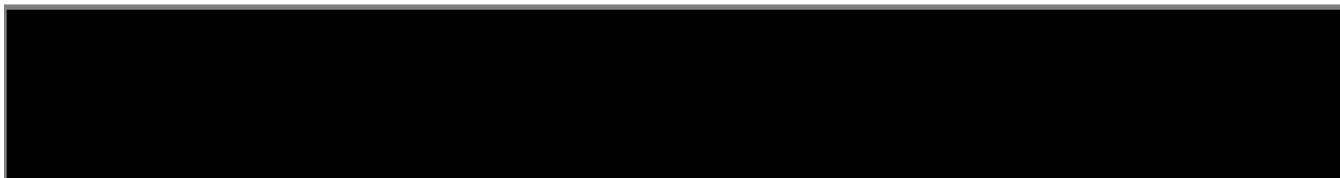


Lease-Leaseback Workshop



Legal Authority

Education Code Section 17406 et. seq.

- “the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee herein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term”

What is Lease-Leaseback?

- ❑ A construction project delivery method
 - Not a financing mechanism
- ❑ A way to select a firm to build or modernize school facilities through a qualifications based process
 - Can pick a firm that fits with District culture
 - Value can be a factor of selection
- ❑ Provides flexibility
- ❑ Guaranteed Maximum Price
- ❑ Set Delivery Date
- ❑ One project or multiple projects

Lease-Leaseback Benefits

- Selection based upon qualifications
- Guaranteed Maximum Price contract
 - Costs are known up-front
- Architect and Contractor work together before plans are completed
 - Constructability reviews, value engineering, estimates, schedules

Legal Matters

- ❑ Financing does not need to be part of the lease-leaseback.
- ❑ The State Allocation Board (“SAB”) and Office of Public School Construction (“OPSC”) are now comfortable with the lease-leaseback process.
 - Due to the veto of AB 1486 in 2004
- ❑ Prevailing wage is required on the project.
- ❑ A validation action can be used if a District is uncertain about the construction delivery method.

SAB Guidelines

- ❑ Competitive selection process
- ❑ District must have title to the site on which the project will be constructed at the time the apportionment is approved by the SAB
- ❑ The lease agreement must contain:
 - The value of the lease
 - Title to the improvements shall vest with the District upon completion of the project
 - The lease agreement shall end within 180 days of notice of completion or occupancy of the project by the District, whichever occurs first.

Lease-Leaseback Team

- District
- Legal Counsel
- Financial Advisor
- Architect
- Contractor

Selecting the Team

- RFP or RFQ
- Reference Checks
- Interviews
- Selection & Board Approval
- Contract Negotiations
- Board Approval of Contract

The RFP/RFO

- ❑ General firm qualifications
 - Firm financial capacity is important
- ❑ Specific qualifications of project team
- ❑ Experience and references
 - Local & K-12 experience is important
- ❑ Suggested scheduling of the project
 - Understand how the project will be staffed
- ❑ How does the firm interact with school district personnel

(see Sample RFP & RFQ Handouts)

Reference Checks

- ❑ Word of mouth is the best way to find out about a firm
 - Talking with other school districts can provide insight on your construction project
- ❑ Proposals/Qualifications should include a list of references.
 - Check both firm and project team references
- ❑ Can check references not on the list

Interviews

- The interview panel can consist of:
 - Superintendent
 - Director of Facilities
 - Board Member
 - School Principal
 - Local Contractor
 - Financial advisor
 - Architect
- The goal is to get a feel for the lease-leaseback entity and see how they will fit in with the District's team
- Understand how sub-contractors are selected

(See Sample Interview Questions Handout)

Communication with the Board

- It is important that the Board is well-educated on the delivery method and the selection process
 - Discuss the reasons for choosing the Lease-leaseback method
 - Describe the selection process

