

## Section 4

# Bond Program Roles & Responsibilities

### Covered in this Section

#### **Roles and Responsibilities**

- A. Board of Education**
- B. Superintendent**
- C. Assistant Superintendent Business Services**
- D. Citizens' Oversight Committee**
- E. Construction and Facilities Department**
- F. Bond Manager**
- G. Design Professional**
- H. Department of State Architect (DSA) and  
DSA Inspector of Record**
- I. Testing Lab**
- J. Contractor**

## ROLES & RESPONSIBILITIES

Roles are the positions team members assume in a particular community or process. Responsibilities are the tasks or duties expected to be completed. Responsibilities include the specific activities or obligations an individual or team are held accountable to manage, track, or complete.

### A. BOARD OF EDUCATION

The Board of Education (BOE) recognizes that one of its major responsibilities is to provide healthful, safe and adequate facilities that enhance the instructional program. The BOE shall endeavor to make the provision of adequate school facilities a priority in the District. Because schools serve as a focal point for the community, the BOE shall also strive to ensure that District facilities fit harmoniously and attractively into their neighborhoods and have flexibility of design to meet future educational and community needs.

The following are the policies of the BOE regarding its role and the Superintendent's role in school facilities adopted March 10, 2009.

The Board shall strive to have a school facilities master plan in place and regularly reviewed in light of the District's educational goals. In accordance with this plan, the Board shall:

- Approve additions or major alterations to existing buildings;
- Determine what new buildings shall be built, when and where, and what equipment shall be purchased for them;
- Determine the method of financing that will be used;
- Select and purchase school sites for future expansion. Approve the selection of architects and structural engineers;
- Award contracts for design and construction; and
- Name schools and individual buildings

### B. SUPERINTENDENT

The role of the Superintendent is to implement the vision of the BOE by making the daily decisions about educational programs, spending, and staff, and to provide for healthful, safe and adequate facilities that enhance the District's instructional program. The Superintendent also responds to the demands of all the other constituencies and interest groups in the District: teachers, students, parents, staff, advocates, and the community at large, while utilizing the financial and human resources of the District to achieve the best results.

The Superintendent or designee shall:

- Assess the District's short- and long-term facility needs



- Direct the preparation and updating of the facilities master plan
- Oversee the preparation of bids and award of contracts
- Supervise the implementation of the District's building program in accordance with the master plan, Board policy, and state and local requirements, including collaboration with the architect and contractor on the construction of new facilities and modernization of existing facilities
- Represent the District in official governmental interactions related to the building program
- Ensure adherence to all applicable laws, codes, and regulations

**To pursue the goals of the District Master Facilities Plan, the BOE delegates authority to the Superintendent as follows:<sup>1</sup>**

- **Procurement of District Contracts and Agreements**

The BOE delegates authority to the Superintendent or his or her designee to procure all District contracts and agreements through appropriate bid and other selection processes, which include, but are not limited to, the preparation of competitive bids, requests for qualifications (RFQs) and/or requests for proposals (RFPs), the issuance of advertisements for such competitive bids, RFQs and/or RFPs, to review bids submitted by contractors and/or vendors, to act as or designate a hearing officer for responsibility hearings and bid protest hearings, to select review and interview panels for RFQ and/or RFP selection processes, to paper screen all responses to the District's RFQs and RFPs, to conduct interviews by the selection panels, to conduct post interview discussions and negotiations with top candidates, to recommend awards to the BOE and to otherwise perform all actions necessary to procure the contracts and agreements needed for the completion of District projects for ultimate consideration and approval by the BOE.

- **Construction Contracts**

The BOE delegates authority to the Superintendent or his or her designee to prepare, negotiate and execute contracts with parties engaged in and prospective parties to be engaged in school facility project, to execute and deliver resulting construction contracts up to the applicable bid limit, and to do any and all things necessary, in consultation with staff, that he/she may deem necessary or advisable for the continued administration and operation of school facility projects, all subject to ratification by the BOE

- **Professional Services Agreements**

The BOE delegates authority to the Superintendent or his or her designee to negotiate and contract with parties engaged in and prospective parties to be engaged in school facility projects, to execute and deliver resulting consultant agreements up to \$175,000, and to do any and all things necessary, in consultation with staff, that he/she may deem necessary or advisable for the continued administration and operation of school facility projects, all subject to ratification by the BOE. Consultant agreements above \$175,000 shall be approved by the BOE prior to execution.

- **Construction Change Orders**

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<sup>1</sup> Performance Audit 2016-17 Observation 9I Improvement Recommendation

During construction of school facility projects, changes will likely occur resulting in change orders and the payment of additional compensation to contractors performing the work in connection with school facility projects. During the course of construction, documents will need to be executed, changes will need to be approved and other decisions will need to be made on behalf of the District in a timely manner so as not to delay progress of the school facility projects.

The BOE delegates authority to the Superintendent or his or her designee to negotiate, execute and deliver construction change orders, which do not exceed ten percent of the original contract. Change orders, which exceed ten percent of the original contract, shall be approved by the BOE before execution.

- **Amendment to Professional Services Agreements**

During construction of school facility projects, changes will likely occur resulting in amendments to consultant agreements and the payment of additional compensation to consultants performing services in connection with school facility projects.

The BOE delegates authority to the Superintendent or his or her designee to negotiate, execute and deliver amendments to consultant agreements, which do not exceed \$175,000, all subject to ratification by the BOE. Amendments, which exceed \$175,000, shall be approved by the BOE before execution.

- **Accept Completion of Certain Construction Projects and Record the Notice of Completion**

Under the California Uniform Public Construction Cost Accounting Act (CUPCCAA) the District may perform public projects of \$45,000 or less by force account, by negotiated contract, or by purchase order. The negotiated contracts are smaller in scope and usually completed in a short time period. The District enters into a large number of negotiated contracts throughout the year for small projects, maintenance, repairs and related work. The BOE desires to pay contractors performing work under negotiated contracts and to close out those contracts as soon as possible.

The BOE delegates authority to the Superintendent to determine and accept completion of projects performed under negotiated contracts and to approve the recordation of notices of completion for those projects.

## **C. ASSISTANT SUPERINTENDENT BUSINESS SERVICES**

The Assistant Superintendent of Business carries out the responsibilities delegated by the Superintendent.

## **D. CITIZENS' OVERSIGHT COMMITTEE<sup>2</sup>**

The Citizens' Oversight Committee (COC) reviews expenditures and is responsible for oversight of Measure E funds and receives an updated status report at regularly scheduled meetings. Reports provided to the COC are limited to the projects funded with Measure E funds (including any other

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<sup>2</sup> Resolution No. 2008-2009-014 Establishing the COC is included in Appendix A.

supplemental funding for those projects). The COC also receives copies of the annual financial and performance audits of the bond program and other documents as requested.

On July 24, 2018, the BOE expanded the responsibilities of the COC to include oversight of Measure BH funds.<sup>3</sup>

The COC pages of the District's website are updated for each COC meeting with agendas and related attachments. This website is also where the annual report of the COC is published for public view.

The COC pursues five primary goals in order to achieve its charter:

- Receives annual auditors' reports;
- Ensures that funds are used only on school building improvements, not on District salaries or administration.
- Provides regular quarterly reports to the BOE that the expenditures match those promised during the bond campaign. In addition, releases these findings to the general public;
- Reviews the District's maintenance effort ensuring proper maintenance of school buildings after repair and renovation; and
- Reviews the District's school building repair funding plan comprised of local and state bond funds and other funding sources.

## **E. CONSTRUCTION & FACILITIES DEPARTMENT**

The Construction and Facilities Department (C&FD) is responsible for capital projects that involve oversight and approval from the California Department of General Services, including the Division of State Architect (DSA), and the California Department of Education.

The C&FD provides facilities needs assessments and the develops and updates a Facilities Master Plan.

The C&FD currently provides capital funding oversight through Measure E and Measure BH bond management and pursues local and state funds, incentives and grants for all applicable capital projects. The department completes, files, and tracks applicable state forms, submittals and requirements to obtain continued compliance.

Facilities tracks square footage, room utilization and capacity to be used in the pursuit of state funding, and assists and partners with the instructional technology and maintenance departments for capital projects, and provides access to construction drawings and product specifications and warranty information for repair and minor construction purposes.

## **F. BOND MANAGER**

The District has hired Team Concept Development Services (TCDS) to operate the F&CD during the course of the Measure E and Measure BH bond program utilizing Owner Managed Services<sup>4</sup>.

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<sup>3</sup> Resolution 2018-2019-001 Expanding Powers of the COC and Approving Amended and Related Bylaws and the Amended and Related Bylaws are included in Appendix A.

<sup>4</sup> TCDS, Inc. Owner Managed Construction Program (see Appendix B)

These services provide for budget and schedule development, maintenance, and oversight to mitigate District risk during the course of achieving the goals of the Facilities Master Plan.

The Bond Manager is responsible for managing the bond program and communicating program and project specific information to the BOE, the COC, and the general public. A subcommittee of the BOE (the Facilities Committee) participates in weekly meetings with the Bond Manager to receive current information on the current bond program.

