office of Administrative Hearings.
3. The Authority shall issue a decision on the protest, which is the final Authority decision. This final decision of the Authority is subject to

judicial review in accordance with the rules established by State Government Article § 10-222.

**E. Contract Awards.**

1. Generally, where a protest has been filed, the Authority will not award the contract until there is a final Authority decision on the protest.
2. The Authority may award a contract before there is a final Authority decision after making a determination and finding which considers:
  - (a) The merits of the protestor's complaint;
  - (b) The need of the Authority for the procurement which is the subject of the protest;
  - (c) The fluctuations in the market, which may impact costs;
  - (d) The unwillingness of the proposed awardee to extend its offer; or
  - (e) Other factors which impact on the public interest.

**11) CONTRACTS VOIDABLE FOR NONCOMPLIANCE**

- A. If the Authority determines that a procurement violates these policies and procedures, the Authority may determine that the procurement contract is voidable, rather than void, if the Authority finds that:
  1. All parties acted in good faith;
  2. Ratification of the procurement contract would not undermine the purposes of this chapter; and
  3. The violation, or series of violations, was insignificant or otherwise did not prevent substantial compliance with these policies and procedures.
- B. If the Authority determines that a procurement contract is voidable under subsection A of this paragraph, and that the contractor has not acted in violation of the procurement policies and procedures, the Authority may:
  1. Ratify the contract if it determines that ratification is in the best interest of the Authority; or
  2. Void the contract.
- C. If the Authority determines that a procurement contract is voidable under subsection A of this paragraph, and that the contractor has acted in violation of these policies and procedures, the Authority may:
  1. Void the contract; or

2. **Without prejudice to the Authority's right to appropriate damages, ratify the contract if the Authority determines that ratification is in the best interests of the Authority.**

## EXHIBIT 5

# EXHIBIT 5



# **POLICY**

## **BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS**

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### **PROCUREMENT AUTHORITY**

#### **I. Purpose**

- A. To ensure that funds provided to the Board for materials, supplies, equipment, services, contract administration, and contractual services are expended and handled most effectively, prudently, and efficiently, and to ensure that bids are obtained for certain items, the Board prescribes that purchases be carried out in compliance with Section 5-112 of the Education Article of the Maryland Annotated Code and in accordance with the administrative regulations developed by the Chief Executive Officer.
- B. As it pertains to the Minority Business Enterprise and Women Business Enterprise, the Board abides by the goals of the State of Maryland or City of Baltimore, as appropriate.
- C. The Board will consistently encourage competitive bidding. When it is not practical to obtain competitive bids or when the need for supplies, equipment, materials, or services is of an emergency nature, then such purchases may be made without competitive bidding.

#### **II. Legal and Policy References**

##### **A. Legal Authority**

§ 4-303(d)(2), MD. CODE ANN., EDUC.  
§ 4-310, MD. CODE ANN., EDUC.  
§ 5-112, MD. CODE ANN., EDUC.

##### **B. Policy References**

Related Board Policies:  
Replaces Board Rule Section 1001

##### **C. Administrative Regulation References**

DJA-RA

# **ADMINISTRATIVE REGULATIONS**

## **BALTIMORE CITY PUBLIC SCHOOLS**

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### **PROCUREMENT**

#### **ARTICLE 1- GENERAL PROVISIONS**

##### **Part A. – Purposes and Application**

##### **1-101 Purposes, Rules**

- (1) *Interpretation.* These Administrative Regulations shall be construed and applied to promote the following underlying purposes.
- (2) *Purposes.* The underlying purposes of these Administrative Regulations are:
  - (a) To simplify, clarify, and modernize the Administrative Regulations governing procurement by the Board;
  - (b) To provide for increased public confidence in the public procurement process;
  - (c) To ensure the fair and equitable treatment of all persons who transact business with the Board;
  - (d) To provide increased economy in the Baltimore City Public Schools (“City Schools”) procurement activities and to maximize, to the fullest extent practicable, the purchasing value of public funds of the City Schools;
  - (e) To foster broad-based competition within the free enterprise system; and
  - (f) To provide safeguards for the maintenance of a procurement system of quality and integrity.

- (3) *Singular-Plural and Gender Rules.* Unless the context requires otherwise:
- (a) Words in the singular include the plural, and those in the plural include the singular, and
  - (b) Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

#### **1-102 Supplementary General Principles of Law Applicable**

Unless displaced by a particular provision of these Administrative Regulations, the principles of law and equity, including the Uniform Commercial Code of the State of Maryland, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of these Administrative Regulations.

#### **1-103 Requirement of Good Faith**

These Administrative Regulations require all parties involved in the negotiation, performance, or administration of contracts to act in good faith.

#### **1-104 Application of these Administrative Regulations**

- (1) *General Application.* These Administrative Regulations apply only to contracts solicited or entered into after the effective date of these Administrative Regulations.
- (2) *Application.* These Administrative Regulations shall apply to every expenditure of public funds, irrespective of their source, unless otherwise specified by the Board notwithstanding Section 2-110. These Administrative Regulations shall not apply to either grants or contracts between City Schools and the Federal government or the State of Maryland or its political subdivisions or other governments, except as provided in Article 10 (Intergovernmental Relations). Nothing in these Administrative Regulations or in regulations promulgated hereunder shall prevent any governmental body, political subdivision or the Board from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.
- (3) Materials of instruction and textbooks are excluded from quoting or bidding by state law (Annotated Code of Maryland, Education Article Section 5-112).

#### **1-105 Severability**

If any provision of these Administrative Regulations or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of these Administrative Regulations which can be given effect without the

invalid provision or application, and to this end the provisions of these Administrative Regulations are declared to be severable.

**1-106 Effective Date**

These Administrative Regulations shall become effective at 12:01 a.m. on June 1, 2011.

**1-107 Savings Clause**

The Policies and Procedures in effect prior to the adoption of these Administrative Regulations shall apply to contracts entered into prior to the effective date of these Administrative Regulations.

**Part B - Determinations**

**1-201 Determinations**

Written determinations required by these Administrative Regulations shall be in the appropriate official contract file of the Director of Materials Management ("Director").

**Part C - Definitions of Terms Used in these Administrative Regulations**

**1-301 Definitions**

The words defined in this Section shall have the meanings set forth below whenever they appear in these Administrative Regulations, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular Article or provision.

- (1) *Assignment* means the transfer of the interest, rights, responsibilities, or payments of a contractor or vendor to another entity or person.
- (2) *Bid* means a statement of price, terms of sale, and description of the supplies, services, construction or construction- related services offered by a bidder in response to an Invitation for Bids.
- (3) *Bidding Time* means the period of time between the date of publication of the Invitation for Bids and the time and date set for receipt of the bids.
- (4) *Board* means the Baltimore City Board of School Commissioners.
- (5) *Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity engaged in an activity for gain or livelihood.

**DJA-RA**

Adopted 6/9/2009

Revised 9/13/2011

- (6) *Change Order* means a written order signed by the Director, directing the contractor to make changes pursuant to the changes clause of the contract. With regard to construction contracts, the provisions of the contract shall govern the processing of change orders.
- (7) *Commodity* means an item of purchase and may include office goods and materials, food, printing, building materials, and other items needed to support normal operations.
- (8) *Competitive sealed bidding* means the procurement process set forth in Section 3-103 of this Regulation.
- (9) *Competitive sealed proposals* means the procurement process set forth in Section 3-104 of this Regulation.
- (10) *Construction* means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property.
- (11) *Contract* means all types of agreements, regardless of what they may be called, for the procurement of supplies, equipment, services, professional services, or construction.
- (12) *Contract Modification* means any written alteration in specifications, delivery point, date of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract. It includes change orders or contract amendments.
- (13) *Contractor* means any person having a contract with the Board or a governmental body.
- (14) *Cost-Reimbursement Contract* means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and provisions of these Administrative Regulations, and a fee, if any.
- (15) *Data* means recorded information, regardless of form or characteristic.
- (16) *Day* means calendar day unless otherwise designated.
- (17) *Definite quantity contract* means a fixed-price contract that provides for delivery of a specified amount of goods or labor either at specified times or when ordered.
- (18) *Designee* means a duly authorized representative of a person holding a superior position.

**DJA-RA**

Adopted 6/9/2009

Revised 9/13/2011

- (19) *Director of the Office of Materials Management* ("Director") means the person who heads the Office of Materials Management of the Baltimore City Public School System.
- (20) *Emergency* means a sudden unexpected happening or an unforeseen circumstance that calls for immediate action to protect public health, safety, or welfare or to procure needed supplies, equipment or services to prevent the disruption or interference with the education programs of the City Schools.
- (21) *Employee* means an individual drawing a salary from the Board, whether elected or not, and any non-compensated individual performing services for the Board.
- (22) *Established Catalogue Price* means the price included in a catalogue price, price list, schedule or other format that:
  - (a) Is regularly maintained by a manufacturer or contractor;
  - (b) Is either published or otherwise available for inspection by customers; and
  - (c) States prices at which sales are currently or were last made to a significant number of any category of buyers constituting the general buying public for the supplies, equipment, services or construction involved.
- (23) *Fixed price contract* means a contract which provides for a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revision of the contract price under stated circumstances.
- (24) *Form 254* means the Architect-Engineer and Related Services Questionnaire used in the Construction Management/Architect-Engineer Services Consultant Selection Procedures.
- (25) *Form 255* means the Architect-Engineer and Related Services Questionnaire for Specific Projects used in the Construction Management/Architect-Engineer Services Consultant Selection Procedures.
- (26) *Governmental Body* means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch.
- (27) *Grant* means the furnishing of the State of Maryland or Federal government or any other public or private entity of assistance, whether financial or otherwise, to the Board to support a program. A contract resulting from such an award is not a grant but a procurement contract, unless otherwise determined by the Board.