Timeline for Selection Process

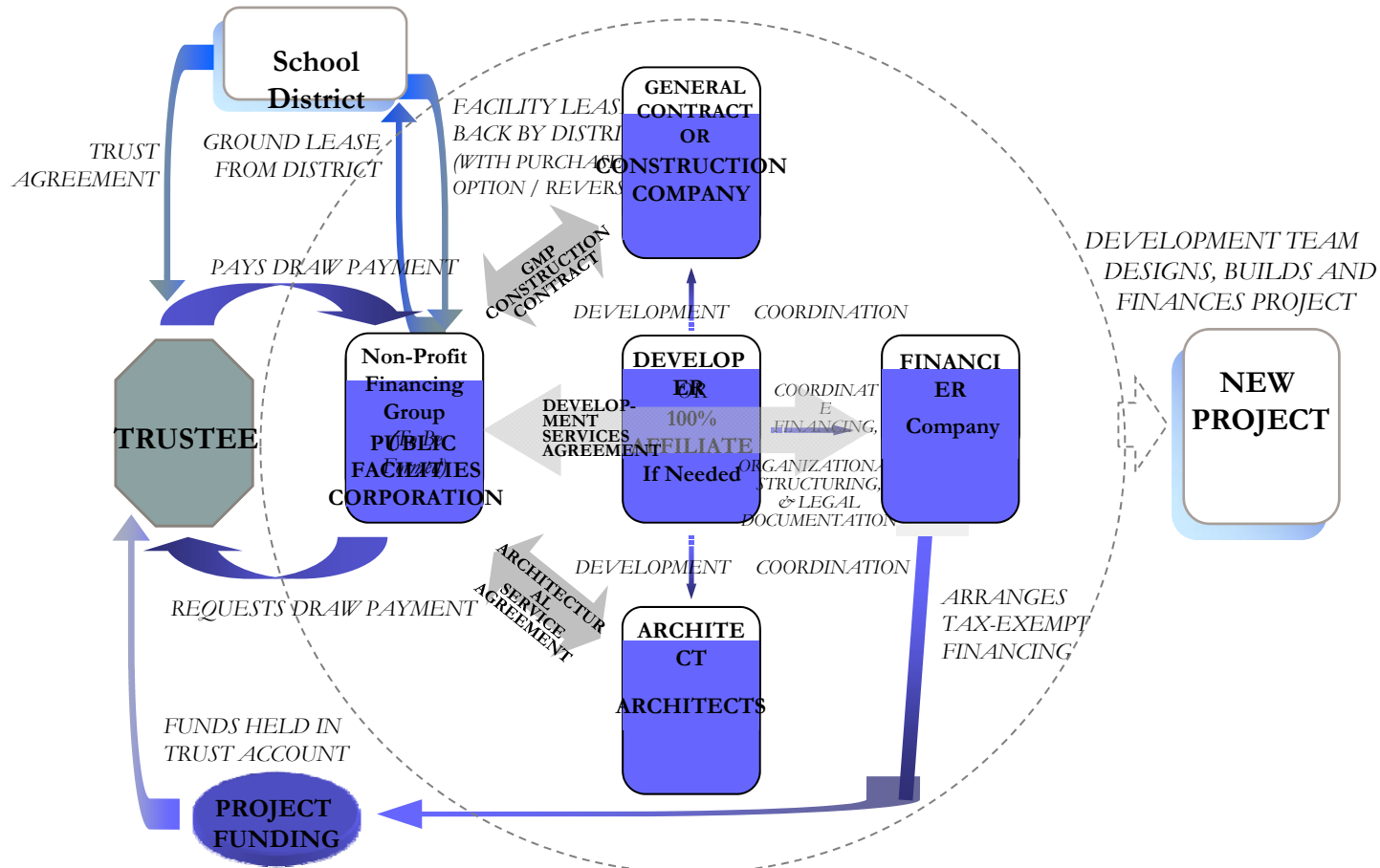
- 2 Weeks
 - Draft RFP/RFQ and circulate to Legal Counsel
 - Distribute RFP/RFQ to Construction Firms
- 1 Month
 - Proposals Due from Construction Firms
- 2-3 Weeks
 - Proposal review and reference checks
 - Interviews of lease-leaseback entity
- 2-3 Weeks
 - Board selection of lease-leaseback entity