The general public accesses information through the BHUSD website.

Bond management includes two primary areas of work: program management and project management.

### **1. Program Management**

Bond program management includes the assessment of District facilities' needs, coordination of input from stakeholders, funding and project development and implementation strategies for capital projects.

Throughout the bond program, status reports are developed by the bond manager and used to provide the BOE with information on current budgets, expenses, commitments, program contingency, revenue sources and narratives on the status of projects, schedules, and contractor and change order information.

The bond manager is responsible for bond management program development and administration related to the following program phases:

#### Programming and Planning Phase

- . Develop and implement the program master plan;
- . Develop and implement the master plan scope by identifying the projects to be include in the program master plan;
- . Develop a prioritization plan;
- . Develop a master schedule for each component of the program;
- . Prepare a program budget based on information provided by the District on the work required for all the projects identified as part of the program; and
- . Develop a management information system to assist in establishing and maintaining communications among the District, the bond manager, design professionals, contractors and other parties within the program.

#### Pre-Design Phase

- . Develop a project management plan for each project;
- . Advise on the division of the program into separate contracts for various categories of work;
- . Assist in the District in selection of design professionals;
- . Assist the District in preparation and review of the agreements between the owner and design professionals;
- . Assist the District and design professionals in the preparation and review of architectural

- programs for the project;
- Prepare a master schedule for each component of the project;
- Prepare a milestone schedule for the design phase; and
- Prepare a program and construction budget based on the plans, specifications and information provided by the District on the work required for the program.

## **2. Project Management**

The bond manager is responsible for bond management and administration of the following project phases:

### Design Phase Procedures

- Prepare procedures for reporting, communication, and administration during the design phase;
- Review the design documents for clarity, consistency, constructability and coordination;
- Assist the design professionals in coordinating transmittal of documents to regulatory agencies for review and advise the District of potential problems related to completion;
- Assist the District in the preparation of the general conditions and other front end documents for construction contracts;
- Recommend revisions to the master schedule as needed;
- Monitor compliance with the milestone schedule;
- Make recommendations to the District on the impact of design changes that may result in revision to the project construction budget, project schedule and established strategy;
- Make recommendations and coordinate and assist the District and design professional when changes to the design are required, to stay within the project and construction budget;
- Prepare procedures for reporting, communications and administration during the construction phase for approval by the District.

### Bid and Award Phase

- Assist the District in developing a list of possible bidders and in pre-qualifying bidders if pre-qualification is required;
- Plan, manage and complete the bidding processes that are utilized in the delivery method selected by the District;
- Assist the District in the assembly, delivery and execution of the contract documents;
- Assist the District in verifying that the contractor has secured the building permits, bonds, insurance, labor affidavits and waivers as required by the contract documents;
- Assist the District in procuring services and contracts for technical inspection and testing required for the Projects.

### Construction Phase

- Provide and maintain a management team on site to provide program management as a representative of the District and to establish and implement coordination and communication procedures;





- Establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, contract schedule adjustments, change orders, substitutes and payment requests and the maintenance of logs for tracking all relevant project information;
- Assist the District in completing and submitting PWC-100 forms for all projects as required, confirming all contractors and subcontractors are properly registered at all times with the Department of Industrial Relations (DIR);
- Coordinate technical inspection and testing provided by the design professionals or others. The bond manager shall be provided a copy of all inspection and testing reports on the day of the inspection or, if the result is not available on the same day, as soon as the report is available;
- Receive from the Contractor as-built record drawings and documents, operation and maintenance manuals, warranties and guaranties for materials and equipment installed on the project; and review such documents for completeness and submit documents to the District.

#### Post Occupancy Phase

- Respond to warranty issues;
- Assist maintenance in determining whether issues are under warranty;
- Perform warranty and commissioning requirements;
- Conduct a post-occupancy evaluation.

#### **G. DESIGN PROFESSIONAL**

Design professionals are contracted by the District to provide design, design administration, and construction design administration. As licensed professionals they are responsible for public safety and the oversight of project design implementation during all phases of the design contract documents.

- *Schematic design*—owner, bond manager and designer meet to discuss the owner's needs and the designer prepares one or more preliminary design concepts;
- *Design development*--after the owner's approval of a design scheme, the designer prepares formal design drawings, a construction budget, and a schedule;
- *Construction documents*--designer prepares detailed drawings and specifications that will be used by contractors for construction;
- *Bidding or negotiation*--designer assists the district in publicly bidding the project, including responding to bidder's questions about the design; and
- *Construction*--designer inspects the on-going construction to ensure that the project is built according to design, answers requests for information after review by the bond manager about the design, and, ideally, works with the bond manager and contractor to solve design and construction issues.



## **H. DIVISION OF STATE ARCHITECT (DSA) AND DSA INSPECTOR OF RECORD (IOR)**

DSA, within the State of California Department of General Services, ensures that public building projects meet the minimum required standard provided in Title 24, California Code of Regulations for structural, and fire and life safety ... and ... certifies that the drawings and specifications are in compliance with state regulations for reasonable accommodation of the disabled. Plan review and construction oversight is provided for all construction with the exceptions specified in the California Education Code.

To meet this end, the District contracts with DSA-approved inspectors of record (IORs) to provide inspection services in accordance with DSA procedures and requirements throughout all phases of the project<sup>5</sup>.

## **I. TESTING LABORATORY**

As specified by project, a testing lab is hired by the District to provide testing and inspection services. The bond manager works with the IOR to coordinate and monitor testing activities.

## **J. CONTRACTOR**

Each construction contractor contracts with the District to perform the scope of work detailed in the project contract documents. The contractor is responsible to provide for subcontractors and suppliers providing services under its contract. Each contractor is also responsible for coordinating work with the bond manager to identify potential interface at the site and with other trades impacted by the project contract scope. The contractor is to fully cooperate with the bond manager in coordination of the construction activities and scheduling requirements. The contractor shall have at least one responsible person on site at all times during its construction work hours.

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<sup>5</sup> DSA form IR A-8 Project Inspector and Assistant Inspector Duties and Performance (see Appendix C)

## Section 5

### Bond Administration

#### Covered in this Section

##### **A. ADMINISTRATIVE SYSTEMS**

1. Filing Systems
2. Document control
3. Conventional Files
4. Electronic Files
5. Department and District Servers
6. Communications
7. Software programs
8. Tracking
9. Document Archives

##### **b. DEFINITION OF PROGRAM VERSUS PROJECT**

##### **B. PROGRAM ADMINISTRATION**

1. Software
4. Tracking System
5. Fraud Management
6. Board of Education Approvals

2. Files and Archives
3. Communication

##### **C. PROJECT ADMINISTRATION**

1. Software
2. Collaboration
3. Scheduling
4. Files and Archives
5. Communication
6. Tracking Systems
7. Fraud Management
8. Document Control

## **A. ADMINISTRATIVE SYSTEMS**

The bond management administrative systems are used to initiate actions, perform tasks, collect data, track, and store information for planning, current use, and historical reference. The methods used include document development, processing, distribution, and filing for individual and group communications, and future resourcing, using software programs, and electronic and hard copy storage and tracking processes.

### **1. Filing Systems**

Documents are stored in hard copy files, electronically within software systems, and on the District server. As documents are compiled or created they are scanned for electronic storage on the District server. Hard copies are then stored in conventional file cabinets, and eventually relocated to an archive when regular resourcing is no longer necessary.

Bond Management staff are expected to have a comprehensive understanding of the filing system and are responsible for correctly labeling documents and files according to the filing system specifications.

### **2. Document Control**

Document control is accomplished with conventional files and electronic files. Physical documents are date stamped upon receipt, then scanned before being securely placed in hard copy file folders and uploaded to the server.

### **3. Conventional Files**

Hardcopy files remain available for easy day-to-day team access to active projects. This conventional filing system maintains bond administration files by:

- Year
- Project
- Vendor

### **4. Electronic Files**

Electronic files are used instead of conventional files whenever possible. All District e-files are stored on department servers. When computers and laptops are used to generate documents or photographs, these items are then uploaded to the District server. Electronic files are uploaded to project files (or all-district files), are then sorted by a primary category, and then filed in ascending date order (oldest first) to aid in tracking the sequence of events for a project within a given area/category. Categories within a project typically include:

- Administration
- Agreements/Contracts
- State Documents
- Other Government Documents
- Plan & Design Development and Use (for plans and specifications)
- Bidding
- Construction
- Testing & Reports

- Commissioning
- Furniture
- ProCore (end of project electronic archives)

#### **5. Department and District Servers**

The C&FD server is used to store documents and data related to District sites, facilities, and projects. The department “F: drive” is part of the District’s central filing system and is used to resource data to develop status reports, and maintain information for future resourcing needs, such as new projects under development and financial audits, for example.

#### **6. Communications**

Communications are made via phone and emails, and collected in meeting minutes and within collaborative forums within software systems. Commitments are put in writing with notes including time, date, and parties included, then filed for future reference in the hard copy project file.

#### **7. Software Programs**

Software programs are necessary to collect the large amount of data compiled and exchanged for review, processing, and reporting, and to share information and project status in real-time.

