



# Lease-Leaseback

## The Continuing Success Story

### Presenters:

Felipe R. Lopez, Chief Business Officer, Compton CC

John P. Dacey, General Counsel, Bergman, Dacey, Goldsmith

Patrick A. Dunn, Partner, AALRR

Shoji Takeshima, Principal, NTD Architecture

Stephen Bachor, PCM3

# Overview

## ◆ Lease-Leaseback

- The Basics
- The Nuances
- Compton Community College – A Success Story

# Applicable Statute

For community college districts, the applicable statute is:

Education code section 81335. The statutes can still be used to build education facilities with private funds. However, it would be wrong to think of the statutes solely as a funding option.

In fact, because of the broad discretion community college districts enjoy under the statutes, it is more correctly thought of today as an alternative delivery method for construction projects.

The discretion is so broad that districts can use direct one on one negotiation to enter into a contract. However, we recommend a different approach. One that blends the best attributes of competitive bidding and one on one negotiations.

# Do's & Don'ts

## Do

- Recognize the broad discretion
- Know all your options
- Have all contracts coordinated
- Build in appropriate safeguards
- Understand the flexibility
- Plan very well to protect the district
- "Own the project" till it is done!

## Don't

- Forget other PCC restraints
- Forget to use common sense
- Rely on others to protect you
- Go it alone with the contractor
- Forget to get good legal input
- Forget to use the "District Team"
- Leave it to others post award!

# The Discretion

- Board leases real property for at least \$1 a year;
- Lease requires construction of a building or improvements for the use of the District;
- Title vests in the District during or at end of the lease term; and
- Leases contain such other terms and conditions as the Board may deem to be in the best interest of the District.

# So What Is It Really?

- The most flexible construction project delivery method available to community colleges; and
- A way to select a very competent and experienced construction firm to build or improve educational facilities based on a contractor's:
  - Qualifications
  - Best Value
  - Successful Experience
  - References

# Advantages of Lease-Leaseback

- Owner hand picks the builder
- Pre-construction services (including vetting & value engineering)
- Project team works in a more collaborative atmosphere
- Greater schedule control / flexibility
- Greater budget control including re-bid on individual trades if necessary = cost savings
- Pre-qualify all trade contractors (subcontractors)
- Competitive pricing in each trade

# Advantages of Lease-Leaseback

- Perceived as more friendly contracting approach by designers, contractors, and subcontractors
- Reduces Change Orders and "Going Back to the Board"
- Significant legal risk reduction if structured properly
- "Open Book" financial approach
- Option of a Validation Action
- Owner can structure award process to meet District needs



# The Nuances

Under lease lease back, the owner can enter into a contract with the contractor (whether drawings are done, partially done; or not done at all) by:

- Direct one on one negotiation;
- Pre-Qualification; Selective Request for Proposals; Negotiations
- No Pre-Qualification; Selective Request for Proposals; Negotiations
- Hiring a contractor and architect team (like design-build);
- Whatever modified version/process is in the best interests of the District

# The Nuances

The Owner can structure the contractor selection process as it desires to meet the owner's needs. Including a rapid process if needed to avoid the loss of funding.

Typically, once the Owner-Legal-Architect-CM Team is in place, a common time line for selection of a construction firm looks something like the following .....

# Contractual Nuances

While there are several key lease provisions required, and while the Construction Provisions (found as an exhibit to the Facilities Lease) are not really out of the ordinary, three such provisions most often asked about are .....

# What are they?

- ◆ Contingency
- ◆ Cost Savings
- ◆ Allowances

Depends on how you define them...

# Generally Speaking....

## Successful Use of LLB Starts With “The Team”

**District and Legal Counsel:** identify goals, approach and docs

**Architect and Construction Manager:** put “meat on the bones”

**Contractor:** performs pre-construction services and solicits trade bids

**Financial Advisor:** if money not on hand and District needs to finance (please see handout regarding financing options)

**Other Consultants:** Real Estate Broker if buying land; CEQA consultant, etc.

# LLB - An Architect's Perspective

- Project team works in a collaborative atmosphere
  - Contractor is involved in design phase
- Benefit of pre-construction services by the Contractor with the Design team
  - Value planning
  - Constructability review
- Early partnership and teaming lowers potential for misunderstanding of project scope
  - Lowers potential for conflicts and change orders

# Compton CCD Case Study





# Compton CCD Case Study



Before and After



# Compton CCD Case Study



Before and After

# Compton CCD Case Study



Before and After

# Compton CCD Case Study



Before and After



# Compton CCD Case Study



Before and After

# LLB - A CM's Perspective

- Establish Project Preliminary budget and schedule
- Issue the RFP and interview General Contractors
- Make recommendation to the District for Best Value GC for the team
- Establish Roles and Responsibilities Matrix
- Set lines of communication and document controls
- 6 week Pre-construction period critical to success of the project
- Worked with the GC to bring in all the subcontractors to walk the building

# LLB - A CM's Perspective

## Development of Scope necessary to:

- Closeout the Original “A” number with DSA
  - 38 outstanding change orders that had to be approved by DSA prior to close out of the old “A” number
  - Brought DSA into the team and developed a solution with them for approval of the new “A” number while still closing out the old A number
- Discover and fix the deficiencies and problems in the building
  - (i.e. electrical and HVAC systems were inadequate, lack of low voltage systems necessary for current technology)
- Once Scope was determined, identified District Priorities and develop strategies for achieving as many as possible
- Finalized and managed Master Budget – only 1
- Finalized and managed Master Schedule with GC buy-in – only 1
- Closeout and certification of both the old and new “A” numbers

# LLB - An Owner's Perspective

## Project Team

- Ability to select project team
  - Legal, Architect, CM, Contractor
- Guaranteed Maximum Price (GMP)
- Limits change orders
- Limits contingency dollars

# LLB - An Owner's Perspective

## Project Type

- Unique Projects
  - Flexibility
  - Hand select specialty general contractor
  - Agreement on total funds available



# LLB - An Owner's Perspective

## Communication

- All parties must be in the loop
  - Weekly meetings
  - Keep board and administration updated
  - Calendar/Timelines



# Questions

# Contact Information

Felipe R. Lopez, Chief Business Officer  
Compton Community College District  
[flopez@elcamino.edu](mailto:flopez@elcamino.edu)

John P. Dacey, General Counsel, Bergman, Dacey, Goldsmith  
[Jdacey@bdgfirm.com](mailto:Jdacey@bdgfirm.com)

Patrick A. Dunn, Partner, AALRR  
[Pgunn@aalrr.com](mailto:Pgunn@aalrr.com)

Shoji Takeshima, Principal, NTD Architecture  
[stakeshima@ntd.com](mailto:stakeshima@ntd.com)

Stephen Bachor, Project Director, PCM3  
[sbachor@pcm3.com](mailto:sbachor@pcm3.com)

# Historically

When funding for community colleges was tight back in the mid 1970's, the statutes were enacted to create a financing option to permit the building of K-14 education facilities with private funds.

However, the statutes *do not require* that private funds be used and whether through oversight or deliberately, the legislature vested broad discretion in K-14 entities to decide how to award and enter into a construction contract under the statutes.

# Education Code Sec. 81335

- ◆ Education Code Section 81335 et. seq. The governing board of a community college district may let, at a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property which belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the community college district during the term thereof, and provides that title to such building shall vest in the community college district at the expiration of such term. Such instrument may provide for the means or methods by which such title shall vest in the community college district prior to the expiration of such term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the community college district.