Contracts

- Preliminary Services Agreement
- Site Lease
- Facilities Lease
- General Conditions

(See Sample Contracts)

Transaction Organization



Financing a Lease-Leaseback Project

- Typically through issuance of Certificates of Participation
 - May be repaid with:
 - State Funds
 - Developer Fees
 - Redevelopment Revenue
 - Flexible structuring options
 - No payments until after construction is complete
 - Prepayment options

Other Financing Considerations

- ❑ General Obligation Bonds
 - May be used if authorization is available
 - ❑ Bridge financing may be used if assessed value is not sufficient to support bonds
 - Ballot language must specify projects
- ❑ Mello-Roos Community Facilities District Bonds
 - Can be formed to fund new school facilities projects
 - ❑ Often in developing areas
- ❑ Energy Efficiency
 - Savings cannot be capitalized
 - Design can incorporate energy efficient possibilities
- ❑ Joint Use

District vs. Developer Financing

□ District

- Can borrow in the tax-exempt market
 - Low borrowing rates
 - Customized repayment
- Simplifies lease-leaseback contract terms
 - Construction only

□ Developer

- A standard construction loan
- Borrowing is not necessarily tax-exempt
- May result in high up-front fees to the District

Other Costs

- ❑ The cost of construction is not the only cost to consider.
 - Site acquisition
 - ❑ CEQA
 - ❑ Land
 - ❑ Consultant Fees
 - Soft costs
 - ❑ Architect
 - ❑ Engineering
 - ❑ Consultant fees

An Architect's Perspective



Lease-Leaseback

An Architects Perspective

- Why consider an alternative delivery method?
- What are the benefits of Lease-Leaseback?
- Thoughts on process
- Summary

An Architects Perspective

Why alternate delivery methods?

The traditional Design-Bid-Build delivery method for Public Contracts requires that the District accept the lowest bid, opening itself up to:

- possibility of low quality workmanship
- change order battles
- time over runs
- legal ramifications

An Architects Perspective

Why alternate delivery methods?

Lease-Leaseback allows the District to select the Contractor based on:

- qualifications
- value
- experience
- references

An Architects Perspective

Benefits of Lease-Leaseback

Lease-Leaseback allows the District to bring its Contractor onto the Team early to provide pre-construction related services such as:

- value engineering
- project estimating
- constructability reviews
- schedule development, etc.

This leads to a more successful project through a spirit of teamwork and cooperation and avoids adversarial relationships.

An Architects Perspective

Benefits of Lease-Leaseback

Results:

- Reduced or eliminated Change Orders
- Collaborative approach to the project
- Significant reduction in legal risks associated with design-bid-build

An Architects Perspective

Thoughts on process

- ❑ Request for Qualifications (RFQ) for Contractors for Pre-Construction and Construction Services.
- ❑ Establish an interview panel to review the RFQ's and shortlist of the contractors.
- ❑ Once selected and approved by the Board, enter into a Pre-Construction Services agreement with the Contractor.

An Architects Perspective

Thoughts on process

- ❑ After Pre-Construction services are complete, competitively bid the project to multiple subcontractors ensuring competition and value.
- ❑ Negotiations with each subcontractor are allowed through the Lease-Leaseback process.
- ❑ Upon acceptance of the final bids, enter into a Guaranteed Maximum Price Agreement (GMP) with the Contractor.
- ❑ Consider a shared contingency incentive included in the GMP (3% - 5%).

An Architects Perspective

Thoughts on process

- ❑ Construction will proceed as normal with the Contractor, District, and Architect relationship.
- ❑ The Contractor is paid through the Facility Lease Payments which equal the GMP.
- ❑ Both the Site Lease and the Facility Lease are cancelled at the termination of the project and the District takes possession of the project.

