Ohlone Community College District
Board Workshop
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CONSTRUCTION PROJECT OPERATIONALIZATION
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Why We Need This Workshop

With approval of the DFMP, we are about to operationalize the projects, and we need to provide information about the available alternatives.

The goal of this presentation is to provide a basic vocabulary and understanding of the alternatives along with some “rules of the game”, including some thoughts on how to stay out of trouble in the process.

We will make no decisions tonight.
Agenda

Tonight’s workshop is divided into five parts:

Part 1-Context-DRE
Part 2-“Staying Out of Trouble”-MK
Part 3-Some Basics-DRE
Part 4-Project Delivery Alternatives-CM
Part 5-Procurement Alternatives-DRE & MK
Part 1-Context
Context Diagram

POLICY [BOARD] “THE WHAT”

OPERATIONALIZATION [ADMINISTRATION] “THE HOW”

= OUTCOMES “THE END RESULT”
The “What” and “How”

For purposes of this Workshop, the “what” is the Measure G Bond language, the DFMP and subsequent revisions.

The “how” is the tools and techniques that are available to the Administration, and are the topics of this Workshop.
Desired Outcomes

The desired construction project outcomes are the “end result” of policy and implementation. Among the most important are:

- Quality projects that meet the stated objectives of the Bond and the District’s Facilities Master Plan.
- Implemented in a manner that meets or exceeds the expectations of our constituents, and the public at large.
- Utilizes processes that are both inclusive and transparent.
- Maintains legal and ethical standards so that everybody stays out of trouble.
Questions on Part 1?
Part 2-“Staying Out of Trouble”
Headlines To Avoid

Southwestern, Sweetwater officials targets of sweeping investigation
Ex-chancellor admits diverting CCSF cash to bond campaigns

By Stephanie Rice
SPECIAL TO THE CHRONICLE

The former chancellor of City College of San Francisco has pleaded guilty to felony charges of misusing public funds.

As part of a plea deal, Philip Day admitted last week to diverting nearly $100,000 in college funds to campaign for community college bond ballot measures. It is illegal to use public money for political purposes.

Day, who served as chancellor from 1998 to 2008, pleaded guilty to three felony counts and agreed to pay $30,000 in fines. He will also pay a $10,000 amount to be determined by the court.

Day and two other officials were investigated by the Attorney Kamal a Chronicle story.
Why Are We Talking About This?

The Board and Administration are about to enter into processes which will, in the end, result in the award of millions of dollars of construction related contracts.

Given the pressures of a lingering “Great Recession”, potential recipients of these contracts are, and will be, energetically attempting to be successful, by various means.

In addition, we are in an era of tremendous scrutiny of public institutions.

Accordingly, we must take steps to insure that all processes are legal, ethical and transparent in order to “stay out of trouble”.
What Kinds Of Steps?

- Published Standards of Conduct
- Training (all applicable parties)
- Full disclosure
  - Form 700 for Board and Administration
  - Consultant Representations
  - Etc.
- Conflict of interest checks
- Audits, including Performance Audit and CBOC Review
- Reporting
- Peer monitoring, including “lessons learned”
Overall Standard

There is really only one overall standard that needs to be remembered to “stay out of trouble”:

“Maintain the Public Trust”

If we do this, everything else will fall in place.
Next Steps

Because “staying out of trouble” can be a very involved topic, the Administration will be providing additional guidance in the near future.

In the meantime, here is a sampling of ways to “get into trouble”.
Ways To Get Into Trouble (A Sampling)

#1-Promising to “deliver” a contract.
#2-Having real (or perceived) financial conflicts of interest and/or improprieties.
#3-Conducting less than “arms length” transactions.
#4-Not following legal requirements.
#5-Accepting gifts.
#6-Spending funds for illegal purposes.
#7-Not being transparent, esp. with regard to selecting vendors (Architects, Contractors, Suppliers).
Questions On Part 2?
Part 3-Some Basics
Sources of Rules - California Community Colleges

The alternatives that are available to California Community Colleges are heavily regulated, and this both describes and limits our alternatives.