**DJA-RA**

Adopted 6/9/2009

Revised 9/13/2011

- (28) *Indefinite quantity contract* means a contract or an indefinite amount of goods or labor to be furnished at specified items, or as ordered, that establish unit prices of a fixed-price type
- (29) *Invitation for Bids* means all documents, whether attached or incorporated by reference, used for soliciting bids under procurement by competitive sealed bidding.
- (30) *Invoice* means a vendor's written request for payment for supplies, commodities, services, maintenance, construction, construction-related services, professional services, architectural services, or engineering services performed or provided.
- (31) *May* denotes permissive.
- (32) *Minor irregularity* is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid or proposal from the exact requirements of the solicitation, the correction or waiver of which would not be prejudicial to other bidders or offerors.  
The procurement officer shall either give the bidder or offeror an opportunity to cure the deficiency resulting from a minor informality or irregularity in a bid or proposal or waive the deficiency, whichever is in the best interest of City Schools.
- (33) *Most favorable* means that bid received from a responsible bidder that is the lowest price or lowest evaluated bid price.
- (34) *Multiple award* means the award of contracts to more than one vendor for the same goods or labor.
- (35) *Multi-year award* means a contract that requires appropriations for more than one fiscal year.
- (36) *Person* means any business, individual, union, committee, club, or other organization, or group of individuals.
- (37) *Piggyback Method* means a form of intergovernmental cooperative purchasing in which a large purchaser requests competitive sealed bids, enters into a contract, and arranges, as part of the contract, for other public purchasing units to purchase from the selected vendor under the same terms and conditions as itself.
- (38) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, including professional services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

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- (39) *Procurement Officer* means a member of the Procurement Department (including, but not limited to, Buyer, Contract Administrator, Purchasing Manager, Staff Specialist, etc.) duly authorized to enter into and administer contracts and make written determinations with respect thereto.
- (40) *Professional Services* means those services provided by an individual or entity that require advanced education and training and a high level of proficiency. This term also includes financial services and services provided by a licensed professional.
- (41) *Proposal* means the response to a Request for Proposals issued by a department to obtain goods or services. The response may include, but is not limited to an offeror's price and terms for the proposed contract, a description of technical expertise, work experience, and other information as requested in the solicitation.
- (42) *Purchase Description or Scope of Work* means the words used in a solicitation to describe the supplies, equipment, services or construction to be purchased and includes specifications attached to, or made part of the solicitation or purchase order.
- (43) *Purchase Order* means a document authorizing a procurement from a vendor. Upon acceptance by a vendor, the purchase order becomes a contract.
- (44) *Purchasing Agency* means any governmental body other than the Director that is authorized by these Administrative Regulations or its implementing regulations, or by way of delegation from the Director, to enter into contracts. Such Purchasing Agency must abide by the requirements of these Administrative Regulations.
- (45) *Regulation* means the Board's or a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describe organization, procedure, or practice requirements, which has been promulgated in accordance with the law or these Administrative Regulations.
- (46) *Request for Proposals* means any document, whether attached or incorporated by reference, used for soliciting proposals from offerors under any method allowed under this policy, excluding competitive sealed bidding.
- (47) *Requirements Contract* means a form of indefinite delivery/indefinite quantity contract where the actual purchase requirements for specific supplies or services during the contract period are filled by the selected vendor(s).
- (48) *Responsible* means a person or vendor that has the capability in all respects to perform fully the contract requirements and the integrity and reliability that shall assure good faith performance.



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- (49) *Responsive* means a bid or proposal submitted in response to an Invitation for Bids or Request for Proposals that conforms in all material aspects of the requirements contained in the invitation for bid or Request for Proposals.
- (50) *Services* means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that may be part of the required performance. This term shall not include employment agreements, professional service agreements or collective bargaining agreements.
- (51) *Shall* denotes the imperative.
- (52) *Sole source procurement* means a procurement which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility.
- (53) *Supplies* means all property, including but not limited to equipment, materials, including educational materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.
- (54) *Tie bids* are responsive bids from responsible bidders that are identical in price, terms, and conditions and which meet all the requirements and evaluation criteria set forth in the Invitation for Bids.
- (55) *Time-and-materials contract* means a contract that provides an agreed price for materials supplied and labor performed. Time-and-material contracts shall state a dollar ceiling that may not be exceeded without the proper authority approval.
- (56) *Using Department* means any division, unit or school of the Board that utilizes any supplies, services, or construction procured under these Administrative Regulations.
- (57) *Vendor* means a person or supplier who desires to enter into a contract with the City Schools.

**Part D - Public Access**

**1-401 Public Access to Procurement Records**

- (1) Procurement records shall be available for public inspection to the extent provided in the State of Maryland's Access to Public Records Act.
- (2) Confidential Information means any proprietary or confidential business information of a party, identified and disclosed by that party, to the City Schools.

**ARTICLE 2 - PROCUREMENT ORGANIZATION**

**2-101 Creation and Membership of the Baltimore City Board of School Commissioners' Procurement Review Committee**

- (1) There is hereby created the Board's Procurement Review Committee ("PRC").
- (2) The PRC shall consist of the Chief Executive Officer ("CEO"), Board Executive, Chief Financial Officer ("CFO"), Chief Academic Officer ("CAO"), Chief Operating Officer ("COO"), and Chief Legal Counsel ("CLC") or their designees. The CEO may designate other individuals to serve on the PRC.
- (3) The PRC is vested with the authority to review proposed procurement items before such items are submitted to the Board for its consideration.

**2-102 Office of the Materials Management**

There is an Office of Materials Management. The Office is headed by and is under the control of the Director. The Director shall provide support services to the PRC.

**2-103 Procurement Authority**

- (1) The CEO of City Schools delegates' authority to the Director of Materials Management to enter into contracts for the procurement of goods and services as the centralized purchasing agency for City Schools. The Board shall award all contracts that exceed delegated dollar thresholds. The Director of Materials Management is authorized to delegate purchasing authority to procurement buyers for the purchase of specified goods and/or services.
- (2) The Director of Materials Management has the responsibility and authority to negotiate, place, and (when necessary) modify invitation to bids, purchase orders, or other awards granted or issued by the Board. Assigned buyers may assist the Director of Materials Management in discharging these responsibilities. Excepting the CEO, no other City Schools official or employee is authorized to

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order supplies, materials, or services; enter into purchase negotiations or contracts; or in any way obligate City Schools for any indebtedness. Any purchases ordered or contracts made that are contrary to these provisions and authorities shall be of no effect and void, and City Schools shall not be bound thereby.

- (3) Any school operated by a contractor or vendor may negotiate revisions to the procurement policy and regulations. Such alternative procurement policies or regulations shall be approved by the CEO or the Board in accordance with State law and shall be reflected in the contractual agreement with the Board.

**2-104 Authority of the Director**

- (1) The Director shall serve as the central Procurement Officer of the Board.
- (2) Consistent with the provisions of these Administrative Regulations, the Director shall adopt operational procedures governing the internal functions of the Office of Materials Management.
- (3) Except as otherwise specifically provided in these Administrative Regulations, the Director shall:
  - (a) procure or supervise the procurement of all supplies, equipment, and services, needed by the City Schools;
  - (b) establish and maintain programs for the inspection, testing, and acceptance of supplies, and services; and
  - (c) maintain a contract file on all matters regarding decisions made by the Office of Materials Management under these Administrative Regulations.
- (4) The Director shall have the authority and responsibility to recommend to the CEO for promulgation, Administrative Regulations governing the procurement management, and control of any and all supplies, equipment, services, and construction to be procured by the Board. The Director shall also consider Administrative Regulations governing the use of real or personal property of the Board including, leases, easements, right-of-way, and insurance and shall consider and decide matters within the provisions of these Administrative Regulations including those referred to it by any member of the PRC.
- (5) The Director shall prepare, issue, revise, maintain and monitor the use of specifications required by the Board.
- (6) The Director shall obtain expert advice and assistance from personnel of the using agencies in the development of specifications and may delegate in writing to a Using Department the authority to prepare and utilize its own specifications.

- (7) The Director may promulgate procedures governing the preparation, maintenance, and content of specifications required by the Board.
- (8) Any Assignment shall be at the discretion of the Director.

#### **2-105 Delegation of Authority by Procurement**

- (1) With the written approval of the CEO, the Director may delegate authority to a designee. City Schools has no obligation to reimburse companies or vendors for independent and unauthorized purchase or for purchases that are not in compliance with these regulations.

#### **2-106 Centralization of Procurement Authority**

- (1) All procurements up to \$24,999, including, but not limited to, supplies, equipment, services, architectural, engineering, professional services, inspection related services, construction or construction management services are under the authority of the Director.
- (2) All procurements \$25,000 or More: All contracts of \$25,000.00 or more for supplies, equipment, services, architectural, engineering, professional service contracts, inspection related services, construction or construction management services must be approved, in writing, by the Board. Once a contract has been approved by the Board, any proposed changes to the approved contract \$25,000 or more shall be in accordance with 3-301.
- (3) Real Estate Leases Regardless of Amount and Real Estate Transactions: All real estate leases, regardless of the amount of the lease, must be approved by the Board. All real estate transactions involving the sale, purchase, or the long-term use of real property must be approved by the Board.
- (4) Memorandums of Understanding (MOUs): The decision as to whether City Schools should participate in a MOU or cooperative agreement with another entity must be approved by the CEO. A report of MOUs and other similar agreements with no fiscal impact is available upon request to the Board.

An MOU is defined as a document describing a bilateral or multilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It most often is used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement. Additionally, for purposes of this regulation an MOU shall also mean there is no cost to City Schools.

All MOUs will be reviewed and signed by Chief Counsel for legal sufficiency and the Director prior to approval of the CEO.

- (5) Professional Service Agreements; Professional services under \$25,000 do not require a Professional Service Agreement. A City Schools Purchase Order is an acceptable agreement.

## **2-107 CEO Procurement Administrative Regulations**

- (1) Procedures shall be promulgated through the Director, in accordance with the applicable provisions of the law and these Administrative Regulations.
- (2) The Director shall not delegate its authority to promulgate procedures.

## **2-108 The Procurement Agenda**

- (1) It is the responsibility of the Using Department to submit a purchase requisition signed by the CEO and a Board letter to Materials Management thirty days (30) days prior to Board meeting.
- (2) It is the responsibility of the Director to prepare, prior to a public meeting of the Board, a written procurement agenda that briefly describes the particular procurement items that the Board is being requested to review and approve.
- (3) In the event the Board is requested to review a procurement item that does not appear on the printed procurement agenda, it is the responsibility of the Using Department to do the following:
  - (a) To present to the Board, at its public meeting, a brief description of the agenda item. The presentation to the Board should include the same information which would have been included in the printed procurement agenda.
  - (b) To prepare a written description of the procurement item added to the procurement agenda, prior to the public meeting of the Board.
- (4) The Director may revise required content of the procurement agenda.

## **2-109 Collection of Data Concerning Public Procurement**

- (1) The Director shall prepare statistical data concerning the procurement of all supplies, equipment, and services, and employ, in accordance with the budget, such trained personnel as may be necessary to carry out this function. All schools and using agencies shall furnish such reports as the Director may require concerning usage, needs, and stock on hand, and the Director shall have authority

to prescribe forms to be used by the schools and other using agencies in requisitioning, ordering, and reporting of supplies, equipment and services.

- (2) The Director shall prepare statistical data concerning the procurement and management of construction, leases, architectural, engineering, construction, and construction management services and inspection-related services, and employ, in accordance with the budget, such trained personnel as may be necessary to carry out this function. All schools and using agencies shall furnish such reports as the Director may require concerning usage and needs, and the Director shall have authority to prescribe forms to be used by the schools and using agencies in the procurement and management of construction, real estate leases, architectural and engineering services and related inspection services.
- (3) The Director shall prepare statistical data concerning the management and procurement of information technology equipment and services, and employ, in accordance with the budget, such trained personnel as may be necessary to carry out this function. All schools and using agencies shall furnish such reports as the Director may require concerning usage and needs, and the Director shall have authority to prescribe forms to be used by the schools and using agencies in the procurement and management of information technology equipment and services.

## **2-110 Legal Counsel**

- (1) Before entering into a contract, the City Schools' Procurement Officer shall provide a draft of the contract to City Schools' legal counsel for written approval as to the form and legal sufficiency. This requirement does not apply to Purchase Orders.
- (2) The Office of Legal Counsel shall also provide necessary legal services to the PRC and the Director.