An Architects Perspective Summary

- ❑ Private sector process in the Public Sector
- ❑ Team atmosphere
- ❑ Better budget and schedule control
- ❑ Reduced risk of legal problems through partnerships established early in the project
- ❑ Easier Close Out process due to team relationships

Contractor's Role



LLB Design Phase Services

“Preliminary Service Agreement”

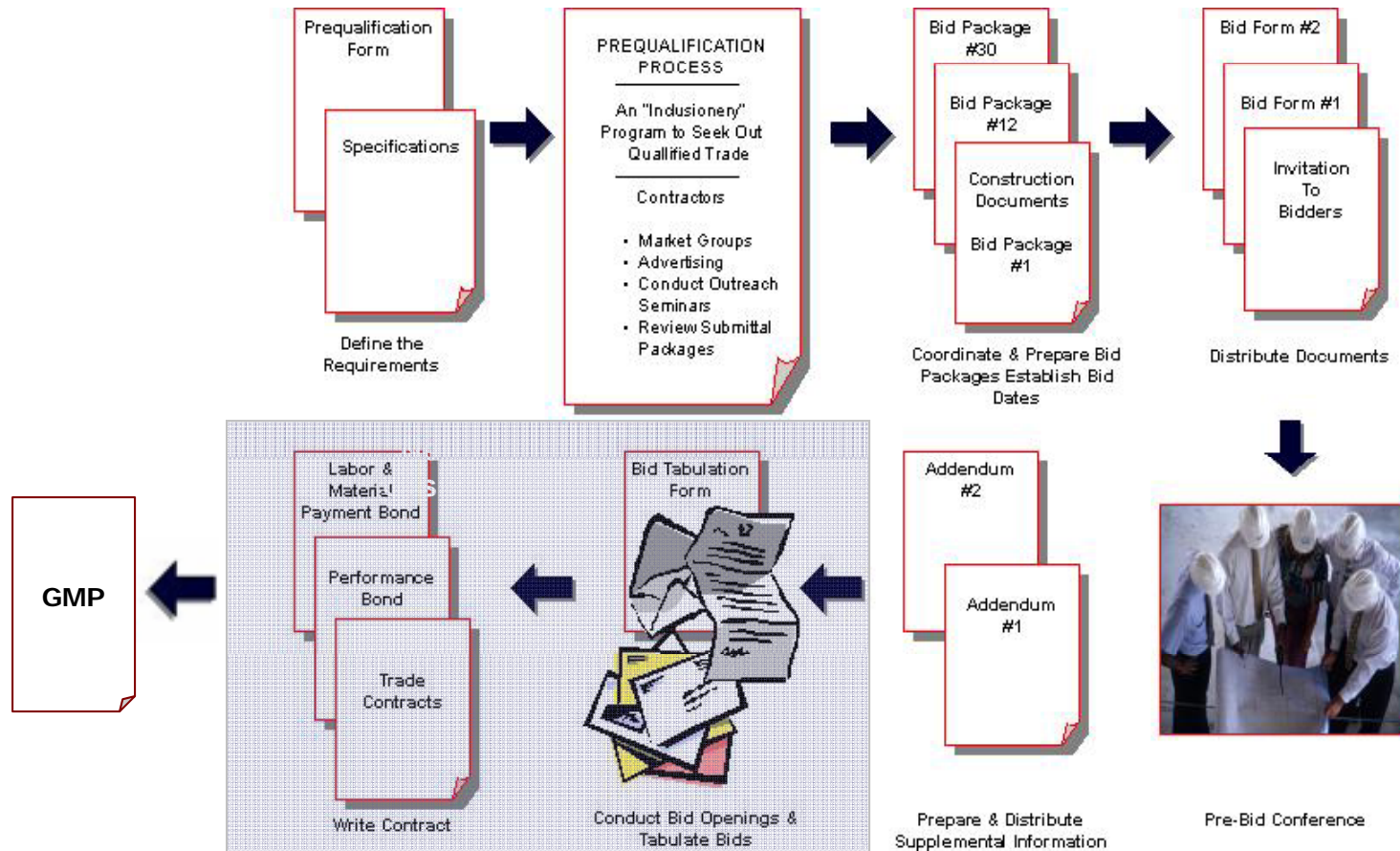
Scope

- Management Plan
- Estimates
- Value Engineering
- Constructability Review
- Bid Package Strategy
- Subcontractor input
- Master Schedule
- Construction Schedule
- Logistics Planning

LLB Bid Process

- Pre-qualify Subcontractors
- Advertise to Bid
- Invitation / Instructions to Bidders
- Scope of Work Sheets
- Pre-Bid Meeting
- Bid Opening
- Evaluate and “Level” Bids
- Negotiate Prices

Bid Package Methodology



What is a GMP?

A Guaranteed Maximum Price (GMP) is the amount that the Contractor guarantees (the sum of the cost of the work and the GC's fee) it will not exceed. The maximum is subject to additions and deductions, due to changes in the scope of work. All costs which exceed the GMP and are not approved by change order are paid by the GC.

CM at Risk – GMP

$$\begin{array}{l} \text{Contractor's Cost (GC's + Fee)} \\ + \\ \text{Subcontractors Bids} \\ + \\ \text{Contingency (3\% controlled by GC)} \end{array} \left. \vphantom{\begin{array}{l} \text{Contractor's Cost (GC's + Fee)} \\ + \\ \text{Subcontractors Bids} \\ + \\ \text{Contingency (3\% controlled by GC)} \end{array}} \right\} = \text{GMP}$$

Changes to GMP:

- Errors & Omissions
- Change of Scope
- Unforeseen Conditions Including Force Majeure

LLB Services

Construction Phase

- ❑ Team Management and Coordination
- ❑ Scheduling