Sources of Rules include:
- Federal and State Constitution
- Codes (Government, Education, Public Contract Etc.)
- Attorney General Opinions (very influential, but not binding)
- Other Laws and Regulations (CEQA, Cal. Code Regs Title 24)
- Community College Regulations (Chancellors Office etc.)
- Other Agency laws and regulations (DSA, DTSC, DIR, Sewer and Water Districts etc.)
- District Policies and Administrative Procedures

Needless to say, our goal is to comply with all the rules.
Definition of “Construction Projects”

For this workshop, we are fundamentally talking about the elements of significant construction projects, including:

- “Land” (site and site issues)
- “Soft” costs (designers, permits, managements etc.)
- “Hard” costs (bricks and mortar construction)
- “Equipment” (furniture, technology, educational etc.)

These items are generally under the jurisdiction of the Division of State Architect (DSA), which operates as the permitting and inspection authority (other agencies may have jurisdiction on certain elements). DSA focuses on Structural, Accessibility and Life Safety issues.

We are NOT talking about maintenance or other statutorily excluded work.
Core Construction Project Relationships (“Triangle”) Chart
More Project Relationships

On the “Owner” side:
- **Owner** (President/Superintendent, Staff and College Committees) [Need & Funding]
- **User Group** - The ultimate users of the project
- **Owner’s Representatives** (Program/Construction Mgrs) [Manages the project on behalf of the Owner]
- **Owner’s Resources** (Lawyers, Insurance, Etc.) [Provides expertise and services]
- **DSA Inspectors** and **Testing Labs** [Inspects the Work]

On the “Architect” side:
- **Architects** (Architects and Engineers) [Designs the project]
- **Design and Technical Consultants** (CEQA, Other) [More detailed help]

On the “Contractor” side:
- **Contractors** (General Contractors and Subcontractors) [Builds the project]
- **Suppliers** [Provides materials to the project]

Of the above, only Contractors use a hammer!
The Board approves all contracts related to the above!
Questions on Part 3?
Part 4-Project Delivery Alternatives
(Our “Big Tools” To Deliver Projects)
Project Delivery-Definition

Project Delivery is the method by which the Owner, selects, contracts for, manages, and interacts with Architects and Contractors.

It also establishes the contract risk that the Owner is taking.
Basic Project Delivery Alternatives

There are several basic project delivery models that are legal and in regular use in the California Community College System. The Traditional Project Delivery method is Design-Bid-Build.

In addition, there are Alternative Project Delivery methods have been developed because of the limitations of the Traditional Design-Bid Build method, including:

1) Multi-Prime
2) Design Build
3) Lease/Leaseback

Each of these methods has plusses and minuses, and can be somewhat modified for particular strategies/situations.

We anticipate utilizing some or all of these during the life of the Measure G Bond program.

We will review the fundamentals of each of these in turn.
Design/Bid/Build (e.g. SSB)

- Owner engages Architect/Engineer to develop design.
- No General Contractor (GC) input during design.
- Completed design is bid competitively to open or pre-qualified list of GCs.
- Construction contract awarded to low bidder.
- GC held by contract to the price, schedule and design.
Multiple Prime Contracting (e.g. NCHST)

- Trade contractors contract directly with the Owner as Prime Contractors.
- Typical contract breakdown; general trades, mechanical, HVAC, electrical, site work and occasional specialties (e.g. fire protection).
- Trade Contracts are competitively bid.
- Constr. Mgr. coordinates and manages Prime Contractors.
Design/Build (e.g. Fremont & Newark Solar)

- Single entity provides design and construction
- Designer – Builder is typically a team of Builder & A/E, but may be a single firm.
- Designer – Builder contracts directly with the subcontractors and is responsible for delivery of the project.
- Early participation by entire D-B Team.
- Design Builder is selected by qualification (per statute).
- Subcontractors are generally selected by bidding.
**Lease/Leaseback**

- Developer (Builder) holds subcontracts and is single point of responsibility for construction delivery of the project.
- Developer can be selected by various methods, but a competitive RFQ process is recommended.
- The Developer is selected early, participates in design review and preconstruction input with the A/E (“Three-legged stool”).
- Guaranteed Maximum Price (GMP) option.
- Requires temporary transfer of leasehold to Developer.
Additional Tools

Within each project delivery method, there are other significant tactical “tools” that are available, including:

1) **Informal Bidding** per (to construction contracts up to $175,000)
2) Formal **pre-qualification** of Contractors e.g. SSB & NCHST
3) **Wrap Up insurance** e.g. NCHST
4) Peer reviews and **constructability reviews**
5) **Energy Services Contracts** (for energy projects only) e.g. Solar projects
6) “**Piggyback**” **Contracts** (for personal property only) e.g. NCHST and SSB

We mention these because they may be proposed as part of an overall Project Delivery solution.
End Result

Different Project Delivery methods are appropriate for different projects. The Administration will pick the best Project Delivery method for a given situation.