#### **8. Tracking**

Tracking is achieved using hardcopy lists, within software programs, and via transmittals which are used to document the formal transfer of information.

#### **9. Document Archives**

Document hardcopies are archived in a secure room and location. Also, when required, a backup of project files is placed on electronic drives and stored along with the hard copies. Project hardcopy documents may include, but are not limited to:

- Project bid sets;
- Record drawings;
- Specifications;
- Addenda;
- Change orders;
- RFIs;
- Submittals;
- IOR daily reports;
- Project management documentation;
- Schedule;s
- Project closeout documents including testing and inspection reports; warranties, O&M and manuals ;
- Hazardous materials reports (including asbestos removal);
- Real estate documents;
- Signed contracts and agreements;
- Applications for payment and schedule of values;
- Government agency communications;

- Environmental Reports;
- Photographs;
- Project correspondence; and
- Other permanent records.

### **Definition of Program versus Project**

In Bond Administration there are two primary areas of focus and development; Program and Project.

Program includes areas related to district administrative policies, procedures, and development. It is also the management framework for projects that encompass district issues (legal issues) or district wide events (bond measures).

When ideas move from the vision development and planning stage, the process of implementation and realization typically forms what is called a project.

Projects are independent, specific planned events that take place within the framework of the program. A construction event is a project. The District is also in development of a new security program. As this project moves from the planning stage into implementation, the District will undertake security projects.

## **B. PROGRAM ADMINISTRATION**

### **1. Software**

For program administration, the C&FD utilizes District accounting software complemented by a financial accounting and cost management program to create reports and view the status of funds. Programs and websites used are:

- *PeopleSoft software* for purchase requisitions and purchase order (PO) management
- RAD (Reporting and Data) Software to view Requisitions and PO status and download expenditure and other accounting reports
- *Key Analytics provided by California Financial Services (CFS) utilizing CFS Internet access* for tracking and reporting financial transactions and budget and preparing reports for the BOE and COC
- *Microsoft Office* for general administrative use

### **2. Files and Archives**

For program administration, the F&CD utilizes traditional hard copy purchase order files organized by site and then vendor name.

### **3. Communication**

For program administration, the F&CD utilizes phone, conferencing, email, and form tracking to communicate, collect data, research information, and compile notes and summaries of transaction/procedure status.

### **4. Tracking Systems**

A separate hardcopy tracking system is used for the procurement of upcoming projects to ensure use of proper procedures. Checklists are used to track the completion of steps.

### **5. Fraud Management<sup>1</sup>**

A combination of lists, documented communications, and tracking forms provide a reference for protocol adherence and assignment of responsibility on procedures.

### **6. Board of Education Approvals**

The history of Board actions includes the Brown Act, which is essentially an “Open Meetings Act” that is specific to local governments and bodies in California. The Brown Act supports one of the main principles of group meetings, which is that group decisions are generally better than individual decisions. Lively debates that incorporate a variety of perspectives should generate the best ideas.

It is expected that governments will hold meetings that are public and transparent in order to ensure accountability. What sounds simple in concept is often more complex in practice. The Brown Act, and other open meeting laws like it, codifies the limited exceptions and circumstances where it is in the best interest of the public to allow for special handling.

#### **a. Agenda Items**

Approximately one week before the next regularly scheduled BOE meeting, items for presentation to the BOE must be agendized using the District’s “Agenda Online” program at: [www.bhusd.org/AboutUs/BoardofEducation/MeetingAgendas/BoardAgendasOnline](http://www.bhusd.org/AboutUs/BoardofEducation/MeetingAgendas/BoardAgendasOnline) (Read Only.) Authorization to initiate and edit items is through secure access, which is provided by the Superintendent’s office (password required.) Items will be presented in Closed Session or Open Session, depending on the subject matter.

#### **(1) Closed Session**

Closed Session items include: Conferences with Legal Counsel and Public Employee Discipline, Dismissal or Release. Closed Session items are placed on the agenda by the Superintendent.

#### **(2) Open Session**

Open Session items are presented in the following sections of the agenda:  
Hearing

- Discussion
- Reports
- Consent
- Action

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<sup>1</sup> Project and Fraud Avoidance Checklist included in Appendix E

i. **Consent Items**

A consent agenda is a board meeting practice that groups routine business and reports into one agenda item. The consent agenda can be approved in one action, rather than filing motions on each item separately. The types of items that appear on a consent agenda are non-controversial items or routine items that are discussed at every meeting. Consent items can also be items that have been previously discussed at length where there is group consensus. The following items are typically found on a school district's consent agenda:

- Meeting minutes
- Acceptance of Donations
- Cash Collection Report
- Warrant Report
- Purchase Order List
- Staff appointments

ii. **Action Items**

Action items are requests to the BOE that require BOE authorization. The items can request any of the following actions by the BOE

- Approval
- Adoption
- Award
- Acceptance
- Ratification (After the Fact)
- Resolution<sup>2</sup>
- Emergency Resolution
- Selection
- Determination
- Amendment
- Rejection
- Denial

An action agenda item should provide the BOE with a clear understanding of what is being requested. The narrative should be respectful and concise, while communicating the recommended option. Except in the case of ratification, a decision has not been made, until the BOE acts on the item. The Action item should include:

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<sup>2</sup> There is no formal rule to govern when a resolution should be prepared in place of a request for approval. However, a resolution is the appropriate course of action in some circumstances, including: if the matter is one that by statute or bylaws is required to be covered by a resolution; if the matter regulates the management of the District and is meant to be permanent until changed; or if the matter is one that is likely to be referred to from time to time.



- Meeting Date
- School Site
- Agenda Item Name (Vendor, School Site, Bid No., etc.)
- Rationale for requested action
- Recommended motion
- Financial impact (dollar amount, how will it be funded?)

### C. PROJECT ADMINISTRATION

For project administration, the C&FD utilizes project management and scheduling software to communicate and collaborate on a project in real time.

#### 1. Software

For project administration, the C&FD utilizes project management and scheduling software to communicate and collaborate, including:

- Procore project management software for team collaboration on projects;
- Primavera scheduling software for construction projects;
- Microsoft Project for general project development, outline, scheduling and management;
- Microsoft Project can be used effectively on smaller projects;
- Microsoft Office for general administrative use.

Procore files are accessed only through Procore. The function of Procore as a project management system is discussed below.

#### 2. Collaboration

Collaboration relies on real-time communication to stakeholders during the course of the project. The project management system is used by the Bond Manager, District staff, consultants and contractors to record essential project information.

The project management system provides:

- Controlled data entry to ensure consistent information across shared documents, i.e., single entry of information by the consultants, contractors and Bond Manager; and
- Secure internet access to reports, forms, drawings, specifications, policies/procedures and other project information based on the user's access privileges.

Through Procore, the Bond Manager establishes workflows which allow the involvement of multiple entities for a specific review and response to RFIs, submittals, applications for payment, etc. These workflows can be tracked and reporting can be built off of them to use in process improvement. This process allows a thorough review by all parties prior to approval/non-approval. Through Procore, change event placeholders are initiated via RFI responses, submittal

responses and/or unforeseen conditions in the field, in real-time which allow tracking of potential impacts to the project.

### **3. Scheduling**

Scheduling deals with the timelines for the various phases of a project. The project baseline schedule provides a time-phased, logical sequence of interdependent activities, milestones, and events defined by the scope of the project. Schedule performance is tracked by project and master project schedule so that adjustments can be made to reflect the actual schedules as required. The key requirements for the system include:

- The ability to show both detailed and roll-up schedules.
- The ability to add costs for a cost-loaded schedule (not usually done for small projects).
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### **4. Files and Archives**

For project administration, the C&FD utilizes traditional hard copy project files, resourced and stored by site, and by project name. Projects have primary files and independent sub-folders developed as needed by project.

### **5. Communication**

For project administration Procore uses phone, email, and software collaboration to collect data, and various process components. Regular project meetings take place to update players and components.

### **6. Tracking Systems**

Procore tracks entry and status, including aging, of each project element that can impact time. This tracking is a comprehensive feature of the software. Procore date stamps entries in real-time as they are entered into the system. Procore has workflows built into the collaborative items that include reporting on aging of action items.

