

**BOARD REPORT NO. 15-1-2C**

TO: Members of the Board of Trustees

FROM: Ron Galatolo, Chancellor

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**LEASE-LEASEBACK DELIVERY METHOD FOR CAPITAL PROJECTS**

The District has successfully delivered over \$900 million in capital improvement projects over the first two phases of the Capital Improvement Program (CIP). The District has served as a leader in successfully implementing Design Build, an alternative project delivery method to the traditional Design-Bid-Build delivery method. Lease-Leaseback (LLB) is another alternative delivery method that provides many of the advantages of the Design Build delivery method, and offers some additional benefits to the Owner. Staff has worked with Counsel and several sister Community College Districts who have successfully implemented LLB, and has compiled this informational report for the Board's consideration.

LLB is an authorized project delivery method for California Community Colleges pursuant Education Code Section 81335 *et. seq.* The statutory scheme for LLB provides the District with some flexibility in the Contractor selection process, which can be tailored to maximize the opportunity for a successful outcome. Implementation of the LLB delivery method involves direct engagement of the Design Team by the Owner, early engagement of a Contractor selected by the Owner for input during the design phase, and finally, engagement of the Contractor to construct the facility once the design is sufficiently complete to allow reliable pricing. The Owner's direct engagement of the Design Team enhances Owner control of the design throughout the process. Early engagement of the Contractor improves the design process by incorporating a builder's perspective early on, minimizing constructability challenges in the field and resultant change orders. Both design phase cost estimates and final Guaranteed Maximum Price (GMP) — the total cost to construct the facility — are intended to be more reliable thanks to a regular reconciliation process between the independent cost estimator and the Pre-Construction Services Contractor. In the event that the Owner and Contractor cannot agree upon a GMP upon completion of the design, the Owner retains the option to seek competitive bids. The LLB delivery method has been successfully implemented by K-12 districts around the state for a number of years, and several local community college districts have had success with LLB in recent years.

The LLB process involves several steps. Typically, the Owner first engages an architectural firm to develop the plans and specifications for the project. It is ideal for the Owner to select a Contractor early in the design phase to perform preconstruction services throughout the design process. This preconstruction input allows the Contractor to perform constructability reviews to identify any potential conflicts in the plans and / or challenges in constructing the project, and value engineering analysis to better manage the project budget. As the design nears completion, and based upon the joint involvement with the project and the Owner's objectives and budget, the Owner and the Pre-Construction Services Contractor negotiate a GMP to contract for construction. Best Practices include corroborating the proposed GMP pricing by an independent cost-estimator. Once the GMP is corroborated and accepted by the Owner, agreements are executed with the Contractor.

LLB allows for a qualified Contractor selection process based upon published criteria. Clear criteria provide a strong basis for an equitable Contractor selection process, which appeals to reputable Contractors.

The Owner may pre-qualify sub-Contractors in addition to the prime Contractor, and all trades must pay prevailing wage. The Owner can stipulate an open-book sub-Contractor bidding process, which allows the Owner to review actual sub-contract bids. If bids exceed estimates, the Owner has the latitude to require that individual sub-contracts be re-bid. The published Contractor selection criteria together with this open-book sub-Contractor selection create a transparent process.

LLB involves several contractual agreements not utilized in other delivery methods. These include:

- **Preconstruction Services Agreement:** Owner engages the Contractor to provide design phase input relative to constructability, value engineering and sub-contractor trade bid-packaging. Contractor selection is based upon Best Value criteria (including qualification and pricing criteria) developed by the Owner.
- **Construction Services Agreement:** Owner engages the Contractor to construct the project, and includes general conditions which define Owner requirements such as project completion schedule, work-hours, logistics, and the like.
- **Site Lease:** Owner leases the property to the Contractor for the construction phase.
- **Facilities Lease:** Contractor leases the facility back to the Owner. Contractor is paid for the construction through Facility Lease payments which equal the GMP. The Facility Lease duration can vary based upon the project financing arrangements. (Note: staff do not anticipate utilizing LLB as a financing mechanism, the Site and Facility Leases would terminate at or shortly following construction completion and the Owner would take possession of the site and facility).

Although these agreements are not currently in use by our District, staff have compiled templates from various local Community College Districts, met with them and gathered their feedback as to lessons learned, reviewed these with Counsel, and are prepared to incorporate the most successful language for our use. The project management activities based upon these agreements, are substantially similar to those staff have implemented over the first two phases of the CIP. Therefore, staff feel comfortable considering implementation of the LLB delivery method. Based on this due diligence and subsequent comfort level, staff intends to utilize Design Build and LLB as the primary project delivery methods for CIP3.

The San Francisco Bay Area Peninsula is currently considered one the most active construction markets in the country. In this highly competitive market, reputable Contractors are being very selective about which projects they choose to pursue. LLB, as a selection process that fosters collaboration between Owner, Contractor and Architect is very appealing to reputable Contractors. For these reasons, and because LLB incorporates private sector Best Practices and affords greater Owner control of the project, staff believes that the LLB delivery method bears consideration for delivery of key projects for the third phase of the CIP.