Expect some or all to come to the Board for approval as part of individual projects.
Questions on Part 4?
Part 5-Procurement Alternatives
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Procurement alternatives include alternatives available to the Administration for Contractor “Business” and “Workforce” participation.

They are alternatives because they are 100% optional. The Administration is not required to utilize any of these alternatives and hasn’t in the past.
Business Alternatives

Questions have arisen about the whether the following alternatives are legal:

1) Small Business preferences - Yes
2) Local Business preferences - No*
3) Minority/Women Business preferences - No*
4) Disabled Veteran Business preferences - Yes*
5) Outreach - Yes*

*=Qualified answer.
Small Business Preference

-Allowed by Public Contract Code Section 2002
-Small Business is defined by the Local Agency (the District)
-The District can give up to a 5% bid preference (note: can also apply to Architects and Suppliers)
-Alternatively, the District can require up to 5% subcontractor / sub consultant participation by the Small Business.
Local Business Preference

-Generally not allowed.
-Exception requires proof of need to discriminate against non-local businesses. It is a Constitutional issue.
-The exception requires a disparity study, findings etc.
MBE/WBE Business Preferences
(Minority and Women Owned Business Enterprises)

-Generally not allowed.
-Procurement based on race or sex is barred by Proposition 209 and case law.
-The exception requires a disparity study, findings etc.
DVBE-Preferences
(Disabled Veteran Business Enterprise)

- Goals are allowed (for local bond projects).
- Goals are required (for State funded projects).
- A goal is just that. It requires a good faith effort to include DVBE’s, but there are no penalties for not achieving the goal.
Outreach

- Allowed, if the outreach is available to all, and not limited to local, minority, and/or women-owned businesses.

- Outreach can publicize bidding and professional services opportunities and can provide training opportunities.
Workforce (Labor) Alternatives

Similar to businesses, questions have arisen about workforce (labor) alternatives:

1)-Union Labor preferences-No*
2)-Local Labor preference-No*

*=Qualified Answer.
UNION LABOR PREFERENCES

-Because of competitive bidding laws:
  -A “union-workers-only” requirement is **not allowed**.
  -Additionally, a prohibition against non-union workers is also **not allowed**.

-The competitive bidding laws invoke a public policy that encourages equal opportunity on public works projects.
Project Labor Agreements

- PLAs are allowed by PCC 2500.
- PLAs have certain statutory requirements, known as “Taxpayer Protection Provisions”.
- These requirements include:
  - No discrimination by race or gender
  - No discrimination by union affiliation or not
  - A guarantee against strikes and lockouts.
Major PLA Terms (All Negotiable)

In addition to the terms required by statute, major terms that are negotiated include:

- **Parties** to the Agreement
- **What projects** are included/excluded (by thresholds or other criteria)
- **Duration** of the Agreement
- **Workforce makeup** (i.e. Referral of ‘core” workforce. Others provided by union local(s))
- **Small Business** provisions
- **Contract administration** provisions

Note that Public Work Prevailing Wage laws establish minimum wages.
Local Labor Preferences

-Similar to local businesses, local labor preferences are generally not allowed absent findings based on proof of need to discriminate against non-local labor. It is a Constitutional issue.

-The exception requires a disparity study, findings etc.
Questions on Part 5?
Decision Criteria And Next Steps

-For all the alternatives described in this Workshop, the Administration will weigh the costs and benefits to determine the best course of action.

-The next step is for the Administration to review all alternatives in more detail, select any which are desirable, and then implement those alternatives as part of the process of moving forward.

-All resulting contracts will come to the Board for approval.
Final Questions?