### **7. Fraud Management**

Software sign-in and tracking as well as a combination of lists, documented communications, and hardcopy tracking forms provide documentation for protocol adherence.<sup>3</sup>

### **8. Document Control**

Using Procore, the Bond Manager is able to be involved in the day-to-day correspondence with the general contractor, architect and consultants to facilitate a flow of documentation. The Bond Manager is able to vet RFIs and submittals prior to their being released to the A/E team, which allows the owner to be written into the script and have an opportunity to be involved in the outcome, which could impact schedule and cost to the project. Documentation related to the project is captured in one place:

- RFIs

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<sup>3</sup> Project and Fraud Avoidance Checklist is included in Appendix E



Beverly Hills  
Unified School District

- Submittals
- Schedules
- Change Events
- Potential Change Orders
- Change Orders
- Delays
- Corrective Notices
- Punch lists
- Closeout
- Warranties
- Inspections

DRAFT

## Section 6

# Bond Program & Construction Project Funds Administration

### Covered in this Section

- A. Program Funding**
- B. Bond Fund Management**
  - 1. Drawdown Schedules**
  - 2. Establishing Project Budgets**
  - 3. Program Funding Control System**
  - 4. Program/Project Management Control**
  - 5. Cost Management**

## **A. PROGRAM FUNDING**

The District has three major funding sources for capital improvement projects:

- Local Bond-Measure E
- Local Bond Measure BH
- State school bonds through the School Facility Program (SFP) and other programs administered by the Office of Public School Construction (OPSC), State Allocation Board (SAB) and California Department of Education (CDE).
- Seismic Retrofit
- Modernization
- Career Technical Education (CTE)

Other funding sources have included:

- Developer Fees
- Proposition 39 Energy Efficiency Funds
- District general fund

The major funding source for District facilities projects is local bonds. Other funding sources are used to fund auxiliary projects or as a method of increasing the scope of a bond project that is eligible for alternate funding. As funding is added to or removed from the project, it is tracked and appropriated to the project for which it is allocated.

## **B. BOND FUND MANAGEMENT**

### **1. Drawdown Schedules**

For Measure BH, an accurate and updated drawdown schedule will allow the District to estimate bond fund drawdowns, providing maximum return on the funds. The drawdown schedule will reflect actual cash flow against incurred costs on work in progress. Fiscal year closeout expenditures will be reconciled to mirror the District's fiscal year accounting closeout period, integrating project accounting with the District's financial management system.

### **2. Establishing Bond Project Budgets**

The original and current program budgets are contained within the financial control system. Project budgets are determined on the basis of the initial scope of work, a comparison to historical data on prior projects, if applicable, and trends. On projects with sub-projects or increments, an accounting goal may be used to identify budgets and expenses for that sub-project, otherwise all project expenses are allocated to the main project.

### 3. Program Funding Control Systems

The funding control system addresses: financial accounting and cost management. The system consists of the following:

- Peoplesoft, the District's Los Angeles County Office of Education financial system;
- KeyAnalytics provided by California Financial Services (CFS) utilizing CFS Internet Access software (CFSInternetAccess);
- RAD software;
- Procore; and
- Microsoft Project.

Financial accounting is accomplished using PeopleSoft and CFS Internet Access to maintain auditable financial records that track funding sources, budgets, encumbrances (committed costs), and expenditures. Components of the system are used daily to record financial data. Reports are prepared to reflect the updated budgets, committed (encumbered) costs, and expenditures as needed by District administration, the BOE, and the COC. *Samples of the reports available on the system are included in Appendix D.*

A time tracking system has been implemented for those employees not fully dedicated to the bond program to ensure all costs incurred are identifiable and have a beneficial relationship to the bond program.<sup>1</sup>

CFS Internet Access is a powerful web-based project tracking and reporting tool that electronically uploads and reconciles financial transactions from the District's Los Angeles County Office of Education financial system, PeopleSoft, into CFS InternetAccess.

The ability of CFS Internet Access to electronically upload and reconcile financial data eliminates the need for District staff or consultants to manually enter these transactions twice: once into PeopleSoft and then again into another software platform. Through a thorough analysis and upload process all PeopleSoft transactions are reflected in CFS InternetAccess on a cumulative basis. In addition to uploading all warrants and purchase orders, CFS InternetAccess reconciles fund deposits, transfers, and journal entries.

CFS InternetAccess does not change any of the District's internal controls and accounting procedures that are set up by the District and its BOE with regard to approving contracts, issuing purchase orders, and paying warrants. CFS InternetAccess simply uploads and reconciles the most accurate data that has already been vetted and entered by District staff into PeopleSoft into a variety of useful reports and tools.

The CFS InternetAccess platform provides District staff with ten dynamic reports including: 1) Revenue Report; 2) Budget Report (tracks multi-year budgets by fund & object code); 3) Expenditure Report (State 50/06 Report); 4) Encumbrance Report (tracks POs and contracts); 5) Vendor Report; 6) Transaction Report (tracks resources within funds); 7) Funding Activity (a checkbook reconciliation of each fund); 8) Overview Report (a project summary report); 9) COC Report (a program summary report; and 10) Budget View Report (a robust report that tracks each project by site, scope and status).

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<sup>1</sup> Performance Audit 2016-17 Improvement Recommendation 3b



In addition, CFS InternetAccess provides District staff with ongoing support services including: preparing Citizens' Oversight Committee reports, state expenditure reports for state eligible projects, periodic cash flow reports, budget and funding tracking services as well as staff training and fund reconciliation services.

The Bond Manager and fiscal services staff are responsible for inputting and assuring the accuracy of data in PeopleSoft and CFSInternetAccess. The Bond Manager is responsible for monitoring expenses to ensure that the project expenses do not exceed the project budget.

Project budgets are developed by the Bond Manager, and the Bond Manager coordinates with CFS to ensure entry to CFS InternetAccess at the beginning of each month, or more often if deemed necessary by the Bond Manager.

Budget line items are coded using the California Standardized Account Code Structure (SACS). The Bond Manager uses detailed reports from PeopleSoft, RAD and CFS InternetAccess to manage project budgets by line item. Most reports to the BOE, COC and public are summaries of individual codes.

Every effort is made so that financial data in PeopleSoft and CFS InternetAccess matches, however timing of data entry into PeopleSoft and uploading into CFS InternetAccess may mean that there are differences in the systems. Discrepancies between the two systems are reconciled and corrected.

#### **4. Program/Project Management Controls**

The Bond Manager should integrate budgets, expenditures, commitments, trends, forecasts and schedules in the management of each project as well as the program as a whole. The key requirements for the system include:

- Real-time and manual data entry of project cost and schedule data.
- Various levels of reporting and flexible reporting tools.
- Internet-based integrated platform for managing and reporting required by key stakeholders, Public Agencies and District staff.

#### **5. Cost Management**

Cost management is accomplished by using CFS InternetAccess to manage project budgets, day-to-day project financial transactions and provide cost forecasting. CFS InternetAccess includes control procedures and systems to track the decisions regarding budgets and budget changes so that staff can proactively prevent or fund any budget shortfalls caused by cost overruns.

CFS InternetAccess is also used to develop cost forecasts and track them against budgets, encumbrances and expenditures over a timeline. Cost management uses cash flows, cost forecasts, commitments and historical trending to forecast future expenditures and funding requirements, which allows management to monitor and control budgets and expenditures proactively.

Cost forecasts are prepared on a continual basis as project information becomes more defined and progress is achieved. Three critical phases in the project lifecycle will trigger new forecasts. In the Schematic Phase, a forecast is based upon the schematic scope. At the design development phase and construction document phase, a forecast is based on the completed engineering and design. The construction phase will mark a period of continuous review and monitoring where forecasts are prepared routinely and as necessary from trending information.





In addition to the forecasts generated from the three critical phases, new forecasts can also result from other events such as: a change in scope, trending project expenditures, trending commitments, schedule impact, and unanticipated changes in market conditions. Changes in scope include but are not limited to, environmental factors and unplanned events. These changes are tracked for continuous learning.

Preparation of project forecasts is the responsibility of the Bond Manager. Close examination of project expenditures and commitments is conducted on a continual basis to ensure compliance with the master plan. This trending information is used to prepare an updated project forecast. Individual trends, either up or down, may not immediately result in a project cost variance from budget because there are many factors that can affect the project forecast including the degree of certainty associated with the trend and the availability of contingency funds.

DRAFT

## Section 7

# Procurement

### Covered in this Section

#### A. General Principles

1. Definition of Procurement
2. Description of Procurement Fraud
3. Paper Trail
4. Public Project Definition
5. Types of Procurement

#### B. Procurement Methods

1. Public Projects
  - a. Competitive Bids
    - (1) Prequalification
    - (2) DIR Registration Requirements
    - (3) Advertising
    - (4) Construction Contract Award
  - b. Emergency Exception
  - c. Public Policy Exception
  - d. Alternative Competitive Bid Process—CUPCCAA

- e. Emergency CUPCCAA

- f. Force Account Labor

#### 2. Materials, Supplies and Certain Services

- a. Piggybacking
- b. CMAS
- c. Cooperative Purchasing
- d. Purchases less than \$50,000 (as adjusted)
- e. Purchases more than \$50,000 (as adjusted)
- f. Emergency Exception

#### 3. Certain Technology Equipment and Services

#### 4. Professional Services

#### C. Project Delivery Methods Most Often Used By the District

1. Design-Bid-Build
2. Lease-Leaseback

## **A. GENERAL PRINCIPLES**

### **1. Definition of Procurement**

Procurement is the process of researching/finding, agreeing/contract terms and receiving/acquiring goods, services and/or work from an external source, often via a tendering or competitive bidding process. The process of procurement is used to ensure that the buyer receives goods, services or work at the best possible price, when aspects such as quality, quantity, time and location are compared. School districts construct processes intended to promote fair and open competition for its business while minimizing risk, such as exposure to fraud and collusion.