## **ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION**

### **Part A – Methods of Source Selection**

#### **3-101 Methods of Source Selection**

Unless otherwise authorized by these Administrative Regulations, all contracts shall be awarded by one of the following methods:

- (1) Small Procurement
- (2) Competitive sealed bidding
- (3) Competitive sealed proposals
- (4) Sole source procurement
- (5) Emergency procurement

### **3-102 Small Procurements**

- (1) Any procurement under \$25,000 shall be considered a small procurement.
- (2) Small procurements are classified in two categories:
  - a. Category I – \$1000 or less
  - b. Category II – More than \$1000 but not more than \$24,999
- (3) The objective of soliciting bids or offers is to foster competition in obtaining needed items in a cost effective manner. In all small procurements, competition should be sought to the extent practical, considering factors such as availability of vendors, dollar value of the procurement, cost of administering the procurement, and time available to make the procurement including delivery time.
  - a. For Category I: responsive bids or acceptable offers from at least one vendor should be obtained.
  - b. For Category II: responsive bids or acceptable offers from at least two vendors should be obtained.
- (4) The acceptable methods of soliciting bids or offers from vendors for small procurements are oral solicitation or written solicitation.
- (5) The basis for award shall be:
  - a. For Category I: The judgment of the Procurement Officer.
  - b. For Category II:
    1. The most favorable bid price or evaluated bid price, or most advantageous offer, as specified in the solicitation; or
    2. In the event of tie bids, Section 3-103 (14) of this Regulation shall be utilized to determine the successful bidder.
- (6) Procurement requirements shall not be divided so as to constitute a small purchase under this Section.

### **3-103 Competitive Sealed Bidding/Invitation for Bids**

- (1) An Invitation for Bids shall be used to initiate a competitive sealed bid procurement.
- (2) Unless an emergency has been declared by the CEO, the bidding time shall be a minimum of fourteen (14) days, beginning upon the first publicly advertised notice, issued in either a newspaper of general circulation in the City of

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Baltimore, the City Schools' website or other electronic bid board, or any other source of publication.

- (3) A contract for the school building, improvements, supplies, or other equipment shall be awarded to the lowest responsible and responsive bidder.
- (4)
  - (a) Pre-bid conferences may be conducted by the Procurement Officer or designee to explain the procurement requirements.
  - (b) If a pre-bid conference is held, it shall be announced to all prospective bidders who were sent an Invitation for Bids or who are known by the Procurement Officer to have obtained the bidding documents.
  - (c) Any pre-bid conference should be held long enough after the Invitation for Bids has been issued to allow prospective bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the pre-bid conference results in the preparation of bids.
  - (d) Attendance at the pre-bid conference is encouraged, but is not mandatory. Nothing stated at the pre-bid conference may change the Invitation for Bids unless a written addendum is made by the Procurement Officer.
- (5)
  - (a) Each addendum to an Invitation for Bids shall be identified as such and shall require that the bidder acknowledge its receipt at bid submission. The addendum shall reference the portion of the Invitation for Bids that it amends. The Procurement Officer must authorize the issuance of an addendum.
  - (b) Each addendum shall be sent to all prospective bidders who are sent an Invitation for Bids or who are known to the Procurement Officer to have obtained the bidding documents. Electronic transmission of a pre-bid conference satisfies the requirements of this regulation.
  - (c) Each addendum shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date for receipt of bids does not permit preparation, the time may be increased to the extent possible. Addendums must be issued at least 3 days before the deadline for submission of the bid or the timeline will be extended accordingly.
- (6) The Board or the Director, as Board's designee, may reject any and all bids and re-advertise for other bids.
- (7)
  - (a) Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late. Any request for withdrawal or



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request for modification received at the place designated in the solicitation after the time and date set for receipt of bids is late.

- (b) A late bid, late request for modification, or late request for withdrawal shall not be accepted or considered.
- (8) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified in the Invitation for Bid, together with the name of each bidder shall be recorded: the record and the amount of each bid shall be open to public inspection.
- (9) Bids shall be unconditionally accepted without alteration or correction, except as authorized in these Administrative Regulations. Bids shall also be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose and compliance with the Board's MBE/WBE requirements. Those criteria that will affect bid price and be considered in evaluation for award, shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the Invitation for Bids.
- (10) Technicalities or minor irregularities in bids, as defined in Section 1-301(28), may be waived if the procurement officer determines that it shall be in the City Schools' best interest. The procurement officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bids, or waive the deficiency if it is in City Schools' advantage to do so.
- (11) If the procurement officer knows or has reason to conclude that a mistake has been made, the bidder may be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn upon the approval of the Director if any of the following conditions are met:
  - (a) If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors extending unit prices, transposition errors and arithmetical errors.
  - (b) A bidder may be permitted to withdraw a low bid if:

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- (1) A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  - (2) The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.
- (12) Mistakes may not be corrected after award of the contract except when the procurement officer makes a determination that it would be unconscionable to not allow the mistake to be corrected. Changes in prices are not permitted. Corrections shall be submitted to and approved by the Director.
- (13) When a bid is corrected or withdrawn, or correction or withdrawal is denied, the procurement officer shall prepare a determination showing that relief was granted or denied in accordance with these regulations.
- (14) A written determination of non-responsibility of a bidder may be made by the Procurement Officer and made available to the bidder. The failure of a bidder to promptly supply information with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.
- (15) Information furnished by a bidder pursuant to this Section shall not be disclosed to outside sources without the prior written consent of the bidder if the bidder has specifically identified the information as Confidential Information. The release of information is also governed by Section 1-401 of these Administrative Regulations. Where Confidential Information is sought from the City Schools, the bidder is placed on notice that the bidder shall defend the grounds of the non-release by the City Schools where the non-release is due to a claim by the bidder of Confidential Information.
- (16) Notice of the intent to award the contract will be provided with reasonable promptness by written notice from the Director or designee to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. Notice shall also be provided to unsuccessful bidders by the Director, or designee. The actual and final award of the contract shall only be made by the Board.
- (17) In the case of tie bids, a drawing shall be conducted. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.
- (18) In the event all bids for a construction project exceed available funds as certified by the CFO, and the low responsive and responsible bid does not exceed such funds by more than five percent, the CFO, or designee, is authorized to negotiate an adjustment of the bid price, including changes in the bid requirements or a reduced scope with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds in consultation with Using Department.

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- (19) If only one responsive bid from a responsible bidder is received in response to an Invitation for Bids, and the Procurement Officer determines that other prospective bidders had reasonable opportunity to respond, an award under Section 3-106 may be made to that bidder.
- (20) An Invitation for Bids may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the Board.

**3-104 Request for Proposals – Competitive Sealed Proposals**

- (1) A procurement by competitive sealed proposals \$25,000 and over may be conducted once a determination that competitive sealed bidding cannot be used because:
  - (a) Specifications cannot be prepared in sufficient detail that would permit an award based solely on price; or
  - (b) Competitive sealed bidding is not practicable or is not advantageous to the City Schools and there is a compelling reason to use the source selection methodology set forth in this section.
- (2) The Director may, but is not required, to issue a Request for Proposals for the purchase of books and other materials of instruction as defined in the Maryland State Department of Education Financial Reporting Manual.
- (3) Unless an emergency has been declared by the CEO, the bidding time shall be a minimum of fourteen (14) days, beginning upon the first publicly advertised notice, issued in either a newspaper of general circulation in the City of Baltimore, the City Schools' website or other electronic bid board, or any other source of publication.
- (4) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A record of the proposals shall be prepared by the Office of Materials Management, and shall be open for public inspection after contract award.
- (5) The Request for Proposals shall state the relative importance of price and evaluation factors.
- (6)
  - (a) Pre-proposal conferences may be conducted by the Procurement Officer or designee to explain the procurement requirements.
  - (b) If a pre-proposal conference is held, it shall be announced to all prospective offerors who were sent a Request for Proposals or who are known by the Procurement Officer to have obtained the solicitation documents.

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- (c) Any pre-proposal conference should be held long enough after the Request for Proposals has been issued to allow prospective offerors to become familiar with it, but sufficiently before the proposal due date to allow consideration of the pre-proposal conference results in the preparation of proposals.
  - (d) Attendance at the pre-proposal conference may be encouraged, but may not be made mandatory. Nothing stated at the pre-proposal conference may change the Request for Proposals unless a written addendum is made by the Procurement Officer.
- (7)
  - (a) Each addendum to a Request for Proposals shall be identified as such and shall require that the offeror acknowledge its receipt. The addendum shall reference the portion of the Request for Proposals that it amends.
  - (b) Each addendum shall be sent to all prospective offerors who are sent a Request for Proposals or who are known to the Procurement Officer to have obtained the solicitation documents. Electronic transmission of a pre-proposal conference satisfies the requirements of this regulation.
  - (c) Each addendum shall be distributed within a reasonable time to allow prospective offerors to consider them in preparing their proposals. If the time and date for receipt of proposals does not permit preparation, the time shall be increased to the extent possible.
  - (d) Any proposal received at the place designated in the solicitation after the time and date set for receipt of bids is late. Any request for withdrawal or request for modification received at the place designated in the solicitation after the time and date set for receipt of proposals is late.
- (8) A late proposal, late request for modification, or late request for withdrawal shall not be accepted or considered.
- (9) Proposals shall be held in a secure place until the established due date. Proposals may not be opened publicly but shall be opened in the presence of at least two City Schools Procurement staff. After the established due date, a register of proposals shall be prepared that identifies each offeror.
- (10) The identity of an offeror may not be disclosed before the Procurement Officer makes a recommendation to award the contract pursuant to Section 3-104(12) of this Regulation. After contract award, only the proposal of the winning vendor shall be open to public inspection.
- (11) A written determination of non-responsibility of an offeror may be made by the Procurement Officer and made available to the offeror. The failure of an offeror to

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promptly supply information with respect to responsibility may be grounds for a determination of non-responsibility with respect to such offeror.

