

Lease-Leaseback Construction Delivery Method



Hacienda La Puente Unified School District

Martin Hom
January 10, 2019

aa/r
Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

Lease-Leaseback – Ed. Code § 17406

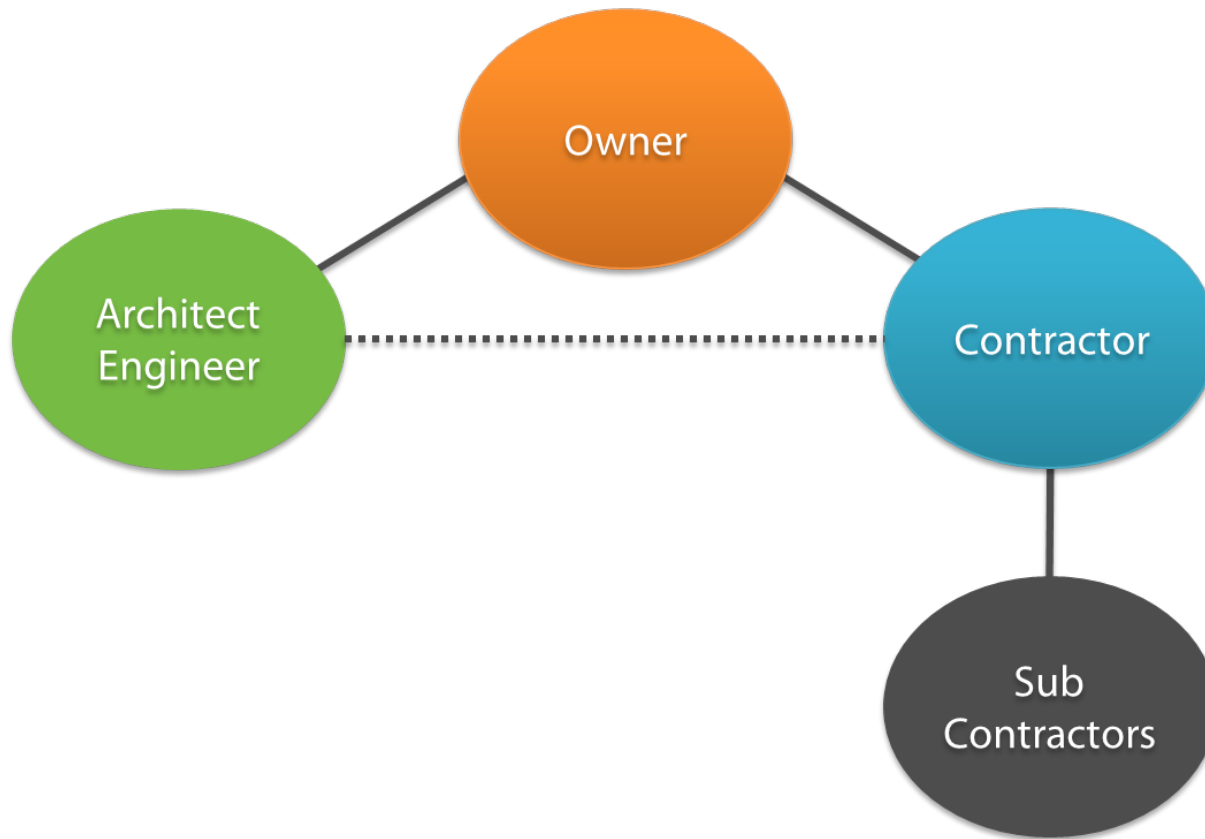
- A public school project delivery method for the construction or improvement of school facilities.
- School district leases property it owns to the contractor for a nominal amount.
- Contractor agrees to construct school facilities or improvement on the property and lease the property and improvements back to the school district.
- At the end of the leaseback period, title to the land and all of the improvements vests in the school district.

Lease-Leaseback

- Lease-Leaseback agreement is made up of the Site Lease, Sublease, and the Construction Services Agreement.
 - Site Lease: District leases the site to the lease-leaseback contractor.
 - Sublease: Lease-leaseback contractor leases back the site and improvements to the District.
 - Construction Services Agreement: construction requirements such as bonds, insurance, payments, indemnification, terminations, etc.

Lease-Leaseback

Lease-Leaseback



Advantages and Disadvantages

Advantages

- Best Value Selection
- Guaranteed Maximum Price
- Flexibility
- Team Concept
- Timing

- Lack of Familiarity
- Best Value Selection
- Process has Detractors

Disadvantages

LLB Best Value Selection

- The best value is determined on established published procedures and guidelines to ensure that selection is “fair and impartial”
 - Seek qualifications through an RFP
 - Mandatory qualifications: prequalified, contractor license, bonds and insurance, and responsibility check
 - Categories: professional qualifications, past performance, preconstruction services, skilled and trained workforce, safety, local outreach, price, and exceptions to the LLB agreement

LLB Best Value Selection

- Publish the notice of RFP for two consecutive weeks in newspaper of general circulation and trade paper
 - Last notice at least 10 days prior to proposal due date
- Evaluate proposals upon criteria and methodology in the RFP
 - Score each proposal and assign a best value score for each proposal
 - Evaluation of price
 - Document scoring to satisfy an external audit

LLB Best Value Selection




- Award LLB contract to proposer who provides the best value to the District
 - Board must publically announce the award with a statement on the basis for award
- After award, LLB contractor must:
 - Provide objectively verifiable information on costs
 - Select subcontractors by either low bid or qualifications-based procurement
 - Negotiate GMP after preconstruction services and DSA approves plans and specifications
 - Provide District with written rationale for GMP

Skilled and Trained Workforce

- Applies to LLB contracts awarded after January 1, 2017
- LLB Contractor to provide an “enforceable commitment” to use “skilled and trained workforce” to perform all work falling within an “apprenticeable occupation” in the building trades.
- “Apprenticeable occupation” means occupation for which there is an approved apprenticeship program per Labor Code § 3075 prior to January 1, 2014.

Skilled and Trained Workforce

- As of January 1, 2017, at least 30% of the “skilled journeypersons” employed by the entity and each of its subcontractors at every tier must be graduates of an approved apprenticeship program for the applicable occupation
- Percentage only applies to each “apprenticeable” trade and not to entire labor force
- Percentage escalates over time

January 1, 2018		40%
January 1, 2019		50%
January 1, 2020		60%

Disclaimer

This presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The firm is not responsible for inadvertent errors that may occur in the publishing process.

© 2018 Atkinson, Andelson, Loya, Ruud & Romo