### **2. Description of Procurement Fraud<sup>1</sup>**

Procurement fraud can be defined as dishonestly obtaining an advantage, avoiding an obligation or causing a loss to public property or various means during the procurement process by public servants, contractors or any other person involved in the procurement. An example is a kickback, whereby a dishonest agent of the supplier pays a dishonest agent of the purchaser to select the supplier's proposal, often at an inflated price. Other frauds in procurement include:

- Collusion among bidders to reduce competition;
- Providing bidders with advance "inside" information;
- Submission of false or inflated invoices for services and products that are not delivered or work that is never done. "Shadow vendors," shell companies that are set up and used for billing, may be used in such schemes;
- Intentional substitution of substandard materials without the customer's agreement;
- Use of "sole source" contracts without proper justification;
- Use of prequalification standards in specifications to unnecessarily exclude otherwise qualified contractors;
- Dividing requirements to qualify for small-purchase procedures to avoid scrutiny for contract review procedures of larger purchases (bid splitting).

### **3. The Paper Trail**

Buyers should create and maintain their procurement records keeping in mind that all procurement records are public records subject to request and release to the requestor.

Planning the purchasing activity begins as soon as the need has been identified. Buyers should develop a strategy of how the procurement activity will be accomplished and document the rationale of what led to the decision. Following is an outline of steps from need recognition to contract:

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<sup>1</sup> Performance Audit Observation 10 Improvement Recommendation; Project and Fraud Avoidance Checklist included in Appendix E

**a. Provide the basis of the decisions**

Describe how competition will be sought, promoted and sustained throughout the course of the purchasing activity. If open competition is not the method of choice, document the basis of that decision. The District will pursue multiple prices and track efforts for every procurement.

**b. Degree of detail**

The degree of documentation detail is determined by the cost, risk, complexity and criticality of the purchasing activity. Example: If the selection of the purchase approach was dictated by time constraints, then appropriate notations in the procurement file should be made which identify concerns related to time. In simple terms, buyers should maintain a diary of the events and decisions that lead up to and complete the purchase transaction, providing a timeline and history of the actions and decisions made throughout the procurement process.

**c. Take Notes**

Buyers should make notations of meetings held and decisions made, and create a phone log to record phone conversations impacting the procurement effort. Maintaining consistent, high quality file documentation helps the transaction to be easily understood by a reader who is unfamiliar with the event and makes documents easy to locate.

**4. Public Project Definition**

For a school district, a public project is defined in the Public Contract Code, Section 22002 as: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility. Painting or repainting of any publicly owned, leased, or operated facility. A public project does not include maintenance, defined as: routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose, minor repainting, resurfacing of streets and highways at less than one inch, and landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

**5. Types of Procurement**

- Procurement for public projects, which must be competitively bid if they involve expenditures of \$15,000 or more;
- Procurement for public projects under \$175,000, which can be procured through a competitive process under the California Uniform Public Construction Cost Accounting Act (CUPCAA);

- Procurement for lease or purchase of capital equipment, materials, supplies or services, except construction services, and repairs that are not a public project which, if they involve expenditures of \$50,000 or more as adjusted annually (as of 2018 \$90,200) must be competitively bid;
- Procurement for the lease or purchase of capital equipment, materials, supplies or services, except construction services, and repairs that are not public projects, which involve expenditures less than \$50,000 as adjusted annually( as of 2018 \$90,200), which can be procured using a request for quotation and purchase order process;
- Procurement which is not required to be competitively bid, e.g., emergencies, certain technology services and equipment, change orders less than ten percent of the original contract, piggyback agreements, purchases on the California Multiple Award Schedules (CMAS), cooperative purchase agreements, energy conservation and energy management work, and professional services.

## **B. Procurement Methods**

### **1. Public Projects**

#### **a. Competitive Bid**

The first legal requirement to consider when contracting for goods or services is whether the work must be put out to bid. Contracts for public projects must be competitively bid if they are over \$15,000, unless a District adopts the California Uniform Public Cost Accounting Act (CUPCAA), which increases the bid limit for public works to \$175,000.

The competitive bid process is one in which a district publishes bid specifications and contractual provisions which all of the bidders must meet. The notice inviting the bids must be sufficiently detailed, definite and precise so as to provide a basis for full and fair competitive bidding upon a common standard and must be free from any restrictions tending to stifle competition.

If any bidder does not meet all of the material bid specifications or agree to all of the material contractual provisions that bidder must be deemed a non-responsive bidder and its bid must be rejected. Unless otherwise authorized by statute, in the competitive bid process, a contract must be awarded to the lowest responsive, responsible bidder.

#### **(1) Prequalification**

The intent of a prequalification process is to ensure that capable contractors are allowed to bid on a specific project. Prequalification is most important for special work whereby a firm without the required experience may struggle to perform the project successfully and may pose a risk of failure. Under certain circumstances, prequalification applies to a general contractor and a subcontractor. Prequalification of bidders is authorized by Public Contract Code (PCC), Section 20111.5. A prequalification process is required if the contract value is over \$1,000,000 and is funded in whole or part with State bond funds.

The prequalification process involves:

**Step 1:** Determine if the project requires a prequalification process.

**Step 2:** Is this a stand-alone solicitation for a future project or one that is ready to bid now? If it is for future work, the advertisement should state that the District is soliciting for one or more firms to be prequalified. If the prequalification is for a project ready to bid, the information should be included in the bid advertisement.

**Step 3:** Define the general prequalification criteria that is suitable for this project and expected from potential bidders. Keep the requirement succinct and to the point and within grasp for potential bidders. The criteria cannot be biased towards a single firm.

**Step 4:** Edit the prequalification questionnaire package to be project specific. Ensure the questions are reasonable and relevant.

**Step 5:** Consider if this will be a "pass/fail" review process or "scoring and ranking" with a passing rate. Edit the prequalification package to conform.

**Step 6:** If it is to be a scoring package, develop the score sheet and make sure the points and criteria are in the package.

**Step 7:** Ensure the document is proofed by at least one other individual. Stage a mock up completion to reveal any flaws in the process. Fix flaws.

**Step 8:** Board authorization of this process is optional. The superintendent has been delegated authority to authorize the process.

**Step 9:** Advertise as a Request for Qualifications (RFQ) if it is stand-alone or, if part of a bid package, advertise that bid accordingly and include the RFQ process verbiage. Ensure dates for the package to be completed are included, contact name for questions are included. If the prequalification process is part of the bid package, allow ten days for bidders to respond prior to the bid opening date.

**Step 10:** Upon receipt of the prequalification packages (all to be opened together, with at least one District person present), make a list of packages received. Make a copy of the package for mark up and keep originals as untouched with the District.

**Step 11:** Complete the prequalification review sheet for each package/contractor. This sheet is a document that lists the criteria with a box to indicate how the questions have been answered. If scoring, list the scores. If yes/no, indicate compliance.

**Step 12:** If there are discrepancies, or missing information, email formally to each firm. Do this at one time for all firms and allow them no more than 48 hours to respond. Advise them that failure to respond or comply will render their packages incomplete and thus rejected. Do not allow any firm more time than others: ensure equal treatment of all firms.



**Step 13:** When calling references, keep note of time, date and response. It is permissible to mark up the package. Keep all documents. Print emails for the file. Note: The information in the prequalification packages is NOT a public record and should be treated as confidential.

**Step 14:** Double check the review sheet and have it checked by a colleague. Create a list of pass/fails.

**Step 15:** Notify all firms formally with a template letter of pass or fail. If prequalification is required to be allowed to bid for a current project at bid stage, time is of the essence.

**Step 16:** If any Contractor challenges its failure to be prequalified, an appeal process is in place. There is no appeal from a refusal for an incomplete or late application. Where a timely and completed application results in a rating below that necessary to pre-qualify, an appeal can be made by delivering a notice of appeal of the decision no later than ten business days prior to the closing time for the receipt of bids for the public works project to the District. If the contractor gives the required notice of appeal and requests a hearing, the hearing shall be conducted so that it is concluded no later than five business days after the District's receipt of the notice of appeal, and no later than five business days prior to the last date for the receipt of bids on the project. The hearing shall be an informal process conducted by a panel selected by the Bond Manager.

## **(2) Procedures for Advertising Bids**

The superintendent or designee for the purpose of securing bids shall publish at least once a week for two weeks in a newspaper of general circulation published in the District, or if there is no such paper, then in a newspaper of general circulation, published in the county, and may post on the District's website or through an electronic portal, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place where bids will be opened. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are opened at that time.

Notice inviting formal bids for projects by a public agency, which include a requirement for prequalification or for any type of mandatory pre-bid conference, site visit, or meeting shall include the time, date, and location of the mandatory pre-bid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory pre-bid site visit, conference or meeting shall occur not less than five calendar days after publication of the initial notice.

Bid instructions and specifications shall include the following requirements and information. All bidders shall certify the minimum, if not exact, percentage of post-consumer materials in products, materials, goods, or supplies offered or sold.



All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

- Cash
- A cashier's check made payable to the District.
- A certified check made payable to the District.
- A bidder's bond executed by an admitted surety insurer and made payable to the District.

The security of unsuccessful bidders shall be returned in a reasonable period of time, but in no event no later than 60 days after the bid is awarded by the BOE.

Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time.

When two or more identical lowest or highest bids are received, the Board may determine by lot which bid shall be accepted.

If the District requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, the bid solicitation shall specify which method, as outlined in PCC Section 10126, will be used to determine the lowest bid.

### **(3) Pre-Bid RFIs**

During the bid process contractors seeking to submit a price may have questions related to the information provided regarding the project (drawings, specifications, dates, scope definition, etc). These questions are reviewed by the management team to determine whether there is a need to make a clarification.

If it is determined that clarification is warranted, all contractors, and all locations of postings regarding the bid, need to be provided with an addendum which address the RFI clarification. All contractors are to be notified of the clarifying information at the same time using an Addendum.

### **(4) Construction Contract Award**

**Step 1:** The bids will be reviewed by the Bond Manager and a list of bidders and their bids will be prepared. The bid list will be reviewed and compared to the bid documents by the Bond Manager. The apparent lowest responsible bidder will be determined by the Bond Manager, and the determination will be entered into the Consolidated Procurement Activity Report,<sup>2</sup> (See Appendix E)

**Step 2:** Bids will be made available for review upon a contractor's written request to the District (per Public Records Act).

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<sup>2</sup> Performance Audit Observations 9D and 9G and Observation 10 Improvement Recommendations

**Step 3:** A five-day bid withdrawal period will be observed.

**Step 4:** The bid protest process and period will be managed.<sup>3</sup>

**Step 5:** Bond Manager processes an agenda item for recommendation of the "Lowest Responsive, Responsible Bidder" for approval by the BOE. Prior to posting the board item, the list of bidders and their bids and the Consolidated Procurement Activity Report will again be reviewed to ensure the apparent low bid is being presented to the BOE for award.<sup>4</sup>

**Step 6:** The morning after the BOE meeting, the "approval of bid #" will be posted on the District website.

**Step 7:** The day following BOE approval, the "notice of intent to award" will be drafted. The following items will be required: Three copies of the agreement to be signed with the total amount entered on each copy, certifications for general liability insurance with the District as the additional insured, auto liability insurance, and workers compensation insurance, with the proper endorsements, a performance bond in the amount of 100 percent of the total bid and a payment bond in the amount of 100 percent of the bid.

**Step 8:** The notice of intent to award to contractor, is then sent to the contractor, and a copy is placed in the hardcopy project file, and also scanned into the electronic project file.

**Step 9:** Agreement(s), performance bond, and payment bond must be submitted within five days of receipt of notice of intent to award.

**Step 11:** Once all items are reviewed, checked off by initialing and dating, a "notice to proceed" letter is generated for signature by the Superintendent.

**Step 12:** Two copies are made of the entire package, one for the purchasing department and one for the project file and scan a copy into the electronic project file. The notice to proceed letter is then sent via email and USPS to the contractor.

**Step 13:** A requisition is then drafted which initiates the process for a purchase order.

#### **b. Emergency Exception**

Public Contract Code (PCC) Section 1102 describes an emergency as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

An emergency resolution is used when there is an emergency situation that permits a public agency to enter into contracts for public work projects without competitive bidding when the total cost exceeds \$15,000. PCC Section 20113 defines an emergency as when any repairs, alterations, work, or

<sup>3</sup> Bid Protest Process is outlined in the District's Bidding Documents "Instructions to Bidders" section.

<sup>4</sup> Performance Audit Observation 9D Improvement Recommendation.



improvement are necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property. In this case, the BOE may, by unanimous vote, with the approval of the county superintendent of schools, do either of the following: make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids or authorize the use of day labor or force account<sup>5</sup> for the purpose.

#### **c. Public Policy Exception**

The purposes of competitive bidding statutes are to secure economy in the construction of public works and the expenditure of public funds for materials and supplies needed by public bodies; to protect the public from collusive contracts; to exclude favoritism and corruption and to promote competition among bidders to ensure that all public contracts are secured at the lowest cost to taxpayers.

However, where competitive bidding proposals do not produce an advantage, a statute requiring competitive bidding does not apply. The law in California on this point holds that where competitive bidding works an incongruity and is unavailing as affecting the final result, or where it does not produce an advantage or it is practically impossible to obtain what is required and observe such forms, then competitive bidding may be dispensed with.

When change orders exceed ten percent of the original contract price, the BOE, by resolution, may find that this exception applies and approve the change orders.<sup>6</sup>

#### **d. Alternative Competitive Bid Process—CUPCAA**

The Uniform Public Construction Cost Accounting Act ("Act") was created to promote the uniformity of cost accounting standards and bidding procedures on construction work performed or contracted by public entities in California. The Act raises the formal bid thresholds for public entities to \$175,000 and sets forth specific informal and formal bidding procedures for projects below that threshold.

On January 26, 2016, by Resolution No. 2015-2016-013 the BOE adopted CUPCAA procedures,<sup>7</sup> and by Resolution No. 2015-2016-14 adopted informal bidding procedures also on January 26, 2016.<sup>8</sup> The State Controller was notified on and accepted the District's election to become a participating member of CUPCAA on February 24, 2016.<sup>9</sup>

CUPCAA allows for the following:

- (1) Public projects of \$45,000 or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

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<sup>5</sup> See Section B.1.f below.

<sup>6</sup> Performance Audit Observation 9H improvement Recommendation

<sup>7</sup> Resolution No. 2015-16-13 is included in Appendix F

<sup>8</sup> Resolution No. 2015-16-14 is included in Appendix F

<sup>9</sup> Notification letter from state controller is included in Appendix F

(2) Public projects of \$175,000 or less may be let to contract by informal procedures as set forth below.

(3) Public projects of more than \$175,000 shall be let by formal bidding procedure with the exception that if all bids received are in excess of \$175,000, the BOE may, by passage of a Resolution by a four-fifths vote, award the contract, at \$187,500, or less, to the lowest responsible bidder, if it determines the cost estimate of the District was reasonable.

CUPCCAA's informal bidding procedures require the District to notify specific trade journals each year in November and generate a list of interested contractors from contractor responses received by the District from the trade journal notifications to establish a list of qualified contractors according to category of work for the next calendar year.

Contractors are asked to submit a request including specific information to the District for inclusion in the District CUPCCAA master list. The required information includes:

- The name and address to which a notice or request for quotation should be mailed;
- A telephone number at which the contractor can be reached;
- The type of work in which the contractor is interested and for which they are currently licensed; and
- The class of license(s) he/she currently possess.

In addition, the District includes any contractor it desires and includes any contractor who requests to be added to the list during the year, so long as the contractor provides the District with the required information.

After this Master List is created, the District must provide all contractors on the Master List with notice for each contract exceeding \$45,000 to be bid in their categories of work at least ten calendar days before bids are due. Additionally, the District is required to notify the construction trade journals when formally bidding contracts over \$175,000, as a part of the Act's formal bid procedures.

When procuring through CUPCCA, the Bond Manager will ensure that processes are followed by adhering to the CUPCAA checklists (Appendix C) and adding each project to the consolidated bid & procurement activity report.<sup>10</sup>

#### **e. Emergency CUPCCAA**

In an emergency, when any repairs, alterations, work or improvement are necessary to any facility of public schools to permit the continuance of existing school classes or to avoid danger to life or property, the governing board of a school district by unanimous vote and with the approval of the county

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<sup>10</sup> Performance Audit 2016-17 Observation 9E Improvement Recommendation

superintendent of schools may make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

For this policy, an emergency is a "sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services." Instead of making a contract as stated above, the District may authorize the use of day labor or force account<sup>11</sup> for such work.

Because the District has elected to become subject to CUPCCAA, different rules apply for emergency contracts issued under CUPCCAA. Under CUPCCAA, emergency situations are governed by PCC sections 22035 and 22050, et seq. In the case of an emergency, a CUPCCAA district may, by four-fifths vote of its governing body, repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. The BOE must make a finding, based on substantial evidence set forth in the minutes of the meeting, that the emergency will not permit a delay to allow for a competitive solicitation for bids, and that the action is necessary to respond to the emergency. The Board may also delegate the authority to order any action authorized in the case of an emergency by resolution and a four-fifths vote.

**f. Force Account Labor in lieu of Competitive Bidding**

In a school district with average daily attendance (ADA) under 35,000, the governing board may make repairs, alterations, additions or do painting, repainting or decorating on school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance by day labor, or by force account whenever the total number of hours on the job does not exceed 350 hours. In a CUPCCAA district the force account limit is \$45,000. Force account is the dollar value of labor, materials and equipment at the rate the public agencies charge themselves. An entity's labor cost of a project is not calculated using prevailing wages. Labor cost calculations are based on the entity's actual cost of labor. Force account limits do not apply to maintenance work.

**2. For Materials and Supplies and Some Services**

**a. "Piggybacking" on other Public Agencies<sup>12</sup>**

The governing board of a school district may, without advertising for bids, if the board has determined it to be in the best interests of the school district, authorize by contract, lease, requisition or purchase order, any public corporation or agency to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors and other personal property for the district. Public Contract Code (PCC) does not authorize districts to "piggyback" on another agency's service contracts.