- (12) (a) Information furnished by an offeror pursuant to this Section shall not be disclosed to outside sources until after Contract award by the Board. In addition, prior written consent of the offeror is required if the offeror has specifically identified the information as Confidential Information. The release of information is also governed by Section 1-401 of these Administrative Regulations.
- (b) Where Confidential Information is sought from the City Schools, the offeror is placed on notice that the offeror shall defend the grounds of the non-release by the City Schools where the non-release is due to a claim by the bidder of Confidential Information.
- (13) The evaluation of proposals shall be based on the evaluation factors set forth in the Request for Proposals and developed from both the statement of work and price.
- (14) Technical proposals and price proposals shall be evaluated independently of each other.
- (15) Proposals are evaluated by an evaluation committee. All information pertaining to the evaluation process (names of committee members, evaluation sheets, minutes of evaluation committee meetings, etc.) shall be held in strict confidence by Committee members and City Schools, both prior to and subsequent to final contract award.
- (16) (a) When more than one proposal has been received for a procurement, the evaluation committee, with approval from the Procurement Officer, may initially classify the proposals:
  - (1) Reasonably susceptible of being selected for award; or
  - (2) Not reasonably susceptible of being selected for award.
- (b) Offerors judged by the Evaluation Committee not to be responsible or offerors whose proposals are classified as not reasonably susceptible of being selected for award shall be so notified.
- (17) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All responsible offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best

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and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (18) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Board taking into consideration price and the evaluation factors set forth in the Request for Proposals. The contract file shall contain the basis on which the award is made by the Director.
- (19) (a) Notice of the intent to award the contract will be provided with reasonable promptness by written notice by the Director to the selected offeror and to unsuccessful offerors.
  - (b) With regard to contracts for \$25,000.00 or more, that require the approval of the Board, the actual and final award shall be made by the Board. The decision of the Board is final.
- (20) (a) Unsuccessful offerors may be debriefed upon receipt of a written request submitted to the Procurement Officer within seven (7) calendar days of notification of non-selection. The debriefing shall be conducted by a Procurement Officer familiar with the rationale for the selection decision and contract award.
  - (b) The debriefing shall:
    - (1) Be limited to discussion of the unsuccessful offeror's proposal and may not include discussion of a competing offeror's proposal;
    - (2) Be factual and based on the evaluation of the unsuccessful offeror's proposal; and,
    - (3) Provide information on areas on which the unsuccessful offeror's technical proposal was deemed weak or deficient.
  - (c) Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of an evaluation committee, but may include a summary of the Procurement Officer's rationale for the selection decision and recommended contract award.
  - (d) A summary of the debriefing for procurements over \$200,000 shall be made a part of the contract file.
- (21) A Request for Proposals may be canceled, or any or all bids or proposals may be rejected in whole or in part when it is in the best interests of the Board.

**3-105 Comparison of Invitation For Bid vs. Request For Proposal**

- (1) Under an Invitation for Bid, judgmental factors may be used only to determine if the supplies, equipment, or construction item bid meet the purchase description.
- (2) Under a Request for Proposal, judgmental factors may be used to determine not only if the items being offered meet the purchase description but may also be used to evaluate competing proposals.
- (3) The effect of this different use of judgmental evaluation is that under an Invitation for Bid, once the judgmental evaluation is completed, award is made on a purely objective basis to the lowest responsive and responsible bidder.
- (4) Under a Request for Proposals, the quality of competing products or services may be compared and trade-offs made between price and quality of the products or services offered, as set forth in the request for proposal. Award under Request for Proposals is then made to the responsible offeror whose proposal is most advantageous to the Board.
- (5) Under an Invitation for Bid, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances as described in Section 3-103 (10).
- (6) The Request for Proposals method permits discussions after proposals have been opened to allow clarification and changes in proposals provided that adequate precautions are taken to treat each offeror fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors.

### **3-106 Sole Source**

- (1) A sole source procurement is a procurement in which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility.
- (2) A contract may be awarded for a supply, equipment, school building construction or improvement, services, or certain professional services, without a competitive source selection when:
  - (a) Section 5-112 of the Maryland Annotated Code, Education Article, and Maryland Financial Reporting Manual applies;
  - (b) The Director determines that there is only one available source;
  - (c) The CFO determines it to be in the best interests of the Board to negotiate the renewal of an existing real property lease without soliciting other proposals;

- (d) The CEO, in writing, determines it to be in the best interests of the Board to award the contract without competitive source selection; or
- (e) The Board requires the professional services of a contractor in connection with actual or potential litigation, legal matters, appraisal of real property, collective bargaining, expert testimony or the services of an expert, or services related to administrative hearings.

### **3-107 Negotiation in Sole Source Procurement**

The Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

## **Part B – Emergency Procurement**

### **3-201 Application for Emergency Procurement**

An “emergency” means a sudden or unexpected happening or unforeseen circumstance that calls for immediate action to protect public health, safety or welfare or to procure needed supplies, equipment or services to prevent the disruption or interference with the educational programs of the City Schools. Emergency procurements are permissible for procurement of supplies, services, maintenance, commodities, construction, or construction-related services, when an Invitation for Bid or a Request for Proposals cannot be used in awarding or modifying a contract within the time constraints imposed by the emergency. Emergency procurements are not permissible for field change orders incidental to construction contracts.

### **3-202 Emergency Procurements**

- (1) **Scope:** An emergency procurement must be limited to the procurement of only the types of items and quantities of items necessary to avoid or to mitigate serious damage to public health, safety, and welfare or to procure needed supplies, equipment or services to prevent the disruption or interference with the education programs of the City Schools. Emergency procurements shall not exceed one-year unless the City Schools is involved in litigation with a party contesting the emergency procurement.
- (2) **Authority:** The Director may award an emergency contract or make an emergency contract modification, only, with the written approval of the CEO.
- (3) **Source Selection:** The procedure used shall assure that the required items are procured in time to meet the emergency. Given this constraint, such competition as is possible and practicable shall be obtained.



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- (4) **Record and Review of Emergency Procurement:** A record of each emergency procurement must be made as soon as practicable and shall include:
- (a) the basis and justification for the emergency procurement, including the date the emergency first became known;
  - (b) a listing of supplies, services, maintenance, commodities, construction, or construction-related services procured;
  - (c) the names of all persons solicited and/or a justification if the solicitation was limited to one person;
  - (d) the prices and times of performance proposed by the persons responding to the solicitation;
  - (e) the name of and basis for the selection of a particular contractor;
  - (f) the amount and type of the contract or contract modification;
  - (g) the identification number, if any, of the contract file.
- (5) **Notice of Emergency Procurements**

An action agenda item must be forwarded to the Board within 30 days of contract award or contract modification.

**Part C – Contract Modifications**

**3-301 Contract Modifications (Fixed Price Contracts)**

- (1) *Contract Modification* means any written alteration in specifications, delivery point, date of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract. It includes change orders or contract amendments.
- (2) Any Contract modification greater than \$25,000 or more requires the approval of the Board.
- (3) Any Contract modification less than \$25,000 requires the approval of only the Director.
- (4) Contract modification to extend the period of performance requires the approval of the Director.

- (5) Contract modifications that result in a contract exceeding \$25,000 during the contract period require the approval of the Board.
- (6) Contract modifications that result in a vendor name change, requires the approval of the Director.

### **3-302 Contract Modifications (Requirements Contracts and Time & Materials Contracts)**

- (1) Contract modifications to requirement contracts up to \$50,000 require the approval of the Director.
- (2) Contract modifications to requirements contracts over \$50,000 and under \$100,000 require the approval of the Director with concurrence of the CFO.
- (3) Contract modifications to requirements contracts over \$100,000 require the approval of the Board.

## **Part D – E-rate Procurements**

### **3-401 E-rate Program**

- (1) The “E-Rate” Program is a program administered by The Schools and Libraries Program of the Universal Service Fund which makes discounts available to eligible schools and libraries for telecommunication services, Internet access, and internal connections. The program is intended to ensure that schools and libraries have access to affordable telecommunications and information services.
- (2) Procurements executed under the E-rate program must be an open and fair competitive bidding process and price must be the primary factor when selecting vendor.
- (3) E-rate procurements can be processed in two ways: Competitive Sealed Bidding or Competitive Sealed Proposals.

### **E-rate Competitive Sealed Bidding**

- (1) The E-rate Competitive Sealed Bidding process is very similar to the Competitive Sealed Bidding process defined in the Administrative Regulation Section 3-103. The only definitive differences are bidding time, when the award can be made, and the mandatory requirement to submit various e-rate forms at various times.
- (2) Public notice of the Invitation for Bids (“IFB” or the “solicitation”) shall be given

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Adopted 6/9/2009

Revised 9/13/2011

at least 28 days before the bids are due. The bids are to be advertised in at least one newspaper of general circulation in the City of Baltimore or an electronic bid board.

- (3) Form 470 (Description of Services Requested and Certification) must be filed with the Universal Service Administration Company (USAC) prior to or on the same day the solicitation is made public so that USAC may post the 470 on its website for 28 days. *Failure to submit Form 470 will deem the procurement e-rate ineligible.*
- (4) Contractors must obtain a Service Provider Identification Number (SPIN #) in order to respond to a 470 Solicitation on the USAC website (refer to <http://www.usac.org/sl/providers/>).
- (5) Pre-bid conference may be conducted by the Procurement Officer to allow prospective bidders the opportunity to become familiar with the solicitation and to ask any questions.
- (6) After the 28 days, bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified in the Invitation for Bid, together with the name of each bidder and the amount of the bid, shall be read aloud, recorded and shall be open to public inspection.
- (7) Award shall be made to lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. *Award can NOT be made until after the 28 day waiting period. Any awards made prior to the 28 day waiting period will deem the procurement e-rate ineligible.*
- (8) Notice of the intention to award a contract will be provided with reasonable promptness by written notice from the Director or designee to the recommended vendor as well as the unsuccessful bidders. The actual and final award of the contract shall only be made by the Board.
- (9) Once the Board has approved the Contract, City Schools must file Form 471 (Services Ordered and Certification Form) with USAC. *Any 471 submitted without a signed contract will deem the procurement ineligible for services.*
- (10) City Schools Procurement must save all documentation pertaining to the competitive bidding process and vendor selection for five (5) years from last day of service. City Schools procurement must certify and acknowledge on both the 470 and 471 forms that they may be audited and that they must retain all records that can verify the accuracy of information provided.

**3-403 E-rate Competitive Sealed Proposals**

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Adopted 6/9/2009

Revised 9/13/2011

- (1) The E-rate Competitive Sealed Proposal process is very similar to the Competitive Sealed Proposal process defined in the Administrative Regulation Section 3-104. The only definitive differences are bidding time, when the award can be made, the mandatory requirement to submit various e-rate forms at various times and award basis.
- (2) Public notice of the Request for Proposals ("RFP" or the "solicitation") shall be given at least 28 days before the bids are due. The RFP is to be furnished to a sufficient number of bidders for the purpose of securing competition.
- (3) Form 470 (Description of Services Requested and Certification) must be filed with USAC immediately upon solicitation being made public so that USAC may post the 470 on their website for 28 days. ***Failure to submit Form 470 will deem the procurement e-rate ineligible.***
- (4) Contractors must obtain a Service Provider Identification Number (SPIN #) in order to respond to a 470 Solicitation on the USAC website (refer to <http://www.usac.org/sl/providers/>).
- (5) Pre-proposal conference may be conducted by the Procurement Officer to allow prospective offerors to become familiar with the solicitation and to ask any questions.
- (6) After the 28 days, technical proposals and financial proposals must be submitted by the offeror in separate sealed envelopes. Proposals may not be opened publicly but shall be opened in the presence of at least two City Schools employees. After the established due date, a register of proposals shall be prepared that identifies each offeror.
- (7) The identity of the offeror(s) nor any other information pertaining offerors' proposals and the evaluation of the proposals may not be disclosed before the procurement officer makes a recommendation of the award.
- (8) An evaluation committee consisting of a minimum of (5) individuals, to include at least one individual from the Information Technology (IT) Department shall evaluate the proposals. Technical proposals and price proposals shall be evaluated independently of each other. Technical proposals are evaluated prior to the price proposals being opened.
- (9) The Evaluation Committee may initially classify the proposals as:
  - (a) Reasonably susceptible of being selected for award;
  - (b) Not reasonably susceptible of being selected for award.

