

Overview of Lease-Leaseback Method of Construction Under Education Code Section 17405



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Presented by:
Lisa R. Allred, Partner

aa/r/r
**Atkinson, Andelson
Loya, Ruud & Romo**
A Professional Law Corporation

What is Lease-Leaseback?

- Best value construction method implemented through a site lease, sublease (leaseback) and construction services agreement
- District leases property to the lease-leaseback contractor
- Lease-leaseback contractor leases the facilities and subleases the property back to the District
- Lease-leaseback contractor constructs the facilities in accordance with the construction services agreement
- District owns the facilities after the construction and after the end of the lease term

Overview of Legal Requirements for Lease-Leaseback Procurement

- Best Value Procurement Required – Competitive RFP Process – Ed. Code 17406.
- Prequalification Required in accordance with Public Contract Code section 20111.6.
- RFP Procurement Process.
- Lease-Leaseback Contract Documents.

New Competitive Procurement Requirements

Best Value Selection - Education Code 17406

- Beginning on January 1, 2017, lease-leaseback contracts shall be awarded based upon a competitive selection process to the proposer providing the best value to the school district, taking into consideration the proposer's "demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required". (Ed. Code section 17406)

Best Value Procurement through Preparation of Request for Proposals (RFP)

- The governing board of the school district shall “adopt and publish required procedures and guidelines for evaluating the qualifications of proposers that ensure the best value selections by the school district are conducted in a fair and impartial manner”.
- Specific questions should be added to address the specific requirements for the school district’s project.

Best Value Procurement

- The RFP must be publicly advertised in the same way a notice to bidders is published for low bid contracts. (See Public Contract Code section 20112).
- RFP must identify all criteria the school district will consider in evaluating the qualifications – relevant experience, safety record, price proposal and other factors specified by the school district.

Prequalification Requirements

- All contractors submitting proposals for a project must be prequalified in accordance with the existing mandatory procedure for LLB contractors.
 - Standardized questionnaire
 - Financial statement
- Recommend following District's standard Prequalification System as a prerequisite to submitting a proposal pursuant to an RFP.

Prequalification Requirements

- Because all lease-leaseback MEP subcontractors must be prequalified, the RFP requires that the proposers must prequalify their subs and submit to the District for approval the names of those subs which will go into a MEP subcontractor pool for District's lease leaseback projects.

RFP Procurement Process

- Two Alternative Ways to Address Price in RFP:
 - The District issues to the pool of qualified LLB contractors a request for sealed proposals with the award based upon a lump sum guaranteed maximum price (GMP).
- Or,
 - If DSA has not yet approved the design (DSA approval is no longer required before entering into LLB leases), the award is based upon the proposer's fee for performing the work.

RFP Procurement Process

- If the award is based upon the proposer's fee, when DSA approval is obtained, the successful proposer provides district with a written rationale for the price.
- District approves or rejects the final price at a public meeting before the successful proposer may proceed with any further work.
- Contract file must contain documentation sufficient to support the final price determination.

RFP Procurement Process

- The District may request that the proposal include certain subcontracted work.
- The sealed proposals shall be ranked highest to the lowest and the project must be awarded to the highest ranked proposer.
- The District may reject all proposals.

Content of RFP

- Notice of RFP
- Description of District and Project
- Instructions to Proposers
- Evaluation Criteria
- Scoring Method of Evaluation Criteria
- Proposed Schedule for Selection and Award of Contact
- Template Contract Terms

Lease-Leaseback Contract Documents

- ✓ Site Lease
- ✓ Facilities Lease-Sublease
- ✓ Construction Services Agreement (CSA) aka Construction Provisions – contains statutory requirements for public works contracts

Other Requirements

- **Subcontractor Selection** – compliance with Subletting and Subcontracting Practices Act (PCC 4100 et seq.)
- **Labor Requirements** – compliance with Skilled and Trained Workforce Requirements (Ed. Code 17407.5)

Benefits of Lease-Leaseback Method

- Team approach in delivering the Project to the District
- Preconstruction services performed by the contractor performing the work can minimize design-related issues during the project
- Flexibility to address project complexities up front
- Minimizes risk of change orders, claims and other course of construction issues
- Provides guaranteed maximum price and project schedule for successful delivery of the project to the District

Question & Answer
Session

Thank You

For questions or comments, please contact:



Lisa R. Allred
(916) 923-1200
lallred@aalrr.com



aalrr

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A Professional Law Corporation

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