

BOARD REPORT NO. 15-8-1C

TO: Members of the Board of Trustees

FROM: Ron Galatolo, Chancellor

PREPARED BY: José D. Nuñez, Vice Chancellor, Facilities Planning & Operations, 358-6836

REPORT ON CONSTRUCTION PROJECT DELIVERY METHOD FOR CAPITAL PROJECTS

In January 2015, staff presented an information report on the Lease-Lease Back (LLB) project delivery method (Board Report No. 15-1-2C) and the benefits that could be leveraged for the third phase of the SMCCCD Capital Improvements Program (CIP3). In June 2015, the Court of Appeal of the State of California Fifth Appellate District issued a ruling in *Davis vs. Fresno Unified School District* finding that Fresno Unified School District's use of LLB did not meet the intent of the enabling legislation. Consequently, staff have consulted with legal counsel relative to pursuing LLB as a construction project delivery method and have determined that, under the current legal ruling, the risks of implementing LLB for the District are significant. It may be years before this matter is adjudicated in the California Supreme Court.

Construction Management at Risk (CMAR) is an alternative construction project delivery method that would afford the District benefits similar to those provided in LLB. The CMAR is selected during the design phase through a qualifications-based Best Value selection process. The CMAR provides preconstruction services including value engineering, constructability reviews, logistics planning, bid document preparation, development of multiple trade bid packages, prequalification of major trade contractors (with District oversight), bidding strategies, and bid review/vetting. The trade contractor bid process is directed by the District and is conducted in an open, competitive, low-bid format assuring compliance with Public Contracts Code. Once the trade package bids have been vetted, the District assigns these contracts to the CMAR who formally holds the contracts with the individual trade contractors. At this point, a Not-to-Exceed (NTX) contract value for the CMAR is established that includes all trade contractor costs, CMAR fees for overhead, field supervision and coordination, general conditions, and specified construction contingencies. All risks for completing the project are carried by the CMAR.

Similar to the Lease Lease-Back delivery method, the CMAR delivery method would afford the District these benefits:

- Direct engagement of the Design Team by the Owner, and hence more control of the design
- Selection of CMAR through qualifications based Best Value process
- Early engagement of a CMAR to provide preconstruction services during the design phase
- Open, competitive bidding process for trade packages that requires prevailing wages

In addition, staff believes the use of the following Best Practices will increase the value for the District:

- Periodic cost reconciliation between the CMAR and the Districts cost estimator
- Pre-qualification of major trade contractors
- Selected rebid of trade packages if necessary to achieve project budget

Although CMAR agreements are not currently in use by our District, staff is compiling templates from various

public agencies and gathering feedback as to lessons learned, reviewing these with Counsel, and will then incorporate the most successful contractual language and requirements. The project management activities based upon these agreements, are substantially similar to those that staff have implemented during CIP1 and CIP2. Swinerton Management & Consulting will continue in its current role as the District's Construction Program and Project Managers throughout the Programming, Design, Construction, Occupancy, and Close-out Phases of the projects.