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- (10) Offerors judged by the Procurement Officer not to be responsible or offerors whose proposals are classified as not reasonably susceptible of being selected for award shall be so notified.
- (11) Interviews/Oral Presentations may be held with the offerors who are reasonably susceptible of being selected for award to assure full understanding of City Schools' requirements of the qualified offerors proposals and abilities to perform and obtain the best price.
- (12) Qualified offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions, negotiations, and clarification of proposals. The procurement officer shall establish procedures and schedules for conducting discussions. If discussions indicate a need for substantive clarification of or change in the Request for Proposals, the procurement officer shall amend the request to incorporate the clarification or change.
- (13) Upon completion of all discussions, the Procurement Officer shall make a determination recommending award of the contract to the responsible offeror whose proposal is determined to be the most advantageous City Schools considering price and the evaluation factors set forth in the Request for Proposals with price being the primary factor. *Award can NOT be made until after the 28 day waiting period. Any awards made prior to the 28 day waiting period will deem the procurement e-rate ineligible.*
- (14) Notice of the intention to award a contract will be provided with reasonable promptness by written notice from the Director or designee, to the recommended vendor as well as the unsuccessful bidders. The actual and final award of the contract shall only be made by the Board.
- (15) Once the Board has approved the Contract, City Schools will be eligible to file Form 471 (Services Ordered and Certification Form) with USAC in accordance with filing window. *Any 471 submitted without a signed contract will deem the procurement ineligible for services.*
- (16) City Schools Procurement must save all documentation pertaining to the competitive bidding process and vendor selection for five years. City Schools Procurement must certify and acknowledge on both the 470 and 471 forms that they may be audited and that they must retain all records that can verify the accuracy of information provided.

**Part E – Types of Contracts**

**3-501 Contracts Types**

- (1) Contracts used by City Schools include, but are not limited to, the following:

- (a) Purchase Orders
  - (b) Fixed-price contracts
  - (c) Time-and-material contracts
  - (d) Quantity contracts
  - (e) Multi-year contracts
  - (f) Multiple award contracts
  - (g) Requirements contracts
- (2) (a) The objective when selecting a contract type is to obtain the best value in the time required and at the lowest cost or price to the City Schools. In order to achieve this objective, the Procurement Officer, before choosing a contract type, should review those elements of the procurement that directly affect the cost, time and risk bearing on the performance.
- (b) Among the factors to be considered in selecting any type of contract are:
- (1) The type and complexity of the procurement;
  - (2) The difficulty of estimating performance costs such as the inability of the City Schools to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
  - (3) The administrative costs to both parties;
  - (4) The degree to which the City Schools shall provide technical coordination during the performance of the contract
  - (5) The effect of the choice of the type of contract on the amount of competition to be expected;
  - (6) The stability of material or commodity market prices or wage levels;
  - (7) The urgency of the requirement; and
  - (8) The length of contract performance.
- (3) Purchase Order means a document authorizing a procurement from a vendor. Upon acceptance by a vendor, the purchase order becomes a contract.
- (4) (a) A fixed price contract is a contract which provides for a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revision of the contract price under stated circumstances. The types of fixed-price contracts are as follows:
- (1) Firm fixed-price contract means a fixed price contract that provides a price that is not subject to adjustment because of variations in the contractor's cost.
  - (2) Fixed-price contract means a contract which places responsibility on the contractor for the delivery of the product or the complete

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Adopted 6/9/2009

Revised 9/13/2011

performance of the services or construction in accordance with the contract terms at the price that may be firm or may be subject to contractually specified adjustments.

- (3) Fixed-price contract with price adjustment means a fixed price contract that provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications.

- (b) A fixed-price contract is appropriate for use when the extent and type of work necessary to meet the City Schools requirements can be reasonably specified and the cost can be reasonably estimated. A fixed-price type contract is the only type of contract that can be used in competitive sealed bidding.

- (5) (a) Time-and-materials contract means a contract that provides an agreed price for materials supplied and labor performed.

- (b) Time-and-material contracts shall state a dollar ceiling that may not be exceeded without the proper authority approval.

- (6) (a) A definite quantity contract means a fixed-price contract that provides for delivery of a specified amount of goods or labor either at specified times or when ordered.

- (b) An indefinite quantity contract means a contract or an indefinite amount of goods or labor to be furnished at specified items, or as ordered, that establish unit prices of a fixed-price type.

- (7) (a) A multi-year contract is a contract that extends more than one year. Unless otherwise provided, a contract for supplies, equipment, services, professional services or construction may be entered into for any period of time deemed to be in the best interests of the Board provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of award. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

- (b) Prior to the utilization of a multi-year contract, it shall be determined that:

- (1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and  
(2) Such a contract will serve the best interests of the Board by encouraging effective competition or otherwise promoting economies in procurement.

- (8) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled at no cost or expense to the Board.
- (9) A multiple award contract is the award of a contract to two or more vendors to furnish the same supplies, or services, where more than one vendor is needed to meet the contract requirements for quantity, delivery, services, availability, or for product compatibility. When a multiple award is made, the City Schools shall order all of its normal requirements for the specified supplies or services from vendors awarded the contract. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards may not be made when a single award will meet City Schools' needs without sacrifice of economy or service.
- (10) A requirement contract means a form of indefinite delivery/indefinite quantity contract where the actual purchase requirements for specific supplies or services during the contract period are filled by the selected vendor(s).

#### **Part F – Determinations and Reports**

##### **3-601 Finality of Determinations**

The determinations made by the Board, CEO, and CFO are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

##### **3-602 Reporting of Anti-Competitive Practices**

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Board and the Office of Legal Counsel.

##### **3-603 Retention of Procurement Records**

- (1) All procurement records (electronic and/or hard copy) shall be retained for five (5) years after the termination date of the contract and shall be disposed of in accordance with procedures established by the Director. All retained documents shall be made available to the Internal Auditor upon request.
- (2) A contractor and such contractor's subcontractors, shall retain and, upon the request of the Board or the Internal Auditor, make available, all accounts, records or documents pertaining to any contracts awarded by the CEO or Board for at least three (3) years after final payment is made or any pending matters are concluded. The Board may audit and inspect all accounts, records or documents maintained by a contractor or by such contractor's subcontractors.



## **ARTICLE 4 - SPECIFICATIONS**

### **4-101 Definitions**

- (1) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, equipment, service, professional service, lease, construction, inspection related service, architectural/engineering service, or information technology equipment or service. It may include a description of any requirement for inspecting, testing, delivering or preparing a supply, equipment, service, professional, lease, construction, inspection related service, architecture/engineering service, or information technology equipment or service for delivery.
- (2) Specifications may not be developed in such a manner as to favor a single vendor over other vendors. When applicable, specifications shall include a statement concerning "brand name or equivalent."
- (3) "Brand name or equivalent" means a specification that is identical in form, fit and function.

### **4-102 Maximum Practicable Competition**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Board's needs, and shall not be unduly restrictive. However the Board reserves the right to specify the quality or nature of the supplies, equipment, construction, construction services, services or professional services that it is seeking to satisfy the City Schools' needs.

### **4-103 Specifications Prepared by Design Professionals**

The requirements of this section regarding the purposes of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

## **ARTICLE 5 - PROCUREMENT OF CONSTRUCTION, CONSTRUCTION MANAGEMENT (CM)/ARCHITECT-ENGINEER**

### **5-101 Definition of Terms Used in this Article**

"Architect-Engineer" are those professional services within the scope of the practice of construction management, architecture or professional engineering as defined by the laws of the State of Maryland.

### **5-102 Responsibility for Selection of Methods of Construction Contracting and Construction Management**

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Adopted 6/9/2009

Revised 9/13/2011

- (1) The Board may contract with an external vendor the responsibility for construction contracting and construction management for the school system. The external vendor shall be bound by the requirements of these Administrative Regulations and the vendor's contract.
- (2) If the Board retains the responsibility for construction contracting and construction management, the Director shall promulgate Administrative Regulations providing for as many alternative methods of construction contracting and construction management as it may determine to be in the best interest of Board. These Administrative Regulations shall:
  - (a) set forth criteria to be used in determining which method of construction contracting and construction management is to be used for a particular project;
  - (b) grant to the CFO, or designee, the discretion to select the appropriate method of construction contracting and construction management for a particular project; and
  - (c) require the CFO to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

### **5-103 Pre-qualification of Vendors**

For architectural and engineering contracts:

- (1) Prospective vendors may be pre-qualified for particular types of supplies, equipment, services, professional services or construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified vendors.
- (2) Pre-qualification is not a conclusive determination of responsibility.
- (3) A pre-qualified bidder or offeror may be rejected as non-responsible on the basis of subsequently discovered information and may be removed as a pre-qualified bidder without undergoing the debarment process.
- (4) A prior failure to pre-qualify will not bar a subsequent determination that a bidder or offeror is responsible with respect to any given procurement.

### **5-104 Bid Security**

- (1) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the CFO to exceed \$100,000.00. Bid security shall be a bond provided by a surety company authorized to do business

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Adopted 6/9/2009

Revised 9/13/2011

in Maryland, or the equivalent in cash, or otherwise supplied in a form satisfactory to the CFO. The CFO may require bid security on construction and construction management contracts under \$100,000.00 when the CFO determines that circumstances warrant the bid security.

- (2) The bid security shall always be in an amount equal to 2 % of the bid.
- (3) When the Invitation for Bids requires security, noncompliance rules requires that the bid be rejected unless the CFO determines that the bid fails to comply in a non-substantial manner with the bid security requirements.
- (4) The bidder shall not be allowed to withdraw its bid after the bid opening and shall forfeit its bid security.
- (5) Bid security may also be required for other solicitations as determined by the CFO or designee.
- (6) City Schools may require performance and payment bonds in other contract in excess of \$100,000 at the discretion of the Director.

### **5-105 Performance and Payment Bonds**

- (1) When a construction contract is awarded in excess of \$100,000.00, the following bonds or security shall be delivered to the Board and shall become binding on the parties upon the execution of the contract:
  - (a) a performance bond satisfactory to the Board, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the Board, in an amount equal to 100% of the price specified in the contract, and
  - (b) a payment bond satisfactory to the Board, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the Board, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.
- (2) When a construction contract is awarded and the contract price exceeds \$50,000.00, but is less than \$100,000.00, an acceptable performance and payment bond for fifty percent (50%) of the amount of the contract shall be delivered to the Board and shall become binding on the parties upon the execution of the contract.
- (3) The CFO may reduce the amount of performance and payment bonds to a minimum of 50% of the contract price for each bond and with the Board's

approval may reduce the amount of the performance and payment bonds to below 50%.

- (4) Nothing in this section shall be construed to limit the authority of the Board to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in this section.
- (5) Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction where the contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing the suit. The obligee named in the bond need not be joined as a party in any such suit.

