

**Board of Trustees Agenda Item****Board Meeting Date:** December 7, 2009**Title of Item:**

Alternative Delivery Method for Large Measure C Construction Projects

**Background and Analysis:**

Use of a Lease / Leaseback type of procurement for our upcoming Measure C projects entitled Physical Sciences and Engineering Center at Foothill and Mediated Learning Center at De Anza is being evaluated.

Both of these projects are large projects in the \$35M construction value range. Using a CM at Risk type of contract delivery model under the authority of Ed Code Section 81335 has some distinct advantages over the traditional design-bid-build method. Attached is a presentation that summarizes the process and the advantages.

This delivery model requires the preparation of a lease agreement for both the land on which the building will be constructed and for the building itself while in construction. In summary, we would plan to lease the land and the building while in construction to a construction contractor on the condition that the construction contractor build a building in accordance with our DSA approved plans and specifications. We would make lease payments (construction progress payments) with Measure C dollars that are set aside for these projects as work progresses. Upon completion of the construction (~ two years), the lease would terminate.

As shown on the attached schedule, we will bring key documents, including the Request for Proposals, Lease Agreements, and Construction Agreement to the Board over the next several months when these documents have been completed, including legal review, for consideration for approval.

**Recommendation:** Information Only.

Submitted by: **Charles Allen, Executive Director of Facilities, Operations & Construction Management, ext 6150**

Is backup provided? Yes



## Board of Trustees Presentation



### Measure C Lease-Leaseback Delivery Information

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December 7, 2009



## Background

- ❖ Growing problems with excessive change orders, claims, cost overruns, and quality concerns with Design-Bid-Build projects.
- ❖ LLB was "rediscovered" in the late 1990's as a qualifications-based delivery method rather than low bid.
- ❖ Authorized under Education Code section 81335

## Basics

- ❖ A Lease-Leaseback project is a Construction Project. Requirements of a District construction contract are applicable. Contracts include:
  - ✓ Project Stabilization Agreement
  - ✓ Standard Bonds, Insurance and Indemnification
  - ✓ DSA-approved plans and Specifications
  - ✓ DSA Inspector of Record

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## Construction Agreement Documents

- ❖ Agreements typically include:
  - ✓ Ground Lease
  - ✓ Building Lease
  - ✓ Construction Services Agreement
- ❖ The Lease is the instrument that leases the School District's property to the General Contractor
  - ✓ The minimum rental rate is \$1.00 per year
  - ✓ The Lease terminates upon the following events
    - End of the term of the Lease
    - Termination of the Construction Services Agreement

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## Advantages

- ❖ General Contractor selected for best value, capability, financial soundness.
- ❖ Subcontractors and vendors selected for best value also.
- ❖ Guaranteed Maximum Price known before construction begins.
- ❖ Increased timeliness and better quality.
- ❖ Lower total cost.
- ❖ Reduced change orders and claims from design conflicts and omissions (Architect still responsible for correctness of the design).

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## Disadvantages

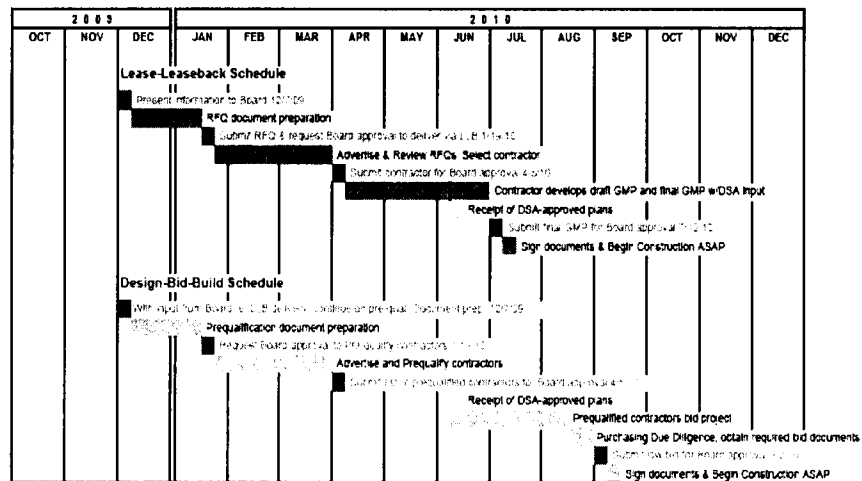
- ❖ Potential confusion due to design “intent” vs. contractors means and methods.
- ❖ Less familiar delivery method.

