



DANNIS WOLIVER KELLEY

Attorneys at Law

Lease-Leaseback Project Delivery

Oakland Unified School District

June 28, 2017

Presented By:

Deidree Sakai

Dannis Woliver Kelley

SAN FRANCISCO | LONG BEACH | SAN DIEGO | NOVATO | CHICO | SACRAMENTO | SAN LUIS OBISPO www.DWKesq.com

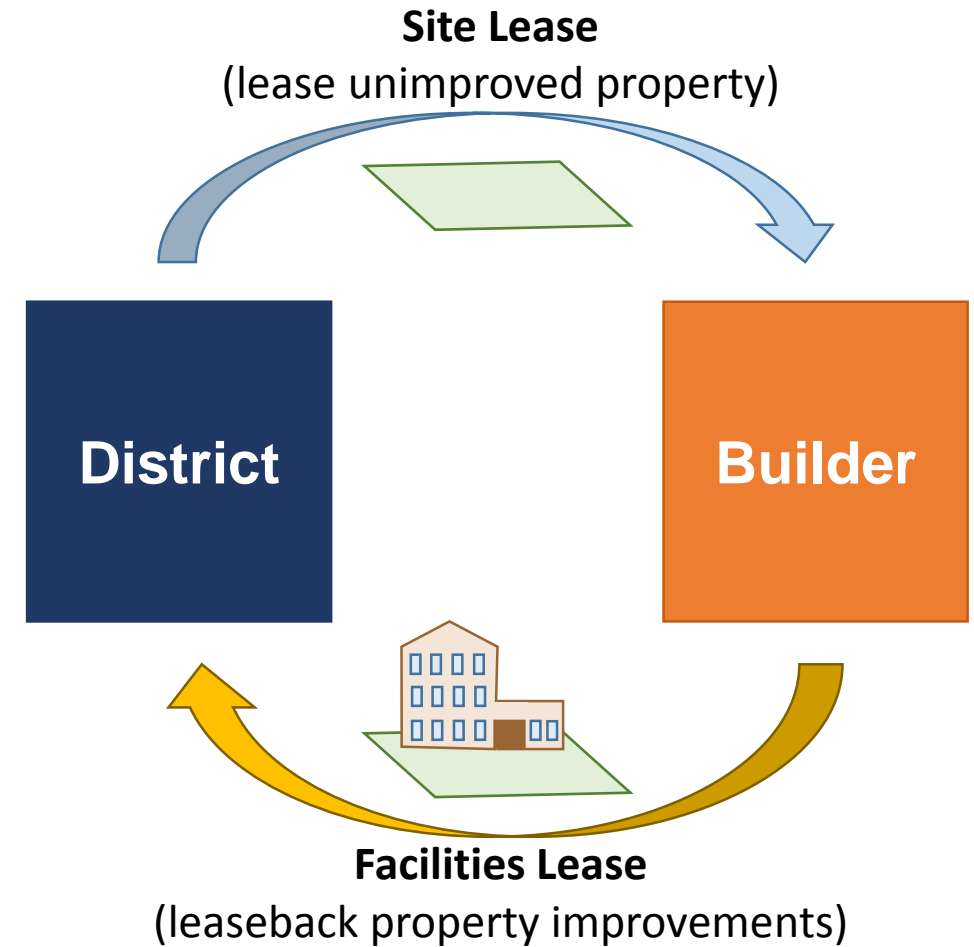
This training is provided for educational, compliance and loss-prevention purposes only, and absent the express prior agreement of DWK, does not create or establish an attorney-client relationship. The training is not itself intended to convey or constitute legal advice for particular issues or circumstances. Contact a DWK attorney for answers to specific questions.

Overview

- What is Lease-Leaseback (LLB)?
- How does the LLB project delivery method work?
- What are the differences after legislative amendments?
 - Has the legislative amendments affected application of Local Business Policy?
- How has the legislative amendments affected timing of projects?

What is Lease-Leaseback?