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<sup>12</sup> Performance Audit Observation 9C Improvement Recommendation



Effective January 1, 2007, PCC section 20118 was amended to clarify that a district is not required to make payment to the other public agency but may make payment directly to the vendor.

The governing board of a school district is also authorized to purchase materials, equipment or supplies through the State Department of General Services without advertising for bids.

To take advantage of piggybacking, the BOE is required to make a determination that a purchase through a public corporation or agency is in the best interest of the district. The BOE may then authorize the public corporation or agency, by contract, lease, requisition, or purchase order, to make a purchase on its behalf. Such authorization enables the public corporation or agency to include in its advertisement for bids, the quantity or nature of the personal property desired by the District.

Piggybacking is also a mechanism by which cooperative purchasing may be achieved. School districts should ensure that any out-of-state piggyback contracts, associated with a cooperative purchasing agreement or otherwise, complied with all California public contracting laws in procuring the subject of the underlying contract and that the contract terms are consistent with California law.

It is generally accepted that a contract for personal property may be piggybacked if it includes an incidental amount for labor or installation. The general rule is that these labor/installation services should not exceed more than ten percent of the contract work or else the contract should be competitively bid or a determination is made that the work is otherwise exempt from traditional public bidding requirements.

Where installation is less than ten percent of the contract, it is considered "incidental" and is not subject to the bidding procedures outlined in the PCC. If the labor/installation component is 50 percent or more of the total contract value, then it is not incidental and must be treated as a public works project.

However, where the labor/installation is beyond the ten percent threshold but less than 50 percent of the contract, the labor/installation is presumptively not incidental, and the burden is placed on a school district to determine otherwise. Where the labor/installation component is between ten percent and 49 percent, the District is advised to record and formalize any findings and the rationale in the approving resolution and any Board minutes, in order to protect itself in the event of a legal challenge.

The District may accept these contracts when the original contract has not passed the expiration date or exceeded its dollar amount (if limited); and it has provisions that allow for piggybacking, meets the DVBE requirements, and has been self-certified by the district originally conducting the bid; and the District has procured a copy of the original contract.



**b. Acquisitions from California Multiple Award Schedules (CMAS) Including Acquisitions of Information Technology Goods and Services.<sup>13</sup>**

The Procurement Division of the California Department of General Services can provide purchasing assistance to school districts without the necessity for the districts to go to bid. School districts need not competitively bid to utilize the "contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department (CMAS) for use by school districts for the acquisition of information technology, goods, and services." It is certainly clear that school districts can use the CMAS acquisition process for technology goods and services and for goods when the Director of General Services makes these contracts, agreements and schedules available to them as it now does.

The Government Code defines Information technology as including but not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines."<sup>14</sup>

It is generally accepted that a CMAS contract may include labor/installation services if those services are "incidental" to the project. According to official CMAS program information, an agency purchase order may allow for a public works component only when it is incidental to the overall project requirements, describing "incidental" as meaning that the total dollar value of all services included in a purchase order must not exceed the dollar value of the products. This definition appears to mean that as long as the construction/labor/installation portion of the contract is less than fifty percent of the total project cost, CMAS can be used. This limit is in contrast to a much lower ten percent rule of thumb that applies to piggyback contracts.

**c. Contracts for Purchases Under \$50,000 (as adjusted--\$90,200 for 2018) for materials and supplies).**

**BHUSD Purchasing Department General Procedures (Excerpts)**

All requests for goods and/or services shall be submitted by way of PeopleSoft requisition. (Contact the Purchasing Department for PeopleSoft Requisition Desk Manual and Approver Manual).

The requisition shall be electronically approved by the site administrator and the business fiscal services.

The requisition must be completely filled in with the following information: vendor name, address, phone number, fax number and contact (if any).

<sup>13</sup> Performance Audit Observation 9C Improvement Recommendation

<sup>14</sup> Performance Audit Observation 9C improvement Recommendation



If the vendor is not in PeopleSoft, a request must be submitted. (See process below).

Vendors are required to send the District a W-9 and sign a Conflict of Interest form.

The requisition should specify:

- (1) Quantity needed.
- (2) Unit (each, dozen, set, etc).
- (3) Complete description of item being ordered, including stock number and ISBN numbers, if available.
- (4) Category (use the drop down tab to determine the category of the item ordered.)
- (5) Unit price.

Indicate shipping, freight or handling charges, if known, as a separate line item on the requisition. If unknown, purchasing will obtain the amount of freight and add it to the purchase order.

The District must pay sales or use tax for purchases of all goods. Sales tax in Los Angeles County is 9.25 percent (starting July 2018). This tax is paid on merchandise and sometimes shipping, even if the order is an out of state order. Purchasing will add sales tax when required.

Items being ordered should be entered directly into the PeopleSoft requisition system including the name of the person for whom the order is intended in the comment area. In cases where the list of items is extensive an excel attachment is permissible.

All backup to the requisitions (conference registration forms, list of supplies, quotes, proposals, reimbursement receipts, etc.) must be downloaded into the LACOE folder on the OS (C:) drive and then attached to the requisition in PeopleSoft and sent into workflow for administrators to approve electronically. Directions are in the PeopleSoft Requisition Manual.

A copy of the completed purchase order will be returned to the school site/department to verify that the order has been placed.

#### **How to Request a New Vendor in PeopleSoft**

If there is a new vendor the following procedure should be followed:

- (1) Ask the vendor if its company accepts purchase orders.
- (2) Request a W-9 from the vendor. The vendor will also need to sign a conflict of interest form. (Purchasing Department will request the conflict of interest form from the vendor)
- (3) Send the W-9 to the Purchasing Department. {Purchasing cannot enter a vendor

in the system without a W-9.)

- (4) Supply Purchasing Department with phone number, fax number, contact name and email if known.
- (5) Email or send information to purchasing. The FP&D will be notified when the vendor is entered and may then proceed with entering the requisition.

Note: The same procedures (#2-4) apply if you know the vendor has requested an address change.

### **Verification Procedures**

All orders will be shipped to the site at which time they will be forwarded to the originator or assigned receiver.

### **Approvals**

Invoices and requests for payment are reviewed and countersign two by members of the Bond Management Team. Signed invoices are sent to the Asst. Supt. of Business Services for approval and forwarding to Accounts Payable; applications for payment are routed to the Superintendent and the Asst. Supt. of Business Services for approval and forwarding to the Accounts Payable Department.

### **What is a Purchase Order?**

A Purchase Order is a contract that obligates the District to pay the vendor for the listed goods or services. It states the BHUSD terms, and instructions to the vendor. The purchase order is mailed, faxed or e-mailed to the vendor from the Purchasing Department after the internal requisition is processed along with any other paperwork necessary for services or delivery of product.

A purchase order can only be authorized by a BOE designated District representative.

There are several kinds of purchase orders. They include itemized, Open, Contracted Services, Maintenance Agreements, Leases, Travel and Conference, Improvement: Construction, Repairs etc.

### **Creating Requisitions/Purchase Orders**

The C&FD creates a requisition in the PeopleSoft system. The requisition is forwarded through the electronic approval process. The budget account number, type of goods, services desired and dollar amount determine the approval path of a requisition. When the requisition completes the approval path, the Purchasing Department converts the requisition to a purchase order, obtains the necessary signature, and sends the purchase order to the vendor.

### **Urgent/Rush Purchase Orders**



An urgent/rush purchase order will be issued when a situation arises that was unforeseen. It will be the responsibility of the site/department to enter the requisition and make sure everyone responsible has signed off on the requisition electronically. At that point the Purchasing Department can turn the requisition into a purchase order, obtain the administrative signature and send to the vendor.

### **3. Certain Technology Equipment and Supplies<sup>15</sup>**

School districts may procure by a detailed request for proposal (RFP) and competitive negotiation computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus provided that the contracts are not for construction or for the procurement of any product that is available in substantial quantities to the general public.

Published notice is required. In the context of technology bids, there may a tendency to overlook the newspaper publication requirement, especially given that FCC Forms are posted on the USAC website and school districts often publish RFPs on their own websites. However, failure to follow California public bidding requirements, including newspaper publication, can serve as grounds for a bid protest and/or forfeiture of any eRate funding received for the contract.

The RFP must identify all significant evaluation factors and their relative importance. In addition to price, evaluation factors may include vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer's warranties, and similar factors. Procedures for technical evaluation of proposals must be in place. If award is not to the lowest priced bidder, the District "shall make a finding setting forth the basis for the award." PCC section 20118.1 provides for an award to any of three lowest responsible bidders for data processing systems and supporting software.

The only manner in which it may be determined which of the bidders are the three lowest is if the bidders have responded to and agreed to meet the same bid specifications. When the District desires the flexibility to award to one of the three lowest responsible bidders, it must advise bidders of that flexibility in the bid documents and should refer to PCC section 20118.1.

### **4. Professional Services<sup>16</sup>**

The District may contract with and employ any persons for special services and advice in financial, economic, accounting, engineering, legal or administrative matters if such persons are specially trained, experienced and competent to perform the special services required without competitive solicitation. These types of consultants may be selected through a competitive solicitation process as laid out below. For consultants on projects that will be wholly or partially funded by the State, a competitive solicitation process is required.