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## Schedule



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## Testimonials

### Sierra College

- ❖ Used lease/leaseback as a delivery method for 3 local-bond funded projects over the past several years
- ❖ Highly recommend it
  - ✓ It allows for contractor selection based on best value vs lowest bid.
  - ✓ The result is a quality project team that works with the District, not against it

## Testimonials

### Sierra College - continued

#### Recent Lease-Leaseback projects

- ❖ Tahoe-Truckee Campus LEED Gold 28,500 gsf building
  - ❖ Lecture, science, art classrooms,
  - ❖ Library, student area and admin offices
  - ❖ Nov 2009 completion
  - ❖ Rudolph & Sletten is CM/ General Contractor
- ❖ Nevada County Campus 60,000 gsf
  - ❖ 21 classrooms, 7 labs, 50 faculty offices, 9 instructional assistants offices
  - ❖ Turner Construction is CM/ General Contractor
- ❖ Grass Valley Campus 53,000 gsf
  - ❖ Classroom building, central plant, two fine arts buildings and a public safety training facility
  - ❖ Turner Construction is CM/ General Contractor

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## Testimonials

### Yuba Community College District

#### Lease-Leaseback projects in RFP phase

- ❖ Yuba College 40,000 gsf
  - ✓ Allied Health & Public Safety Building
- ❖ Sutter County Outreach Facility 80,000 gsf

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## Testimonials

### Los Rios Community College District

- ❖ Comprehensive legal opinion dated January 2007
  - ✓ Statutory authority for lease-leaseback approach to construction
  - ✓ Overview of Education Code Section 81335 including Legislative history
  - ✓ Addresses specific issues involved
  - ✓ Addresses use of a validation actions
    - Used to minimize possible risk associated with a challenge by a taxpayer or a disgruntled contractor

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## Testimonials

### Los Rios Community College District

- ❖ The Sacramento City College Parking Structure
  - ✓ 540,860 sf
  - ✓ 5 levels
  - ✓ 1,970 stalls
  - ✓ Cast-in-place structure
  - ✓ 15 month construction schedule
  - ✓ Project Status: Complete
- ❖ The Cosumnes River College Parking Structure
  - ✓ 585,577 sf
  - ✓ 5 levels
  - ✓ 2,000 stalls
  - ✓ Cast-in-place structure
  - ✓ 15 month construction schedule
  - ✓ Project Status: Awaiting Final DSA Approval

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## Testimonials

### California State University System

- ❖ Model and Guidelines for construction manager at risk with guaranteed maximum price.
- ❖ Universities can use the CM at Risk with GMAX procurement when they want to obtain delivery of a large and complicated project within a fixed budget and timeline.

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## Testimonials

### Los Angeles Unified School District

- ❖ Has used the lease leaseback procurement for over 20 schools.
  - ✓ The largest is 391,840 sqft, another was 309,000 sq ft
  - ✓ Has used them on smaller schools as well.
- ❖ In the final stages of selecting firms to build 2 more schools
- ❖ Have about 10 more that will be built using this process.

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## Process Comparison

### Design-Bid-Build:

- ❖ General Contractor is selected by lowest bid.
- ❖ No early involvement by the General Contractor with design process.
- ❖ Less time during typical bidding cycle to gather clearly defined and substantiated subcontractor bids.
- ❖ General Contractor has to balance submitting lowest bid with recouping costs via change orders.

### Lease-Leaseback:

- ❖ General Contractor is selected based on specific qualifications and fees.
- ❖ General Contractor has early involvement with design and engineering.
- ❖ General Contractor assumes responsibility for completeness of design documents, reducing change orders and claims from ambiguities or conflicts in the design (Architect still responsible for correctness of the design).
- ❖ Allows work to commence more smoothly with fewer up-front issues to resolve.
- ❖ GMP, based upon competitive bidding of subcontractors, GC markups, and an allowance for change orders, is negotiated.

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## Board of Trustees Presentation



### Measure C Lease-Leaseback Delivery Additional Discussion

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