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**OF CALIFORNIA**

# Novato Unified School District Bond Project Procurement Options September 4, 2018

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## **Two Primary Options for Selecting a Contractor for the Bond Projects**

- a) Public Bidding  
(Public Contract Code § 20111)
- b) Lease Leaseback  
(Education Code § 17406)

# Lease Leaseback

## Education Code 17406

- The law as it exists today:

“[T]he governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year ... any real property that belongs to the district if the instrument ... requires the lessee therein to construct ... a building ... for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of that term.”

- The process for selection of LLB contractors includes the following requirements:
  - Board adoption and publication of procedures and guidelines for evaluating qualifications of proposers.
  - Must ensure the best value selections by the District are conducted in a fair and impartial manner.
  - Prequalification of all general contractors and mechanical, electrical and plumbing subcontractors.
  - Issuance of an Request for Proposals (RFP).

- The RFP must include:
  - An estimate of price,
  - Precise description of any preconstruction services that may be required,
  - Key elements of the contract,
  - Description of the format to be followed and elements to include, standard to be used in evaluating proposals,
  - Date when proposals are due, and
  - Timetable for review and evaluation of proposals.

- The RFP must identify the scoring criteria that will be used to select the LLB contractor.
- Once proposals are received, the District must score them according to the specific criteria and award the contract to the responsive proposer with the highest score.

- Lump Sum Proposal:
  - RFP for LLB contractor cannot be issued until after DSA approval without including preconstruction services.
- Fee Proposal:
  - RFP can be issued prior to DSA approval in order to include preconstruction services.
  - Additional competitive process applies for selecting contractor's selection of subcontractors following DSA approval.
  - The Governing Board must approve the total project cost once it has been determined by the contractor.

## **Pros and Cons of Lease Leaseback**

### Pros

- Increased ability to select a highly qualified contractor who will construct the project in a timely manner.
- LLB requires a competitive “best value” solicitation process which allows the district to evaluate both the contractor’s qualifications and price.
- Allows selected contractor to provide preconstruction services to the district before DSA approval.
- Potentially fewer change orders.

### Cons

- Prequalification will be required for all LLB projects
- Increased front end work for district staff – prequalification, LLB RFP, analysis and selection of contractor.
- LLB pricing may be higher due to the “skilled and trained workforce” mandates and the need for lease/financing after completion of the project.



# Questions?



Information in this presentation, including but not limited to PowerPoint handouts and presenters' comments, is summary only and not legal advice. We advise you consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

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