

San Diego Unified School District



Best Value Procurement Lease-Leaseback

Facilities Planning and Construction
September 15, 2011

Best Value Legislation

Education Code 17406: Lease-Leaseback (L-LB)

Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term...

Section 17417: After the governing board of a school district has complied with Section 17402, it shall, in a regular open meeting, adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article...

17406 Summary: Competitive bid Public Contracts Code requirements are inapplicable to lease-leaseback arrangements; all other requirements apply.

Lease-Lease Back (L-LB)

- ◆ District leases district-owned real property to the builder
- ◆ Builder constructs the project in accordance with DSA-approved construction documents for a guaranteed maximum price (GMP)
- ◆ District leases back the real property and completed facilities via construction progress payments
- ◆ Leases are terminated upon completion of construction
- ◆ 89 districts in California are using the L-LB delivery method
- ◆ 13 school districts in San Diego County are using the L-LB delivery method

L-LB Advantages

- ◆ Best value selection of contractor L-LB entity
- ◆ Small and emerging business participation can be a L-LB entity selection factor
- ◆ Allows for pre-construction input (contractor and subcontractors)
- ◆ Subcontractor pre-qualification/bidding/selection
- ◆ Scope/price can be negotiated with subcontractors
- ◆ Flexible phasing, scope adjustments
- ◆ Allows development of a good team (owner/contractor/trades/architect/IOR/legal)
- ◆ Establishes contingency for changes

Lease-Lease Back (L-LB) Process

- ◆ Select architect
- ◆ Develop conceptual plans
- ◆ RFQ: select pool of pre-approved L-LB entities (qualification based)
- ◆ Negotiate with one for pre-construction services
- ◆ Board approval of L-LB list and award of contract for pre-construction services
- ◆ RFP to pool: select one for L-LB project development (construction)
- ◆ GMP
- ◆ Validation
- ◆ Board approval/contract award for construction services

Contracts

- ◆ Pre-construction Service Agreement
 - Value engineering, constructability review, preliminary estimates, materials/methods recommendations
- ◆ Site Lease
 - Pre-determined duration
 - \$1/year rent
 - Expires upon natural or premature termination
- ◆ Sub-lease and Construction Services Agreement
 - Plans, specs, terms and conditions
 - GMP, progress payments

Best Management Practices

- ◆ Legal counsel opinion
- ◆ Board resolution approving L-LB on case-by-case basis
- ◆ Independent estimate review
- ◆ Contingency funds included in GMP
 - Owner contingency (unforeseen conditions, enhancements, owner requested changes, errors and omissions)
 - Contractor contingency?
- ◆ Performance and payment bonds
- ◆ Validation

Validation – Preemptive Suit

- ◆ Government Code Section 53982: an action to determine the validity of any resolution ordinance, agreement, or method of financing may be made pursuant to California Code of Civil Procedure Section 860.
- ◆ District requests a judgment from superior court, validating its board actions, lease-leaseback documents (site lease, facilities lease, and construction provisions) and any financing documents.
- ◆ Declares the project to be legally valid
- ◆ Ensures that challenges by outside parties (would-be bidding contractors, disgruntled taxpayers) to the project cannot be made after construction commences.
- ◆ Precludes external delays and injunctions

Test Project L-LB – Proposed Timeline

- ◆ Legal opinion/management approval: *June 2011*
- ◆ RFQ – select pool: *August to October 2011*
- ◆ BOE approval of pool and award of Pre-construction Services Agreement: *November to December 2011*
- ◆ Pre-construction services: *January to June 2012*
- ◆ RFP – L-LB project delivery (construction): *July 2012*
- ◆ Selection: *September 2012*
- ◆ Award: *October 2012*
- ◆ Validation: *October to February 2013*
- ◆ Construction: *18-24 months*
- ◆ Completion: *2015-2016*