- ❑ Cost Controls and Change Order Management
- ❑ Submittal Process
- ❑ Subcontracting

LLB Services

Construction Phase

- Field Management
- Safety Program
- Quality Program
- Project Close Out Process
- Warranty Period Service

Acceptance of Risk

- ❑ Will Guarantee the Cost with a GMP
- ❑ We Cover the Gap in the GMP
- ❑ Project Completion – We Will Assure On-Time Completion
- ❑ We Will Furnish a Payment & Performance Bond if Requested
- ❑ We Will Furnish a Contractor Controlled Insurance Policy
- ❑ We Will Provide Subcontractor Default Insurance
- ❑ We function as the LLB Developer/Contractor

LLB v. Lump Sum Bid

	LLB	Lump Sum
Owner receives competitive pricing	✓	✓
Performance and payment bonds	✓	✓
Ability to re-bid individual trades	✓	No
Prequalify all subcontractors	✓	No
Field coordination control	✓	✓
Commissioning/warranty issues	✓	✓
Price Guarantee *	✓	✓
Contractor pays for scope gaps	✓	✓
Contractor involved in design phase	✓	No

* Price Guarantee in Lump Sum is the "floor" but in LLB it is the "ceiling".

Summary:

Advantages of LLB

- ❑ Owner hand picks their builder
- ❑ Project team works in a collaborative atmosphere
- ❑ Greater schedule control / flexibility
- ❑ Greater budget control including re-bid on individual trades if necessary
- ❑ Pre-qualify all trade contractors
- ❑ Competitive pricing in each trade
- ❑ Lowers potential for future change orders
- ❑ Perceived as more friendly contracting approach by designers and subcontractors
- ❑ Cost savings
- ❑ "Open Book" financial approach

Benefits to Architects

- ❑ A/E maintains contractual relationship to District
- ❑ Selection of contractor based on qualifications
- ❑ Contractor involvement during design phase
- ❑ Adversarial GC relationship eliminated
- ❑ GMP prior to construction