

San Luis Coastal Unified School District
Minutes of the Measure D Study Session - Friday, October 16, 2015
District Conference Room (B3) - District Administration Complex
1500 Lizzie Street - San Luis Obispo, CA

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These minutes were adopted on November 3, 2015.

1. OPEN SESSION -

1.01 Call to Order/Roll Call

The meeting was called to order at 9:08 a.m., with a quorum. (Mr. Millar and Mr. Quesenberry were not yet present but arrived shortly.*/**)

Members present: Mark Buchman, Kathryn Eisendrath-Rogers, Walter Millar,** Jim Quesenberry,* Ellen Sheffer, Chris Ungar

2. DISCUSSION

2.01 Construction Delivery Method Options

Mr. Pinkerton shared previous discussions held about the decision to pursue the Lease/Lease-Back (LLB) method. A recent legal challenge (Davis v. Fresno) puts this decision into question, necessitating further discussion on the preferred delivery method. Mr. Pinkerton introduced Harold Freiman and Devon Lincoln from Lozano Smith to present a review of the various options. At Tuesday night's Board meeting, attorney Mark Kelley from Dannis Woliver Kelley will present his perspective for the Board.

* Mr. Quesenberry arrived at 9:10 a.m.

Harold Freiman provided his background.

** Mr. Millar arrived at 9:11 a.m.

Devon Lincoln provided her background.

Mr. Freiman explained that a "project delivery method" is how the district will achieve the goals of Measure D to construct the various projects approved. Choosing the right delivery method is integral to ensuring project timeliness, completion, and quality. Each delivery method has its own pros and cons and will impact how local businesses might be favored in the program.

Board members were interested in hearing what steps are possible to reduce the possibility of errors, damages, and eventual litigation. Mr. Freiman told the Board that, in the event of litigation, the legal costs can be paid from Measure D, but would reduce available funds for projects. Conversely, paying those costs from the General Fund would consume funds intended for educational programs. This highlights the critical importance of making the best choice of delivery option and carefully and thoroughly preparing the necessary legal documents.

Design-Bid-Build (DBB) is the default standard in public construction. It involves the selection of an architect, DSA approval of plans, public process for contractor selection, and awarding the bid to the lowest "responsible" bidder. Procedural requirements in DBB involve a process to prequalify the general contractor and three primary subcontractors so the District can preserve eligibility for possible state funding. This step necessarily limits the contractor pool. Districts can choose to prequalify on a project basis, quarterly, or annually. When bids are received, they are analyzed on both price and package content. A bid protest may be filed by other bidders in an effort to overturn the award.

A bid may be deemed "responsive," but a district may feel that a particular bidder is not "responsible." In that event, the Board holds a public hearing to make a decision. Contractors prefer to avoid such a hearing due to the negative publicity it may cause. The downside to DBB is that the district must award to a contractor by virtue of the bid process, who might not be their preferred choice in a negotiated venue.

Ron Holcombe, Measure D Advisor, cautioned that it can be difficult to get a good contractor under DBB when the construction industry is booming.

Pros: competitive bid should equal lowest project cost; limits the appearance of bias in bid awards; commonly understood delivery method; architect represents the district.

Cons: limited flexibility in selecting contractor; potential bid protests; limited time for contractors to review plans; finger pointing between contractor and architect.

Design-Build (DB) creates a single entity for design and construction and includes statutory requirements for prequalification, RFP, and contractor selection. The district would schedule agenda items to review guidelines, conduct a public hearing, and make a choice over delivery method.

Discussion ensued regarding the district's specific needs and the viewpoints of Board members including input from audience members present.

Devan Lincoln reviewed procedural requirements for a DB decision. The best-value responsible bidder would be decided on performance and other criteria (which the district would define). AB1358 impacts the decision, because it lowers the threshold from \$2.5 million to \$1 million effective July 1, 2016. One provision is a requirement to use a percentage of skilled and trained workforce requirement, pushing labor costs higher. This can be done with a Project Labor Agreement (PLA), but this is not required.

Mr. Freiman reviewed LLB which allows contracting without competitive bidding. Historically, this was designed in the 1950s prior to State school funding to provide a financing mechanism to allow public agencies to build with the financial assistance of the builder. The recent legal challenges show that courts are looking at the genesis of the law that would require a true financing component, a genuine lease, occupancy by the tenant, and a prohibition on conflict of interest. Procedural requirements are to obtain DSA approval of plans prior to entering an LLB and use a preconstruction services agreement. Prequalification may also be required. The District may issue an RFP for contractors with no selection process; and the district leases property to the contractor who traditionally leases it back during construction.

Pros: flexibility in selecting preferred contractors; collaborative relationship between architect and contractor; many districts feel LLB reduces overall cost and claims.

Cons: Davis case has created substantial uncertainty; unclear contracting requirements; contractor fear over having to repay all funds received from district.

Construction Management At Risk is illegal under California law.

Multiple Prime - The district hires the architect, who breaks up the project into multiple prime bid packages. The district contracts with multiple prime contractors directly, and projects are competitively bid. The district hires a construction manager (CM) to oversee the multiple projects and contracts.

Pros: CM assumes oversight and management duties. CM often has significant construction oversight knowledge and management capabilities.

Cons: District assumes risks common to general contractor; multitude of contracts creates added administrative work and added complexity.

With Multiple Prime there is no mark-up for the general contractor, but this savings is likely consumed by the fees paid to the CM.

3. ADJOURNMENT - The meeting adjourned at 11:55 a.m., to meet again:

3.01 10/20/15 @ LOMS (Regular Mtg @ 6pm); 11/3/15 @ J2 (Regular Mtg @ 6pm)

Respectfully submitted,

ERIC PRATER, Ed.D., Superintendent and
Secretary to the Board of Education