Lease-Leaseback Projects

FAQs

What is Lease-Leaseback?
The lease-leaseback project delivery method (LLB) has increased in popularity as an alternative option to deliver successful educational construction projects in the state of California. The Lease-leaseback project delivery method was authorized by the state legislature to deliver school facilities on time, on budget and with a reduced level of public risk. California’s Ed Code section 17406 says (in plain language) that:

- A District may lease any real property that belongs to the District to a “person, firm, or corporation,” (the Builder) for $1.00 per year;
- The agreement between the District and the Builder must provide for the construction on of a building or improvement on the District’s property;
- The District may do this without advertising for bids. (What this means is that Districts are authorized under California state law to enter into agreements with partners based on qualification and price to deliver facility improvements. Districts may consider “best value” proposals, similar to procedures associated with procuring other professional services contracts, and avoid the pitfalls associated with ‘low bid’ contracting methods (i.e., bid protests, increased cost of change orders and frequent litigation and associated costs).

Lease-leaseback agreements typically start with a preconstruction services agreement that allows the builder to work with the architect in a team environment during the preconstruction phase to develop an efficient and effective set of drawings for Division of the State Architect (DSA) approval.

Why are the District’s payments to the contractors structured as lease payments?

A significant advantage of lease-leaseback agreements is that they offer school districts flexible financing. As the developer pays for the construction and recoups the cost through the facilities lease, the school district does not have to pay the construction costs at the start or even during the construction phase – the costs are paid through lease payments that extend over several years. As the school district pays for the construction in relatively small increments through lease payments, the district can spread available funds over a variety of projects at one time. In addition, the use of lease-leaseback agreements makes it possible for the District to proceed despite the current, temporary interruption in payment of State school modernization matching funds.

What role does the Board of Education have in lease-leaseback?

First, the Board of Education selects and approves the list of general contractors deemed qualified for lease-leaseback construction services. The Board is also required to approve the lease-leaseback construction agreements for each project.

How is a general contractor selected?

First and foremost, the Board of Education selects and approves a list of general contractors determined to be qualified all facets of lease-leaseback services. Thereafter, for many projects, a competitive Request for Qualifications (RFQ) and/or Proposal (RFP) process is used whereby multiple general contractors from Board approved list may be invited to submit their qualifications and/or proposals for the specific project. In the case of an RFQ, firm qualifications are reviewed by a panel and the general contractor is selected based on experience with similar projects, quality results, performance and responsiveness, financial resources and stability, ability and willingness to work with local subcontractors and suppliers, fee, and other factors.

Depending on the project, a general contractor may be selected from the Board approved list early on in the design process to work with the architect and provide pre-construction services. Some projects do not require pre-construction services and the proposal is for construction only. For a limited number of projects, one general contractor from the Board approved list may be identified to submit a proposal for project scope and pricing in response to a district RFP.

Is competitive bidding and subcontractor participation similar?

Subcontractor bidding is similar for lease-leaseback as with hard bid projects – the work is advertised and competitively bid by the general contractor. The value of the subcontractor work typically represents approximately 90% of the total guaranteed maximum price.

What is the difference between lease-leaseback and traditional hard bid?

Under lease-leaseback, the district is allowed to select a general contractor based on factors in addition to cost. Identification of the general contractor is based on a variety of criteria, the most important of which are quality, performance and cost. The general contractor competitively bids the subcontractor work, and this cost is part of the general contractor’s proposal. Through negotiation between the district and the general contractor, a guaranteed maximum price for the project is established and recommended to the Board for approval. This process provides additional flexibility and control for the district in ensuring quality projects at a competitive price. In the traditional hard bid environment, the district is required to award the project to the lowest responsive, responsible bidder, without regard to quality and performance.

Does the district have the legal authority to use lease-leaseback?

Yes. Lease-leaseback is authorized by Education Code section 17406.