

Berkeley Unified School District

FACILITIES PLANNING DEPARTMENT

1720 Oregon Street, Berkeley, CA 94703 (510) 644-6066 Fax: (510) 644-8703

Draft Minutes of the Meeting of July 19, 2012

Members Present: Stephanie Allan Susi Marzuola Eric Weaver
Nicolie Bolster-Ott David Goldin

Staff Present: Lew Jones, Director of Facilities
Chanita Stevenson, Administrative Coordinator

Board Members Present: School Board Director, Josh Daniels

Consultants Present: Elena Ayana, Turner Construction Bob Diaz, Turner Construction

1. *Call to Order:* The meeting was called to order at 6:04 PM.
2. *Approval of Meeting Minutes:* The following changes were made to the minutes:
 - A clarification was made to the May minutes regarding comments related to the pool at West Campus to reflect:

The pool at West Campus will be built, paid for and maintained by the City of Berkeley if the proposed bond measure passes in November.

Member Goldin moved to approve the minutes as amended and Member Bolster – Ott seconded the motion. The motion was approved unanimously.

3. *Public Comments:* There were no public comments.

4. *Presentation from Turner Construction*

Bob Diaz, Project Executive from Turner Construction provided the committee with a document comparing the various delivery methods. Below details an excerpt of presentation along with questions from various committee members regarding each method.

- **Lease Lease Back:**

1. It is more of a financial arrangement between the District and the Developer. It is a method of developing a school property as opposed to hiring a general contractor. Lease Lease Back allowed School Districts to contract with a developer to build a school. The school district leases the developer the property and the developer builds the school. Over the course of time the District makes lease payments or pays off the developer once monies are available.
2. Districts utilize this method if they have additional criteria to address that is not allowed under the public administration code. For example, if the agency has local participation goals, they can stipulate that certain trades are obtained from local business. Another reason is that they would like a builder to work with a contractor in the beginning and

have some of the subcontractor trades design build the project. Staff noted that generally a lot districts do lease lease back to avoid an adversarial relationship with the contractor.

3. Co-Chair Allan asked:

- a. What effect does this method have on a project labor agreement? None. Subcontractors have to sign a letter of assent.
- b. Has the district done this type of agreement? Staff responded no, but many districts are exploring this option. Mr. Diaz stated that the downside to Lease Lease Back agreements are the financing costs that are incurred to pay back the developer.

4. Secretary Weaver asked:

- a. Are there any additional costs associated with financing? A Guaranteed Maximum Price Contract (GMP) is signed and the process is transparent. There usually are not any additional costs, because any savings goes back to the owner. Incentives are sometimes offered to the builder. In the beginning, it seems more expensive but in the end it may not be more expensive.

5. Member Goldin provided history regarding the Lease Lease Back and noted that districts utilize Lease Lease Back to select the contractor. Since BUSD has the funds, he wondered if there was a way to select the contractor without having to enter into this type of financial agreement. He noted that it is important to select a group with a long history of doing Lease Lease Back.

6. Staff asked how large does a project have to be utilizing a Lease Lease Back:

Mr. Diaz stated that it is not about the scale of the job but the type of work you would like to do and what needs to be accomplished. He gave an example of Oakland Unified who wanted to have local participation. Staff states that the Maintenance Building could be a possibility. Member Goldin stated that BHS Phase II/Phase III would have been a good candidate for this method.

- **Design/Bid/Build:** Most familiar method. The owner hires an architect and puts the project out to bid. The project is awarded to the lowest bidder.
- **Construction Agency Manager:** Owners hire construction managers to augment staff to provide their expertise in construction, technology, costs, scheduling and constructability. The construction manager works with the architect and contractor. It is still a design/bid/build process.

Pitfalls of these two may involve claims, schedule delays and litigation.

Additional Delivery Methods discussed were:

- **Construction Manager/ Multiple Prime:** Owner hires a construction manager. Construction manager works with the design, creates bid packages. The owner puts all trades out to bid to subcontractors. The owner holds the contracts with the contractors. The pitfall is that there are additional administrative costs associated with this type of contract. Also, the owner may be

exposed to trade contractor claims for productivity or coordination. However, this risk could be alleviated if a construction manager is hired at risk to manage the project. The construction manager could be liable for liquidated damages. Staff noted that Multiple Prime contracts were explored, but the administrative burden was too much for the district to handle. It could only be used for something small.

1. Co-Chair Marzuola asked how is the CM selected and how are the trades bid? Typically on qualifications. Price is not typically a factor. The trades are bid and the lowest bidder is selected.

Turner prefers this type of method.

- **Construction Manager at Risk:** The public agency does a value based selection based on qualifications and the construction management firms will compete on general conditions. The construction manager creates a guaranteed maximum price. It is good for special or complex projects. There is an ability to overlap design, bid, build for a shorter schedule.
 1. Secretary Weaver asked with CM at Risk can the District still have a criteria for a Project Labor Agreement and does it reduce problems with the owner?

CM at risk would run into problems if bidders are restricted. The CM will have some elements of advertising and accepting bids. This can reduce problems with the owner because bids are evaluated carefully by the CM for exclusions and to make sure that all risks are covered either in the GMP or in the contingency.
- **Design/Build:** This is a new idea but executed differently by different agencies. An agency can hire the architects to create the design and offer it to a prequalified group of design/build firms who could win the bid on lump/sum price or on some value based criteria where price and qualifications are considered. Another way this could be done (ie: SFO Terminal 2) is where the Design/Build firm and Architect team up and compete for the project based on qualifications. Design and Build can occur at the same time, because San Francisco Airport does its own permits, which would not work for schools. Staff noted that there is DSA minimum (>\$10M) for design/build projects.

