Lease-Leaseback Legal Update
New Rules and Best Practices

San Leandro Unified School District
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Presentation Summary

- An overview of the lease-leaseback project delivery method
- The new lease-leaseback contractor selection method



OVERVIEW OF THE LEASE-LEASEBACK DELIVERY METHOD

California School District Procurement Generally

- Bid Limits. California school districts must formally and publicly bid contracts for construction projects over $15,000 (Public Contract Code § 20111), ***unless there is an exception.***
- The good news: you don't have to put out to bid all those projects which are less than $15,000!

LLB Process

- Architect selected through competitive selection process
- Builder/developer selected through competitive selection process
  - Unlike low bid, builder can be selected during design phase and provide input under a preliminary services agreement.

LLB Process

- Builder provides guaranteed maximum price
- Builder agrees to finance a portion of the construction (lease payments)
- After project is completed and occupied by district, district repays builder the financed portion of construction



NEW LEASE-LEASEBACK CONTRACTOR SELECTION METHOD

Best Value Selection Method – Change to Authorizing Statute

- (AB 2316) Since January 1, 2017, lease-leaseback contracts are awarded based upon a competitive selection process to the proposer providing the **best value** to the school district, taking into consideration the proposer's *"demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required".*

Best Value Selection Method – Change to Authorizing Statute

The most significant change is that districts may no longer simply choose a developer for a particular project. Instead, they will be compelled to select the contractor whose bid provides the best value to the district.

STEP ONE: Adoption of Selection Criteria

- New requirement:

The governing board of the school district shall *"adopt and publish required procedures and guidelines for evaluating the qualifications of proposers that ensure the best value selections by the school district are conducted in a fair and impartial manner".*

STEP ONE: Adoption of Selection Criteria

- Competitive Selection Process
  - Prepare standardized prequalification questionnaire, statement of qualifications and rating system for potential prime contractors and MEP subcontractors
  - Prepare procedures and guidelines for evaluating LLB builder. Best value means combination of price and value, must include at a minimum, the elements listed in Ed Code 17406, subs.(a)(2)
  - Prequalification package must be adopted by District's Board of Education

STEP TWO: Prequalification

- All contractors submitting proposals for a project must be prequalified in accordance with the existing mandatory procedure for LLB contractors (PCC sec. 20111.6)
  - Standardized questionnaire
  - Financial statement

STEP TWO: Prequalification

- A school district may either:
  - issue one combination RFQ/RFP,

    or
  - have a separate RFQ followed by a RFP with price information.

STEP TWO: Prequalification

- The prequalification responses are graded in the same manner that prequalification applications are graded, with essential questions which must be answered affirmatively and other questions for which the responses are weighted.
- However, also scored should be the responses to qualification questions regarding best value criteria as well as the specific project requirements.

STEP THREE: RFP Process

- The District issues to the pool of qualified LLB contractors a request for sealed proposals with the award based upon a lump sum bid or the proposer's fee for performing the work.
- Or, if it is a combination RFQ/RFP, it is included in one package.
- Must advertise the way you would a low bid project.

STEP THREE: RFP Process

- The district may request that the proposal include certain subcontracted work.
- The sealed proposals shall be ranked highest to the lowest and the project must be awarded to the highest ranked proposer.

STEP THREE: RFP Process

- The preconstruction services agreement is no longer necessary. Those services may now be performed under the facilities lease.

- Removes a conflict-of-interest issue!

Lease-Leaseback Selection Criteria

Score	Possible Points	Builder A	Builder B	Builder C	Builder D
Selection Criteria					
Price Points	100	70	90	87	86
Technical Expertise	30	20	25	25	25
Subcontractors	35	25	28	25	32
Safety	20	20	20	20	20
Life Cycle	10	10	10	10	10
Schedule	20	15	17	18	18
Staffing	20	15	17	16	17
CHPS	5	4	5	5	5
Energy Savings	5	5	5	5	5
Durability	5	5	5	5	5
TOTAL	**250**	**189**	**222**	**216**	**223**

STEP FOUR: Contractor Selection

- If the award is based upon the proposer's fee, the successful proposer provides district with a written rationale for the price.
- While it appears that an award based upon the proposer's fee was intended to occur in those instances where DSA had not yet approved the design, there is nothing in the new law which specifically limits its use to that circumstance.
- If DSA has not yet approved the design at the time of award, once there is DSA approval, subcontractors are selected and a GMP is finalized.

STEP FOUR: Contractor Selection

- The District approves or rejects the final price at a public meeting before the successful proposer may proceed with any further work.
- The District shall publicly announce its award, along with a statement regarding the basis of the award.

LLB Best Practices
STEP FOUR: Contractor Selection

- The governing board of the District, at its discretion, may reject all proposals and request new proposals.
- If the selected proposer refuses or fails to execute the LLB agreement, the District awards it to the proposer with the second highest best-value score, or, if necessary, continues down the list in order of ranking until a proposer is awarded the project.

Subcontractor Selection Issues

- In awarding subcontracts with a value exceeding one-half of 1 percent of the price allocable to construction work, the contractor shall provide public notice of availability of work to be subcontracted.
  - Must comply with the publication requirements applicable to the competitive bidding process of the school district
  - Must include a fixed date and time on which qualifications statements, bids, and proposals will be due.

Subcontractor Selection Issues

- Contractor awards the subcontract either on a best value basis or to the lowest responsible bidder. Subcontractors must be afforded all the protections of the Subletting and Subcontracting Fair Practices Act.
  - Listed subcontractors must be afforded a hearing unless they consent to the substitution.

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Thank you.

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