- District **“leases”** property to Builder
- Builder constructs tenant improvements to the property
- Builder **“leases back”** the completed improvements to the District



New Legislation (AB 2316)

- Applies to contracts entered into after January 1, 2017
- Requires competitive selection and advertising
- Allows for preconstruction services to be included in contract, eliminating conflict of interest concerns
- Subcontractors:
 - After award, all subcontracts over 0.5% of contract price must be bid and selected by low bid or best value
 - Subcontractors have rights under Public Contract Code section 4100 et seq.
- Board must make findings supporting award of contract

New Legislation

- Although school district may enter into contract sooner, events that used occur before contract now occur after contract:
 - DSA approval of plans and specifications
 - Subcontractor bidding
 - Establishing Guaranteed Maximum Price (GMP) and Project Schedule

Differences

Old LLB

- No competition required
- No advertising for proposal
- DSA approved plans before enter into contract

New LLB

- RFP and selection based on Best Value required
- Advertising for at least 2 weeks required
- DSA approved plans not required before enter into contract

Differences (continued)

Old LLB

- Multiple contracts required
- GMP established before entering into contract
- Construction can start after enter into contract

New LLB

- One contract for preconstruction & construction
- GMP established after entering into contract
- Construction cannot start until after DSA approves plans (and subcontractor bidding, and GMP is negotiated, and bonds are submitted)

Local, Small Local & Small Local Resident Business Enterprise Program

- In Best Value Score
 - Compliance with Local Business Program Required (Pass/Fail)
 - 50% minimum participation (max. 25% LBE & min. 25% SLBE/SLRBE)
 - Affects Pricing Category
 - bid discount (up to 5 points or 5%) as the proposer's level of local, small local and small local resident business participation increases



Procurement Steps – With DSA Approved Plans

1. RFQ/P Advertised/Released
2. Proposals Submitted
3. Interviews
4. Notice of Selection/Start Contract Negotiation
5. BOE Award of Contract and Approval of Developer Team
6. Preconstruction Services, including Subcontractor bids
7. GMP Submitted/Start District Review
8. BOE Approval of GMP

Steps After Award of Contract – With DSA Approved Plans

1. Award of Contract/Board Resolution (**Day 0**)
2. Notice of Award/Submission of executed agreement, insurance and certifications (**approx. 1 week**)
3. Notice to Proceed with Preconstruction Services (subcontractor bidding, prepare GMP and Project Schedule) (**1-2 months**)
4. Amendment to Facilities Lease brought to BOE (**at least 72 hours after negotiation of GMP completed**)
5. Notice to Proceed with Construction (**approx. 1 week to collect bonds**)

= Award Contract 6/28 ... Construction starts 9/1

Procurement Steps – Without DSA Approved Plans

1. RFQ/P Advertised/Released
2. Proposals Submitted
3. Interviews
4. Notice of Selection/Start Contract Negotiation
5. BOE Award of Contract and Approval of Development Team
6. Preconstruction Services
7. Architect Submit Plans to DSA
8. DSA Approves Plans
9. Subcontractor bidding
10. GMP Submitted/Start District Review
11. BOE Approval of GMP and Developer Team

Steps After Award of Contract – Without DSA Approved Plans

1. Award of Contract/Board Resolution (**Day 0**)
2. Notice of Award/Submission of executed agreement, insurance and certifications (**approx. 1 week**)
3. Notice to Proceed with Preconstruction Services (constructability review/value engineering, DSA approval of plans, subcontractor bidding, prepare GMP and Project Schedule) (**3-9 months**)
4. Amendment to Facilities Lease brought to BOE (**at least 72 hours after negotiation of GMP completed**)
5. Notice to Proceed with Construction (**approx. 1 week to collect bonds**)

Thank You!

SAN FRANCISCO

LONG BEACH

SAN DIEGO

NOVATO

CHICO

SACRAMENTO

SAN LUIS OBISPO

www.DWKesq.com

Mark W. Kelley

mkelley@DWKesq.com

415-543-4111

Deidree Y.M.K. Sakai

dsakai@DWKesq.com

415-543-4111

How Lease-Leaseback Works: Project Timeline