Additional Questions and Comments:

- Co-Chair Marzoula asked is there a reason why our district can not use Lease Lease Back?

Member Goldin stated that financially there would be no reason to do lease lease back and the only upside will be for the district to choose the developer. Turner noted that lease lease back could also be utilized to fulfill conditions not allowed under public contract code such as local participation.

- Staff asked if there are any alternative methods that should be explored:

Turner believes that a Multiple Prime contract would be useful for the smaller projects. A larger project would be fine to utilize Construction Manager at Risk delivery method. Staff noted that there may be problems with purchasing and accounts payable with too many contractors. This would not be a good fit for all projects.

5. *Staff Report*

- **BHS Summer Projects:** At Berkeley High School, the Roofs, the Flooring and Painting Project at the G Building and the Bridge Project are on schedule. The BCT follow-on project submittals are in and work will begin next week, however this project is still on schedule.
- **BHS Science Labs Update:** The BHS Science Rooms went to the Board for schematic approval. The Board approved moving forward with only two of the three science rooms, because one of the science rooms was smaller than the two. The Board also had questions about when the B-Tech science lab will be created. Member Bolster-Ott asked if Independent Study students will still have to continue to register for science courses at the high school. Staff responded yes, however the independent studies students may benefit from a science lab at B-Tech. Board Director Daniels also clarified that Independent Studies students are enrolled as Berkeley High School Students. Member Goldin asked how much would it cost to design all three classrooms. Staff responded that the Superintendent and the Board would have to make the decision to move forward.
- **BHS South of Bancroft:** At the Stadium Building, the systems are primarily up. We have a few issues with final fire alarm inspection. The Building has received all the furniture. There were a few issues raised during the Committee's walkthrough (plumbing and the addition of a railing at the top of the stadium). The Consultants are still exploring the plumbing issue and a price has been provided to the District regarding the railing. Staff is working with Superintendent and the BHS Administration to determine if the railing makes the building more safe or unsafe. Board Director Daniels asked what makes the railing addition unsafe. Staff responded that it may encourage students to play on the railing. The cost is around \$10K. Co-Chair Allan requested more information regarding the protection of plumbing in one of the rooms on the second floor. Staff stated that the issue is with the engineers to determine a solution and will happen. Member Goldin asked about closeout with the Contractor and if it will end in a claim. Staff responded that he believes the project will close out without claim. There was a completion agreement signed. The contractor will pay \$125K to the District for being late. The District compromised our claims, to avoid costly litigation against the contractor. Payments are being withheld from the current payment. Change orders are currently at 3% and we currently hope to resolve everything amicably. The original deadline was almost a year ago.
- **BHS Phase II & III:** Demolition is currently underway. The job is a little behind as the steam tunnel required additional abatement work. The demolition of the Milvia street side will begin on Monday. The scoreboard was put up today. Training is scheduled to happen on August 1st. The Laundry Room price from Alten is around \$90K. The District is evaluating the bid. Staff is still researching the track options raised at the previous meeting.
- **West Campus:** The move is set for July 30th through August 8th. The 2nd floor will move in first. There are still issues and Staff believes that we will end in a claim. Some funds were released from retention to pay sub-contractors. Member Goldin asked if the District plans to paint the other buildings. Staff discussed that a painting and roofing project has been awarded at West Campus. The paint project will paint the Boy's Gym, Auditorium and the Girl's Gym. The roofing project will include replacing the Boy's Gym and Auditorium roofs. The original scope

also included the Girl's gym, but this roof will be completed next year. The roofing system will be changed to a single ply system instead of hot tar.

- **Derby Field:** Construction has started. Migratory birds caused some delay to the project and we had an ornithologist go to the site to provide a report that the birds will not be disturbed. Construction has resumed. PG&E has slipped and is planned to begin in August.
- **Other Projects:** Berkeley Arts Magnet and LeConte Transformer Projects are on schedule. The Malcolm X Solar Project is on schedule. The lockers for King and Willard Girl's Gym will be received in 1-2 weeks and is slightly behind schedule. King Media Elevator is ahead of schedule, the inspection is scheduled for August 10th.
- **Other Projects in Design:** The King Field goes to the Board on August 22nd for schematic approval. There is some interest in this project as some members of the community would like an all-weather track. The Board approved the Hopkins Preschool Modernization Project with a significant increase to the budget (\$525K). Co-Chair Marzuola asked if the mold issue was addressed. Staff responded that this issue has been addressed and a drainage issue will be corrected during this project. Jefferson Modernization – the District is exploring whether or not additional seismic work is needed. The architects will provide a recommendation. The District is still working with the site regarding the communication and Crowden School concerns. The District held an additional community meeting to address the concerns of the parents. West Campus CTE facilities – There are two components that will have to be reviewed. The Architect made an error on the estimate during their presentation to the Board in terms of the work that could be completed. To stay within budget, work will be completed in the old administration building and no work will be done in building E. It will be structured to bid the old administration and bid Building E as an alternate.

6. *Schedule Next Meeting:*

The next meetings are scheduled for the following dates:

- August 30th – West Campus Tour and Presentation
- September 20th or 27th – Discussion with the Auditor (Tentative)

7. *Adjournment.* The meeting adjourned at 7:51PM.