#### **5-106 Bond Forms and Copies**

- (1) The Director shall determine the form of the bonds required by these Administrative Regulations.
- (2) Any person may obtain a copy of the bond required by these Administrative Regulations, from the CFO, upon payment of \$25.00. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

#### **5-107 Construction Management/Architect-Engineer Services Consultant Selection Procedures**

- (1) The Consultant selection procedure is used to procure services that will provide the highest quality and maximum value to City Schools. The City Schools shall advertise the solicitation to attract the most qualified firms. The City Schools will ensure an open, fair, competitive and documented consultant procurement process. The City Schools will develop a work scope and fee structure jointly with the firm to maximize the value to City Schools in terms of schedules, cost, construction, project management and building technology. The program manager/construction manager may serve as an advisor, as an agent or as a design-builder depending on the delivery approach agreed upon by City Schools and the selected firm. The program manager (PM) may be hired by City Schools for a particular project or facility program to come in and act as an owner's representative to manage the project architect, construction manager and contractor. The construction manager (CM) may be hired by City Schools to oversee such project and/or construction specific issues as schedule, cost, construction, project management and building technology.
- (2) Firms will be solicited in the areas of program management and/or construction management services as needed. Interested firms will submit written information in enough detail, as well as the applicable wage rates for each discipline; the

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Adopted 6/9/2009

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information will allow City Schools' Review Panel to determine their qualifications. The Review Panel will be comprised of a cross functional team depending on the specific requirements of the RFP. The role of the panel members will be to review, evaluate and rank each proposal for the basis of short-listing and consultant selection.

- (3) The City Schools shall place advertisements in appropriate publications indicating a request to procure consultant services. Interested firms will be requested to provide an Initial Technical Proposal Form 254 (which is an Architect-Engineer and Related Services Questionnaire). The purpose of the advertisement is to establish a list of pre-qualified consultants based on:
  - (a) being lawfully engaged in the practice of those professions;
  - (b) the P/CM is qualified to perform services;
  - (c) submission of qualification resumes; and
  - (d) other performance data on file or requested by City Schools.
- (4) The Review Panel, subject to the Board's approval, shall establish a pre-qualified listing of firms for projects where the fees are estimated to be less than \$200,000.00.
- (5) For fees estimated to be less than or equal to \$200,000, the Department of Facilities Planning and School Construction or the Department of Facilities Maintenance and Operations will select a firm on a rotating basis, negotiate the terms, conditions and compensation with a firm from the on-call listing.
- (6) On a semi-annual basis, the Department of Facilities will produce and deliver a report to the CEO and the Board that includes the vendor name, projects assigned (with fees), total value of work assigned and MBE/WBE utilization. The Department of Facilities will share the report, bimonthly, with the Facilities and Capital Budget Committee. The report will also list the specific vendors considered for each project and indicate the vendor selected to be awarded a contract.
- (7) All proposals exceeding \$200,000 must be approved by the Board.
- (8) For projects where the fees are estimated by the Department of Facilities to be greater than \$200,000, the Director of Facilities Planning and School Construction or the Director of Facilities Maintenance and Operations will develop the scope of work and, through the Materials Management Office, develop an RFP, solicit requests for Forms 254 and 255, and encourage a competitive process.

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Adopted 6/9/2009

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- (9) A Review Panel will be convened to review the proposals. The membership of the Panel will consist of City Schools staff and individuals external to the school system with particular expertise in program/construction management and general contracting.
- (10) Only those program or construction management firms that are short-listed based on their technical proposal will be requested to attend an interview with the Panel. The focus of the interview shall be primarily on the following items:
  - (a) The firms' understanding of the project challenges;
  - (b) How the firms would apply its experience and technical expertise (qualifications) to address these challenges; and
  - (c) How the firms' services would provide benefits to the City Schools in project programming effectiveness, efficiency, maintainability, life cycle and construction cost control, and external impacts.
- (11) The interviews will consist of a technical presentation and a question-and-answer session, after which the panel will discuss and rank the firms in order of their qualifications and presentation.
- (12) Cost proposals will be submitted seven (7) days after the interview process is completed.
- (13) The Review Panel shall make a recommendation to award contract to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Board, taking into consideration price and the evaluation factors set forth in the Request for Proposal.
- (14) The Board may utilize the Mayor and City Council's established Administrative Regulations governing the selection of architect-engineer and land surveying services.
- (15) The Director, or designee, shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation, which is determined in writing to be fair and reasonable to the Board. In making this decision, the Director, or designee, shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Director, or designee, be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a fair and reasonable price, the negotiations with that firm shall be formally terminated and negotiations with the second, and if necessary, the third most qualified firm shall commence. Should the Director, or designee, be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, additional firms shall be selected and ranked,

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Adopted 6/9/2009

Revised 9/13/2011

and negotiations shall continue until an agreement with a firm is reached or the procurement is withdrawn by the Director.

**ARTICLE 6 – REPEALED**

**ARTICLE 7 - REPEALED**

## **ARTICLE 8 - SUPPLY MANAGEMENT**

### **Part A – Definitions**

#### **8-101 Definitions of Terms used in this Article**

- (1) *Excess Supplies* means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the Using Department in possession of the supplies.
- (2) *Expendable Supplies* means all tangible supplies other than non-expendable supplies.
- (3) *Non-expendable Supplies* means all tangible supplies having an original acquisition cost of over (\$ 100) per unit and a probable useful life of more than one year.
- (4) *Surplus Supplies* means any supplies other than expendable supplies no longer having any use to the City Schools. This includes obsolete supplies, scrap materials, and non-expendable supplies that have completed their useful life cycle.

### **Part B - Administrative Regulations Required**

#### **8-201 Supply Management Regulations Required**

The Director may promulgate procedures governing:

- (1) The management of supplies during their entire life cycle;
- (2) The sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by the requirements of the Director.
- (3) Transfer of excess supplies.

### **Part C - Proceeds**

#### **8-301 Allocation of Proceeds from Sale or Disposal of Surplus Supplies**

Proceeds from the sale, lease, or disposal of surplus supplies will be revenue to City Schools' general fund and will be allocated in accordance with standard budget procedures.



## **ARTICLE 9 - LEGAL AND CONTRACTUAL REMEDIES**

### **9-101 Authority to Resolve Protested Solicitations and Awards**

#### **(1) Right to Protest**

Any bidder or offeror who responds to a solicitation and is aggrieved in connection with the solicitation or notice of intent to award a contract may protest to the Director. The protest shall be submitted, in writing, to the Director within five (5) business days after the basis for protest is known or should have been known, whichever is earlier.

- (a) A notice of protest that is not filed within this timeframe shall be dismissed by the Director.
- (b) A protest that is filed after the Board has approved the award shall be dismissed by the Director.
- (c) A protest that is filed when City Schools utilizes/piggybacks an existing Contract shall be dismissed by the Director.
- (d) Should a protest be dismissed for enumerated reasons (a) through (c), such dismissal is not appealable.

#### **(2) Form**

The written protest shall include, at a minimum the following:

- (a) The name and address of the protester,
- (b) Appropriate identification of the RFP or Bid;
- (c) A statement of reasons for the protest; and
- (d) Supporting exhibits, evidence, or documents to substantiate the reasons for the protest unless not available within the filing time, in which case, the expected availability dates shall be indicated. In all cases, supporting documentation must be provided by the Level I conference.

#### **(4) Request for Information**

Upon receipt of the protest, the Director may request information from the protestant. All requested information shall be submitted within five (5) business days after receipt of request or such other reasonable time as the Director may specify as necessary to expedite the protest. Failure of any party to comply with a request for information from the Director may result in a resolution of the protest, without consideration of any requested documents.

**(5) Protest Conference**

The CFO, , or a designee, shall have the authority to settle and resolve a protest of an actual bidder or offeror. Every effort should be made by the CFO or designee to schedule the Protest conference within five (5) business days after the filing of the protest. A written decision shall be issued within one business day of the conference. The decision shall:

- (a) state the reasons for the action taken; and
- (b) inform the parties of their right to file exceptions ("Exceptions") as provided in these Administrative Regulations

**(6) Notice of Decision**

A copy of the decision under Subsection (5) of this Article, shall be mailed by certified mail to the protestant. The decision of the CFO or designee shall be final unless timely exceptions are filed pursuant to Section 7.

**(7) Written Exceptions**

- (a) Within five (5) business days after receipt of the decision from the CFO or designee, the Protestant may file written exceptions to the Director
- (b) Failure to file timely written exceptions to the Director shall render the CFO or designee's decision final from which there lies no appeal.
- (c) Any response to the written exceptions shall be filed within ten (10) business days of receipt of the exceptions.
- (d) The proposed decision of the CFO or designee, and any written exceptions filed, and any responses thereto may be considered by the Board at an executive session. The Board shall accept, reject, remand or modify the proposed decision of the CFO or designee at a public board meeting. The Board's decision shall be final and rendered in accordance with 9-101 (9).

**(8) Stay of Contract award under protest**

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Adopted 6/9/2009

Revised 9/13/2011

In the event of a timely protest, the Board shall not proceed further with the solicitation or with the award of the contract under protest unless:

- (b) the CEO has issued a written determination lifting the stay and awarding the contract without further delay because it is necessary to protect the substantial interest of the school system.

### **(9) Final Order**

A written final order from the Board shall be provided by the Board Executive to the Protestant, the CEO, Director and CLC. The final order shall include:

- (a) A brief description of the controversy; and
- (b) A statement of the decision, which may make reference to supporting material.

## **9-102 Authority to Debar**

- (1) After reasonable notice to the party involved and reasonable opportunity for that party to be heard, but within 60 days of notice, the Director after consultation with the Using Department and the Office of Legal Counsel, shall have the authority to debar a party for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years unless the Board agrees to a time period of more than three. (3) years. .
- (2) The causes for debarment includes, but not limited to, the following:
  - (a) conviction for commission of a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - (b) conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously or directly affects responsibility as a contractor with the Board;
  - (c) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals;
  - (d) violation of contract provisions, as set forth below, of a character which is regarded by the Director to be so serious as to justify debarment action :

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Adopted 6/9/2009

Revised 9/13/2011

- (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance was caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment ;
  - (e) any other cause the Director determines to be so serious and compelling as to affect responsibility as a contractor with the Board and/or school system, including debarment by another governmental entity for any cause; and
  - (f) for violation of the ethical standards set forth in these Administrative Regulations.
- (3) The Director shall issue a written decision to debar. The decision shall:
- (a) state the reasons for the action taken, and
  - (b) inform the debarred party involved of its rights to administrative review as provided in these Administrative Regulations.
- (4) A copy of the decision under Subsection (3) of this Section shall be mailed by certified mail to the debarred party and any other party intervening.
- (5) A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or the debarred party appeals administratively to the Board. The Board may refer the appeal to an administrative hearing officer to conduct an administrative hearing in accordance with the Board's hearing procedures and these Administrative Regulations.
- (6) The Director, or designee, shall maintain a current record of all debarments , which shall include person/entity, debarred, date of action, and date of possible reinstatement.
- (7) The Director shall notify the appropriate State agency as to the debarred party.

**9-103 Remedies**

- (1) The provisions of this Section apply where it is determined administratively or upon judicial review, that a solicitation or award of a contract is in violation of law.

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Adopted 6/9/2009

Revised 9/13/2011

- (2) If, prior to award, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:
  - (a) revised to comply with the law, or
  - (b) canceled.
- (3) If after an award, it is determined that a solicitation or award of a contract is in violation of law, then:
  - (a) if the person awarded the contract has not acted fraudulently or in bad faith:
    - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the school system; or
    - (ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, prior to the termination;
  - (b) if the person awarded the contract has acted fraudulently or in bad faith:
    - (i) the contract may be declared null and void.