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<sup>15</sup> Performance Audit Observation 9B Improvement Recommendation

<sup>16</sup> Performance Audit Observation 9A Improvement Recommendation.

**a. Professional Services over \$175,000**

For the District, best practices dictate that professional services, not wholly or partially funded by the state, which will result in an agreement for more than \$175,000, shall be procured through a competitive process unless the BOE authorizes procurement of the services without a competitive process. The competitive process will be structured to choose competent professional firms or any other consultants to provide services for the District.

The committee, which is chaired by the Bond Manager, may include board members, a representative of the COC, Director of Maintenance and Operations, and the Purchasing Agent. The committee will evaluate the information, interview the short-listed candidates, select the best qualified professional services firms/consultants for projects and recommend those most qualified professional services firms/consultants to the BOE to receive the contract award. In certain cases where the scope of services is limited, an interview process may not be considered necessary. The BOE may accept or reject the committee's recommendation.

**Step 1: Preparation of A Request for Qualifications (RFQ)**

An RFQ invites professional firms, vendors, or consultants interested in competing for the services to respond to the RFQ.

The RFQ follows a set format to request a statement of qualifications (SOQ) for professional firms/consultants to provide services for K-12 projects. The particular RFQ will be edited for the specific work scope solicited.

The RFQ includes dates and a schedule that will be met throughout this phase of the selection process. It will also include a reference number obtained from the Purchasing Department.

**Step 2: Posting of the RFQ**

The RFQ will be posted on the District website. In addition, the Bond Manager will notify potential consultants that the RFQ is available. The RFQ may be advertised in a newspaper of general circulation at the option of the Bond Manager. Any questions received and the answers will be posted on the District website. Any addendum needed to the RFQ will be posted on the website.

**Step 3: Submission of Statements of Qualifications (SOQ)**

The professional services firms/consultants must submit their qualifications by the deadline contained in the RFQ. The District reserves the right to refuse any SOQs that are submitted after the deadline. The Bond Manager will receive and log in all documents.

**Step 4: Formation of a Selection Committee**

A selection committee chaired by the Bond Manager, which may include board members, representatives from the COC, Director of Maintenance and Operations, and the Purchasing Agent, will be created.

The chair will notify the committee members of their selection and the schedule for the interviews.

The chair or designee will prepare a rating spreadsheet in order to evaluate the qualifications submissions.

#### **Step 5: Short listing of the Most Qualified Firms**

Upon receipt of the SOQs, the selection committee will screen the SOQs to determine which firms are the most qualified and to determine a short list of which will be interviewed for the project. The short list should be a minimum of three, if possible, of the most qualified firms/vendors/consultants based on the requirements outlined in the RFQ.

The Committee will review the SOQs and rate the respondents based on selection criteria of:

- Experience with the specific service being requested in modernization/renovation and structural upgrade projects

- Experience with the DSA, if relevant;

- Understanding of the scope of work, possible problems and solutions; management methodology to accomplish project;

- Financial data and ability to meet insurance requirements;

After the short list of the professional services firms/consultants is developed, the Bond Manager will notify the shortlisted firms by phone and mail or e-mail that they have been invited to interview. The professional services firms/consultants not receiving an invitation will be sent a letter or an e-mail notification of their status. If an interview process is deemed unnecessary, the most qualified firm will be determined and process jumps to step 7.

#### **Step 6: Interviews (If Required)**

In this step, the Selection Committee interviews the shortlisted professional services firms, vendors, or consultants and creates a ranked list of the most qualified firms to do the work. The Bond Manager will arrange the interviews.

The Selection Committee will interview each of the firms for 30 to 60 minutes. At the end of the interview process of all of the firms, a formal scoring and discussion will take place to determine the ranked list.

#### **Step 7: Board of Education Approval**

The Bond Manager will prepare an agenda item requesting the BOE to approve the firm(s) determined by the Selection Committee to be the most qualified.

### **Step 8: Contract Negotiations**

The Bond Manager will negotiate with the selected professional services firms/consultants to create a fair and equitable contract to perform the work utilizing the District's standard form of agreement.

The negotiations will be based on a clear scope of work and fee for the project.

The professional services firms/consultants will submit a fee proposal based on their understanding of the scope of work. The Bond Manager will review the draft proposal and fee and make suggestions that will be given back to the professional firm. There may be several iterations of this step. The end result will be a proposal that is balanced and appropriate for the proposed scope.

In the event a fee cannot be negotiated, the District has the option of terminating negotiations and starting negotiations with the second most qualified firm. The District can move to the third most qualified firm if negotiations fail with the second.

### **Step 9: Contract and Execution**

Once a proposal has been accepted by the District, an agenda item is submitted for by the BOE. After BOE approval, an agreement is prepared and routed for signatures. Then the Consultant, the Superintendent and/or his designee will execute the contract.

### **Step 10: Issue and Commencement**

Copies of the agreement shall be distributed. Prior to commencement of any services, the consultant shall provide all insurance documents and a copy of its City of Beverly Hills business license. Once received, a notice to proceed shall be issued by the Superintendent or his designee, and the services scheduled with the Bond Manager.

#### **b. Professional Services Under \$175,000<sup>17</sup>**

For services under \$175,000, utilizing a competitive solicitation process (RFQ) is optional at the discretion of the Bond Manager. If an RFQ is not utilized, efforts made to ensure the best value for the District should be documented in the project file and the activity logged into the consolidated bid and procurement checklist and activity report. By approving this Manual, the BOE delegates authority to the Superintendent or designee to negotiate and execute consultant agreements for ongoing and anticipated school construction, modernization and maintenance projects up to \$175,000. Such agreements will then be ratified by the BOE. For professional services above \$175,000, the BOE shall approve the agreements prior to services being rendered.

The Superintendent is authorized to approve amendments up to ten percent of the original agreement amount for each amendment. Such amendments would then be ratified by the BOE. An amendment

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<sup>17</sup> Performance Audit Observation 9A Improvement Recommendation

exceeding ten percent of the original contract price must be approved by the BOE prior to services being rendered.

### **C. PROJECT DELIVERY METHODS MOST OFTEN USED IN THE DISTRICT<sup>18</sup>**

Construction projects in the public works sector are procured and constructed using various delivery methods. The decision to use a specific method depends on numerous project factors: complexity of the work, dollar value, fund sources, project phasing, completeness of the design, willingness of the District to take on risk, and time constraints. The decision to proceed with a specific method must be determined in the early phases of a project. Delayed decisions on the delivery method, can hamper the design process, ultimately leading to cost overruns and schedule delays. The most common delivery methods used by the District are traditional design-bid-build and lease-leaseback.

#### **1. Design-Bid-Build**

Design-Bid-Build (DBB) is the traditional construction delivery method used to complete construction projects in the public sector. The DBB model separates design and construction responsibilities by awarding them to an architect and/or engineer (A/E) and a general contractor (GC). By doing so, DBB separates the delivery process into three phases: design phase, bid and award phase, and construction phase.

During the design phase, the District awards a design contract to an architect. The architect is responsible for completing a final project design and providing detailed construction drawings, specifications and supporting documents.

In the bid and award phase, the District. General contractors (GC) are invited to submit competitive, lump-sum bids, and the District awards the construction contract to the GC submitting the lowest responsive responsible bid for a lump sum price. The project then moves into the construction phase.

The District retains responsibility for monitoring the GC's performance by hiring inspectors of record and usually retains the architect to provide administration of the construction phase.

#### **2. Lease-Leaseback**

The lease-leaseback approach is to select an organization, commonly referred to as the developer-contractor, to develop a new building or improve buildings on property the District owns. A construction management firm may serve as a developer/contractor. A common mechanism is to simultaneously execute two lease documents, a site lease and a facilities lease. A site lease of the property gives the developer-contractor the right to develop the project. A facilities lease gives the developer-contractor the obligation to develop the project and to lease the improvements and the site back to the District, with the District's owning the improvements when the leases expire.

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<sup>18</sup> ACCM Project Delivery Handbook, A Guide to California School and Community College Facility Delivery



The statutes authorizing this approach are very broad and, therefore, many variations and different approaches to lease-leaseback have been refined. Different districts and their attorneys have used or allowed different approaches to financing, if any; and selection of the developer-contractor, design responsibility, lease terms, and method of selecting trade contractors. This flexibility is the main attraction for lease-leaseback.

Under lease-lease back the contracted entity may provide design assistance or hold the complete design responsibility. The contract is responsible for construction with some or all design accountability.

Preconstruction work by the developer-contractor up to the time of signing of leases is sometimes conducted under a preliminary services agreement, although some attorneys draft leases that are signed immediately and then amended as design and pricing are developed. Some attorneys draft leases providing for pre-construction services, even design responsibility, with language that calls for an amendment to give approval for construction to proceed including setting the date of completion and the guaranteed maximum price.

The District retains responsibility for monitoring the contractor's performance by hiring an inspector of record (IOR) and usually retains the architect to provide administration of the construction phase.