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**C.A.S.H. WORKSHOP**  
**“Choosing a Project Delivery Method”**

**Monday, October 8, 2007**

12:00 p.m. to 4:00 p.m.

Westin South Coast Plaza

686 Anton Blvd.

Costa Mesa, California

**LEA PERSPECTIVE**

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San Ramon Valley Unified School District

## Experience w/ Delivery Methods

- Design/Bid/Build
- Design/Bid/Build (PSA)
- CM – Agency (General Contractor)
- CM – Multiple Prime (< 8 primes)
- CM – Multiple Prime (up to 30 primes)
- CM – Multiple Projects/Multiple Prime

## Experience w/ Delivery Methods

- Lease-Leaseback
- Developer Built
- Developer Funded
- Emergency
- CMAS
- Piggyback
- Uniform Public Construction Cost Accounting Act
- Futility

## Design/Bid/Build


California school districts must formally, publicly bid all contracts unless there is an exception.

- Generally, school districts must formally and publicly bid contracts for:
  - Construction projects over \$15,000
  - Equipment and supplies purchases or non-construction service contracts over \$65,100
    - (Public Contract Code, section 20111)

## Design/Bid/Build

- Must take low bid
- Who are the subs
- Will my general bid shop after opening
- Protests
- Smaller Projects = greater unknown
- Pre Qualification of Contractors

## Design/Bid/Build w/PSA

- Project Stabilization Agreement
  - Union contractors or sign agreement for that project
  - Fewer bidders
  - Supply and demand issues  
(fewer bidders = less competition=  prices)

## CM - Agency

- Construction Manager with General Contractor
- Use a qualifications based process to select Construction Manager
- Use CM as extension of staff
- Watch fees
- No or few General Conditions

## CM – Multiple Prime (fewer primes)

- Construction Manager with trade packages grouped for size, scoping, and efficiency
- Use a qualifications based process to select Construction Manager
- Control schedule (float goes to me)
- Watch fees and general conditions
- Scope coordination issues

## CM – Multiple Prime (many primes)

- Construction Manager with packages by trades
- Use a qualifications based process to select Construction Manager
- Hire and contract for the person, not the company
- Control schedule and sequencing (float goes to me)
- Watch fees and general conditions
- Scope coordination issues
- Keep project moving
- Lots of contracts, pay applications, paper, paper, paper!!!

## CM – Multiple Projects & Primes

- OPSC funding and audit issues
- DSA change order tracking issues  
(1 contract per prime for multiple DSA application numbers/projects)
- Economy of scale (combine smaller projects)
- Save on general condition costs
- Group projects by similar building construction and/or distance
- PAPER, PAPER, PAPER!!!

## Lease - Leaseback

- Education Code sec. 17406 allows districts to obtain facilities by leasing without up-front funding by district
  - District leases site to builder
  - Builder constructs facility and leases back to district
  - Finance entity funds construction costs
  - Lease payments should equal a term different than the length of construction (should not pay an amount equal to construction pay applications)
  - Need a good lawyer

## Developer Built/Funded Schools

- District may charge a fee against construction within its boundaries – Developer fees
- In exchange for a waiver or reduction in fees (plus other concessions) developer builds school or pays for District to build school
- Lease – Leaseback
- Design/Bid/Build (Developer Holds Contracts)
- Design/Bid/Build (District Holds Contracts)
- CM – Agency
- CM – Multiple Prime

## Developer Built/Funded Schools

- Complex legal set-up
- Evaluate value of concessions demanded by developer vs. value of facility delivered
- May lose some control over quality
- Still need to develop the program and monitor quality
- State approvals, design, inspector, etc.

# Emergency Contracting

- To avoid danger to life or property or to permit the continuance of existing school classes, districts may contract without bidding for construction work
- Requires:
  - Unanimous vote of the Board;
  - County Superintendent approval;
  - Compliance with requirements re: bonding, insurance, etc.
    - Public Contract Code sec. 20113

## Emergency Contracting, Cont'd.

- The emergency must be “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services“

*(Marshall v. Pasadena (2004) 119 Cal.App.4th 1241)*

## CMAS – California Multiple Award Schedule

- **What can you do?**
  - Buy things not labor
    - Labor must be incidental (what?)
- **What is Excluded?**
  - The following services are not available on the CMAS program:
    - Architectural, Engineering, and Environmental Services
    - Financial Audits
    - Legal Services
    - Public Works

## PIGGYBACK

- School districts may piggyback on other agreements lawfully entered into by public agencies to purchase or lease equipment, materials, supplies and other personal property.
  - Public Contract Code sec. 20118
- Not to be used for construction
- AG Opinion (portables not modulars)

## UPCCAA

- Uniform Public Construction Cost Accounting Act
- School districts may adopt the alternate bidding procedures of the Uniform Construction Cost Accounting Act to:
  - “Informally bid” construction projects of \$125,000 or less
  - Have other contracts of \$30,000 or less performed by District employees or by force account.
    - Public Contract Code sec. 22030 *et seq.*

## UPCCAA

- Can be an administrative hassle
- Establish contractor list and maintain it
- “Informal” bid process is still required
- Monetary limits are still somewhat low.

## FUTILITY – Bidding in Unavailing

- When it would be impossible or futile to bid for the work, and bidding would be of no advantage to the public
  - “Where competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply" (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694).

## FUTILITY – Bidding in Unavailing

- Public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve the purposes of competitive bidding. (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.)

## FUTILITY – Bidding in Unavailing

- Change orders that exceed 10%
- When project or prime has received no bidders after multiple attempts
- When project is at no cost (i.e. 100% parent or developer funded)

# WARNING