## **ARTICLE 10 - INTERGOVERNMENTAL RELATIONS**

### **Part A - Definitions**

#### **10-101 Definitions of Terms Used in this Article**

- (1) *Cooperative Purchasing* means procurement conducted by, or on behalf of more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity.
- (2) *External Procurement Entity* means any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit. An agency of the United States is an External Procurement Activity.
- (3) *Local Public Procurement Unit* means any county, city, town, and any subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and-to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation. This term includes the Board.
- (4) *Public Procurement Unit* means either a Local Public Procurement Unit or any State Public Procurement Unit.
- (5) *State Public Procurement Unit* means the Office of the Chief Procurement Officer and any other Purchasing Agency of any State.

### **Part B - Cooperative Purchasing**

#### **10-201 Cooperative Purchasing Authorized**

The Board, under the direction of the Office of Materials Management, may participate in, sponsor, conduct, utilize, or administer a cooperative purchasing agreement for the procurement of any supplies, equipment, construction services, services or professional services with one or more Public Procurement Units or External Procurement Entity in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but not be limited to, joint or multiparty contracts between Public Procurement Units and open-ended State Public Procurement Unit contracts, which are made available to Local Public Procurement Units. In instances where purchases are in excess of \$25,000, approval of the Board is required. Vendor selection pursuant to 10-201 is not subject to protest as set forth in Article 9.

#### **10-202 Sale, Acquisition, or Use of Supplies by the Office of Materials Management**

The Office of Materials Management may sell to, acquire, or use any supplies or equipment belonging to another Public Procurement Unit or External Procurement Activity independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of these Administrative Regulations.

**10-203 Cooperative Use of Supplies or Services**

The Office of Materials Management may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of these Administrative Regulations, with any other Public Procurement Unit or External Procurement Activity for the cooperative use of supplies, equipment, construction services, professional services or services under the terms agreed upon between the parties.

**10-204 Joint Use of Facilities**

The Office of Materials Management may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit or an External Procurement Activity under the terms agreed upon between the parties. Any such agreement is subject to approval of the Board.

**10-205 Supply of Personnel, Information, and Technical Services**

- (1) *Supply of Personnel.* The Office of Materials Management is authorized, subject to the approval of the CEO, upon written request from another Public Procurement Unit or External Procurement Activity, to provide personnel to the requesting Public Procurement Unit or External Procurement Activity. The Public Procurement Unit or External Activity making the request shall pay the Procurement Office the direct and indirect costs of furnishing the personnel, in accordance with an agreement between the parties.
- (2) *Supply of Services.* The informational, technical, and other services of the Office of Materials Management may be made available to any other Public Procurement Unit or External Procurement Unit provided that the requirements of the Public Procurement Unit tendering the services shall have precedence over the requesting Public Procurement Unit or External Procurement Activity. The requesting Public Procurement Unit or External Procurement Activity shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

**10-206 Use of Payments Received by a Supplying Public Procurement Unit**

All payments from any Public Procurement Unit or External Procurement Activity received by the Office of Materials Management for supplying personnel or services shall be credited to the Education fund, for reuse at the discretion of the Board.

## **ARTICLE 11 – ETHICS IN PUBLIC CONTRACTING**

### **11-101 Definitions of Terms**

- (1) *Blind Trust* means an independently managed trust in which the employee beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (2) *Confidential Information* means any information that is available to an employee only because of the employee's status as an employee of the City Schools and is not a matter of public knowledge.
- (3) *Direct or Indirect Participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (4) *Domestic Partner*, for purposes of this article, means any two people who have chosen to share the common necessities of life as indicated by the sharing of a common legal residence and the commingling of finances as evidenced by, but not limited to, joint accounts, powers of attorney and joint indebtedness.
- (5) *Financial Interest* means:
  - (a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$1,000.00 per year, or its equivalent;
  - (b) Ownership of such interest in any property or business as may be specified by the Board's Ethics Policy; or
  - (c) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (6) *Gratuity* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present, or promised, unless consideration of substantially equal or greater value is received.
- (7) *Immediate Family* means a spouse, children, parents, brothers and sisters, domestic partners, and such other relatives as may be designated by the Board.

### **11-102 Employee Conflict of Interest**



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Adopted 6/9/2009

Revised 9/13/2011

- (1) It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:
  - (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
  - (b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - (c) any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (2) If an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee will not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Board.
- (3) If an actual or potential conflict of interest is discovered, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may request, at the same time that the Board, apply to the Board of Ethics for an advisory opinion as to what further participation, if any, the employee may have in the transaction.
- (4) Notice of this prohibition shall be provided by the Office of Materials Management.

**11-103 Employee Disclosure Requirements**

- (1) Any employee who has, or obtains any benefit from, any Board contract with a business in which the employee has a financial interest shall report the benefit to the CEO, Board, and Board of Ethics. This provision does not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.
- (2) Any employee who knows or should have known of the benefit, and fails to report the benefit to the CEO, Board, and Board of Ethics, is in breach of the ethical standards of this Section.
- (3) Notice of this requirement must be provided by the Office of Materials Management.

**11-104 Gratuities and Kickbacks**

- (1) It is a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any:
  - (a) decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request; or
  - (b) influencing the content of any specification or procurement standard; or
  - (c) rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal.
- (2) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated as an inducement for the award of a subcontract or order.
- (3) The prohibition against gratuities and kickbacks prescribed in this Section must be conspicuously set forth in every contract and solicitation.

**11-105 Prohibition Against Contingent Fees**

- (1) It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Board contract: upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- (2) Each person, before being awarded a Board contract, shall represent, in writing, that such person has not retained anyone in violation of subsection (a) of this section. Failure to do so constitutes a breach of ethical standards.
- (3) The representation prescribed in subsection (b) of this section must be conspicuously set forth in each contract and solicitation.

**11-106 Use of Confidential Information**

It is a breach of ethical standards for any employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

**11-107 Civil and Administrative Remedies Against Employees Who Breach Ethical Standards**

- (1) Civil and administrative remedies against employees that are in existence on the effective date of these Administrative Regulations will not be impaired.
- (2) In addition to existing remedies for breach of the ethical standards of these Administrative Regulations, the Board may impose any one or more of the following:
  - (a) oral or written warnings or reprimands;
  - (b) suspension with or without pay for specified periods of time; and
  - (c) termination of employment.

**11-108 Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards**

- (1) Civil and administrative remedies against non-employees that are in existence on the effective date of these Administrative Regulations will not be impaired.
- (2) In addition to existing remedies for breach of ethical standards, the Board may impose any one or more of the following:
  - (a) Written warnings or reprimands;
  - (b) Termination of transactions; and
  - (c) Debarment or suspension from being a contractor or subcontractor under contracts.
- (4) All Administrative Regulations under this section must be in accordance with due process requirements, including a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a Board contract.

**ARTICLE 12 – MINORITY AND WOMEN'S  
BUSINESS ENTERPRISES**

**12-101 Definitions of Terms Used In This Article**

As used in this article the following terms have the meanings indicated unless the context clearly requires a different meaning:

- (1) *Bidder*: one who submits a bid to the Board in response to an Invitation to Bid or to a Request for a Proposal.
- (2) *Certification*: the process by which the Minority Business Standards Committee determines a firm to be a bona fide minority or women's business enterprise as set forth herein.
- (3) *Chief*: the Chief of the Equal Opportunity Compliance Office of the City of Baltimore (City).
- (4) *Contracting Agency*: the Board or its authorized representative, which issues Invitation for Bids or Request for Proposals.
- (5) *Contractor*: the person, firm, or legal entity with whom the Board has entered into a contract.
- (6) *Control*: the primary power to direct the management and operations of a business enterprise.
- (7) *Joint Venture*: an association that provides for the sharing of economic interest and equal proportionate control over management, interest in capital, and earnings. The Minority Business Enterprise/Women's Business Enterprise joint venture must have proportionate interest in the control, management, and operation of the affairs of the joint venture.
- (8) *Minority Business Enterprise (MBE)*: a sole proprietorship, partnership, or corporation owned, and controlled by minority group member(s) who have at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, and earnings commensurate with the percentage of ownership. To qualify as a minority business enterprise, the enterprise shall be doing business in locality or localities from which the Board regularly solicits, or receives bids on or proposals for Board contracts within the minority business enterprise's category of contracting.
  - (a) *Sole Proprietorship*: a legal entity that is 100% owned, operated and controlled by one minority group member.

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Adopted 6/9/2009

Revised 9/13/2011

- (b) *Partnership*: a legal entity where 51% of the assets and interest in the partnerships owned by one or more minority group members. For MBE purposes, minority group member partners must have a proportionate interest in the control, operation, and management of the partnership affairs.
  - (c) *Minority Corporation*: a legal entity where 51% of each class of the share of stock or other equitable securities is owned by minority group member(s). The minority group member(s) must have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.
- (9) *Minority Group Member(s)*: African Americans, Asian Americans, Native Americans, Latino Americans and Women legally residing in the United States or its territories, as defined:
- (a) *African Americans*: U.S. Citizen or lawfully admitted permanent resident who originates from any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indies.
  - (b) *Asian Americans*: U.S. citizen or lawfully admitted permanent resident who originates from Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
  - (c) *Hispanic Americans*: persons of Mexican, Puerto Rican, Cuban, Spanish, or Central or South American origin regardless of race.
  - (d) *Native Americans*: U.S. citizen having origins in any of the original peoples of North America and who are recognized as "American Indian", by either a tribe, tribal organization, or a suitable authority in the community.
  - (e) *Women*: means U.S. citizens that are female with racial origins of any of the above and Caucasian.
- (10) *MBE/WBE Subcontractor(s)*: an MBE/WBE having a direct contract with the contractor for the performance of a part of the work at the site.
- (11) *MBE/WBE Vendor(s)*: An MBE/WBE that furnishes needed items to the contractor and performs a commercially useful function in the supply process. The vendor must be involved in the manufacture or distribution of the supplies or materials, or otherwise warehouse and ship the supplies.
- (a) *MBE/WBE manufacture* is a firm, which produces goods from raw materials, or substantially alters or fabricates them before resale, and the

MBE/WBE assumes the actual and contractual responsibility for the materials and supplies.

- (12) *Segmentation*: the act of subdividing a contract to provide MBE/WBE's reasonable contracting opportunity.
- (13) *Subcontract*: an agreement between the contractor and another business entity for the performance of work.
- (14) *Women's Business Enterprise (WBE)*: a sole proprietorship, partnership, or corporation owned, operated, and controlled by women who have 51% ownership. The women must have operational and managerial control, interest in capital, and earnings commensurate with the percentage of women ownership. To qualify as a Women's Business Enterprise, the enterprise shall be doing business in a locality or localities from which the Board regularly solicits, or receives bids on or proposals for Board contracts within the women's business enterprise's category of contracting.

#### **12-102 Statement of Policy and Goal**

It is the policy of the Board to increase the use of minority and women's business enterprises to provide goods and services to the Board on a contractual basis. The provisions of the policy shall apply to certain contracts awarded by the Board.

#### **12-103 Duties of the Chief Legal Counsel (CLC)**

- (1) Where feasible, the CLC shall designate a staff person to serve as MBE/WBE Coordinator.
- (2) The CLC, or designee, shall compile, maintain, and make available source lists of MBE/WBE for the purpose of encouraging procurement from MBE/WBE.
- (3) To the extent deemed to be appropriate and as may be required by regulation, the CLC shall include MBE/WBE on solicitation mailing lists.

#### **12-104 Contract Requirements**

- (1) It is the policy of the Board that maximum feasible opportunity be provided to certified Minority and Women Business Enterprises to participate in the performance of Board contracts for goods and services needed by the Board.
- (2) Prior to the issuance of an Invitation for Bids or a Request for Proposals, the CLC shall determine whether the proposal contract is subject to the requirements of this Article.

- (3) When piggybacking method is used, the application of the requirements of this Article shall be a joint decision of the Director and the CLC.
- (4) If the CLC determines that the requirements of this Article apply to an Invitation for Bids or a Request for Proposals that is to be issued, the CLC shall:
  - (a) Determine whether a waiver of the requirements or goals of this Article should be granted; and/or
  - (b) Determine the goals to be established for the intended contract to be awarded.
- (5) The general goal of the Board is, that, in contracts valued at \$25,000 or more, the Awarded Bidder or offeror subcontract a given percentage to certified Minority Business Enterprises ("MBE") and a given percentage of the total contract price to Women Business Enterprises ("WBE").
  - (a) Unless otherwise provided by the CLC, interested bidders must complete the MBE and WBE Information and Utilization Form accompanying the Invitation for Bid and submit it as directed.
  - (b) The CLC or designee, will review and evaluate the submission on behalf of the Board to determine whether the firms listed by the interested Bidder are certified MBE/WBE firms, the percentage of MBE/WBE participation, and whether the interested Bidder has attained the Board's MBE/WBE goals. The CLC or designee will submit its findings and any recommendations to the Board for its review and approval. The Board may accept, reject, or modify any findings or recommendations of the CLC.
  - (c) The Board may grant such exceptions, waivers, and reduction in the MBE/WBE goals as it deems to be in the best interest of the City Schools. The Board, in its capacity as the contracting authority, may also grant exceptions and waivers with respect to the MBE/WBE requirements, as it deems appropriate.

#### **12-105 Compliance with Federal/State Requirements**

Where procurement involves the expenditure of the State of Maryland or federal assistance or contract funds, the CLC, shall comply with such State and/or Federal law and authorized regulations that are applicable.

## EXHIBIT 6



## EXHIBIT 6

### Expected School Building Closures Under 10-Year Plan as of October 1, 2013

	School Building Name School Building Number Address	Anticipated School Program Closure	Building Swing Space Utilization	Building Closure Date	State Bonds Outstanding* Y/N	City Bonds Outstanding* Y/N	School Board Bonds Outstanding* Y/N
1	Garrison Middle # 042 3910 Barrington Road, 21207	2013	3 swing space uses	2023	N	Y	Y
2	Laurence G. Paquin #457 2200 Sinclair Lane, 21213	2013	TBD	2013	Y	Y	Y
3	Patapsco #163 844 Roundview Road, 21225	2013	1 swing space use	2017	Y	Y	Y
4	Waverly Middle (Building) #115 3400 Ellerslie Avenue, 21218	2015	TBD	2015	Y	Y	N
5	Winston Middle #209 1101 Winston Avenue, 21212	2013	1 swing space use	2017	Y	Y	Y
6	Lombard #057 1601 E. Lombard Street, 21231	2013	1 swing space use	2018	Y	Y	Y
7	Harbor City West Building # 413 1001 W. Saratoga Street, 21223	2015	3 swing space uses	2025	N	N	Y
8	Southeast Building # 255 6820 Fait Avenue, 21224	2016	2 swing space uses	2024	Y	Y	Y
9	Alexander Hamilton #145 800 Poplar Grove Street, 21216	2017	2 swing space uses	2022	Y	N	Y

\* Identification of bonds as outstanding (or not) is as of date of anticipated Closure of a School Building and is based on information currently available as of date of the MOU.

## **EXHIBIT 6**

### **Expected School Building Closures Under 10-Year Plan as of October 1, 2013**

	School Building Name School Building Number Address	Anticipated School Program Closure	Building Swing Space Utilization	Building Closure Date	State Bonds Outstanding*	City Bonds Outstanding*	School Board Bonds Outstanding*
					Y/N	Y/N	Y/N
10	Claremont Special Ed. High #307 5301 Erdman Avenue, 21205	2017	TBD	2017	Y	Y	Y
11	Fairmont Hartford Building #456 2555 Hartford Road, 21218	2017	2 swing space uses	2025	N	Y	Y
12	Langston Hughes #005 5011 Arbutus Avenue, 21215	2017	TBD	2017	Y	Y	Y
13	Northwestern High #401 6900 Park Heights Avenue, 21215	2017	2 swing space uses	2023	Y	Y	Y
14	Rognell Heights #089 4300 Sidehill Road, 21229	2017	1 swing space use	2019	Y	Y	Y
15	Samuel B. Morse Elem. #098 424 S. Pulaski Street, 21223	2017	2 swing space uses	2024	N	Y	Y
16	Lakewood Center #086 2625 Federal Street, 21213	2018	TBD	2018	N	Y	Y
17	Lois T. Murray #313 1600 Arlington Avenue, 21239	2018	TBD	2018	N	Y	Y
18	Sarah M. Roach PK -5 #073 3434 Old Frederick Road, 21229	2018	1 swing space use	2020	Y	Y	Y

\* Identification of bonds as outstanding (or not) is as of date of anticipated Closure of a School Building and is based on information currently available as of date of the MOU.

## EXHIBIT 6

### Expected School Building Closures Under 10-Year Plan as of October 1, 2013

	School Building Name School Building Number Address	Anticipated School Program Closure	Building Swing Space Utilization	Building Closure Date	State Bonds Outstanding*	City Bonds Outstanding*	School Board Bonds Outstanding*
					Y/N	Y/N	Y/N
19	Sharp Leadenhall #314 150 W. West Street, 21230	2018	TBD	2018	Y	Y	Y
20	Westside Elementary #024 2235 N. Fulton Avenue, 21217	2018	TBD	2018	Y	Y	N
21	Joseph C. Briscoe #451 900 Druid Hill Avenue, 21201	2019	2 swing space uses	2021	Y	Y	Y
22	Westside (Edmonson Westside Skill Center) #400B 4501 Edmonson Avenue, 21229	2018	TBD	2023	Y	Y	Y
23	Thurgood Marshall #170 5001 Sinclair Lane, 21206	2020	3 swing space uses	2024	Y	Y	N
24	Wm. Pinderhughes #028 701 Gold Street, 21217	2013	2 swing space uses	2020	N	Y	Y
25	William C. March #263 2050 N. Wolfe Street, 21213	2013	2 swing space uses	2020	N	N	N
26	Independence Charter (Modular Unit) #333 1250 W. 36 <sup>th</sup> Street, 21211	2017	TBD	2017	N	N	N

\* Identification of bonds as outstanding (or not) is as of date of anticipated Closure of a School Building and is based on information currently available as of date of the MOU.

## EXHIBIT 7

## **EXHIBIT 7**

The CMP shall contain at a minimum the following categories of information, organized as seen fit by the School Board:

1. Executive Summary
2. An Overview which includes;
  - a. Mission statement and goals.
  - b. History of maintenance of public schools in Baltimore City, including budgetary history:
    - i. Past history
    - ii. Current accomplishments
    - iii. Prognosis
  - c. City Schools unique conditions that affect maintenance such as:
    - i. age of schools,
    - ii. past history of investment,
    - iii. 10-Year Plan,
    - iv. financial and other resources available,
    - v. community impacts such as vandalism,
    - vi. Other.
  - d. Connection between the maintenance program and the capital improvement program, including the projection of capital funding needed to contain the maintenance burden.
3. Definitions:
  - a. Scheduled maintenance:
    - i. Preventative maintenance
    - ii. Life-cycle or predictive maintenance
  - b. Unscheduled maintenance:
    - i. Corrective maintenance
    - ii. Emergency maintenance
  - c. Deferred maintenance
4. Organization:
  - a. Description of City Schools organizational structure for maintenance
  - b. General organizational chart: current and proposed
  - c. Departmental and divisional organizational charts to level of individual trades: current and proposed

- d. Coordination of activities and projects among the maintenance, capital planning, and plant operations departments
  - e. Descriptions of:
    - i. Central office responsibilities and staffing
    - ii. Sub-district or cluster responsibilities and staffing
    - iii. School-based responsibilities and staffing
    - iv. Specialized teams (HVAC, fire prevention, etc.)
- 5. Budget:
  - a. Industry standards (e.g., as established by the Council of Great City Schools)
  - b. Regional or Maryland averages
  - c. Comparable urban school districts
  - d. Comparable large school district(s) in Maryland
  - e. City Schools:
    - i. current budget,
    - ii. budget required to achieve progress toward the metrics established in the Plan
    - iii. sources of revenue, and
    - iv. facility implications of budget shortfalls
- 6. Staffing parameters:
  - a. Industry standards:
    - i. Minimum industry qualifications standards
    - ii. Minimum industry square footage per FTE standards
  - b. Comparable Maryland school systems
  - c. City Schools staff positions:
    - i. Current number and qualifications of positions under each category of work (HVAC, painting, electrical, etc.)
    - ii. Comparison to industry standards (number, qualifications, square footage per FTE)
    - iii. Comparison to comparable Maryland school systems (number, qualifications, square footage per FTE)
    - iv. Schedule for achievement of adequate staffing in each category of work
    - v. Positions currently approved by School Board
- 7. Procedures:
  - a. Facility inspections and full-building audits
  - b. Computerized Maintenance Management System (CMMS)

- c. Work order protocols:
    - i. Scheduled work orders
    - ii. Unscheduled work orders
  - d. Construction/maintenance interface:
    - i. Procedures and protocols (from educational specification to project hand-over and warranty period)
    - ii. Commissioning requirements
  - e. Energy management and conservation practices
  - f. Sustainable maintenance practices
- 8. Training:
  - a. Starting and on-going training for new and renovated schools
  - b. New staff training
  - c. Existing staff refresher training
- 9. Departmental and divisional action plans for upcoming fiscal year
- 10. Appendices:
  - a. Board of School Commissioners policies on maintenance
  - b. State of Maryland regulations on maintenance (COMAR)
  - c. Industry literature
  - d. Glossary of terms
  - e. CMMS protocols
  - f. Inspection protocols
  - g. Standard Operating Procedures (all categories of work)
  - h. Templates for Building Maintenance Plan (BMP) for new, renovated, and existing facilities
  - i. Procedures for the amendment of the CMP and individual BMPs as warranted by changed circumstance.
  - j. Annually: Prioritized list of maintenance and capital replacement projects to be accomplished in the budget year and future fiscal years.
  - k. Other
- 11. Specific metrics of performance for facility maintenance.