INTRODUCTION  The lease-leaseback project delivery method (LLB) has increased in popularity as an alternative option to deliver successful educational construction projects in the state of California. The purpose of this study is to explain some of the basic elements behind this established method of delivery, which has become available to public school districts.

BACKGROUND  The Lease-leaseback project delivery method was authorized by the state legislature to deliver school facilities on time, on budget and with a reduced level of public risk. California’s Ed Code section 17406 says (in plain language) that:

- A District may lease any real property that belongs to the District to a “person, firm, or corporation,” (the Builder) for $1.00 per year;
- The agreement between the District and the Builder must provide for the construction of a building or improvement on the District’s property;
- The District may do this without advertising for bids.

What this means is that Districts are authorized under California state law to enter into agreements with partners based on qualification and price to deliver facility improvements. Districts may consider “best value” proposals, similar to procedures associated with procuring other professional services contracts, and avoid the pitfalls associated with ‘low bid’ contracting methods.

Lease-leaseback agreements typically start with a preconstruction agreement that allows the builder to work with the designer in a team environment during the preconstruction phase to develop an efficient and effective set of drawings for Division of the State Architect (DSA) approval.
Once DSA approval is granted, the District executes two additional agreements: the site lease (which leases the property to the builder), and the facilities lease (the tool that allows the District to lease back the real property with the improvements).

One or both of these documents will reference the construction provisions, which in turn reference the plans and specifications and contain typical legal language associated with public works projects (i.e. bonding, insurance, indemnity, schedules, inspections, etc.).

These documents will establish the Guaranteed Maximum Price (GMP), which should include provisions for contingencies and/or allowances as negotiated between the District and the builder. Lease payments to the builder are most often based on a percent completion, where the District releases payments regularly each month based on actual performance.

As with traditional delivery methods, Districts contract directly with the Inspector of Record (IOR) and special inspection teams with all other public works projects subject to DSA oversight. This provides a measure of third-party accountability, ensuring that the project progresses in compliance with the state-approved drawings and specifications. Title vests back with the District as lease (progress) payments are made and the project is completed.

**The Benefits** The Lease-leaseback contracting method was developed specifically to provide Districts with the same negotiating tools as private sector entities, meaning that the builder(s) may be selected on the basis of qualifications that are important to the District and its stakeholders, including references from other Districts, proven performance, etc.

Some benefits of the LLB contracting method include:

- It permits a collaborative, teamwork-oriented approach to projects that increases accountability and provides the designer, builder and key subcontractors with the ability to work together prior to construction and identify best practices, appropriate products, and value engineering opportunities.

- Agreements can be structured to ensure local subcontractor participation and selection of qualified subcontractors with a proven track record of success. The agreement documents can specify the level of transparency in the subcontractor bidding process.

- Entire sites or portions of active sites can be leased.

- Tight schedules can be maintained as the builder participates in the design process - when approval is granted, construction crews can ‘hit the ground running’ as soon as the next day. Phased DSA approval helps meet deadlines, and allows projects to be priced during the approval process.
• The LLB method establishes a single contract for the District to administer, which frees up administrative staff.

• Post-bid negotiation with subcontractors enables the most cost-effective and error-free set of trade packages prior to start of construction.

• Risk to the District is reduced because the builder is responsible for delivering the project within the mutually agreed-upon GMP.

**THE CONCERNS** While state officials have not yet identified risks specific to the lease-leaseback contracting method, they have cautioned that it is a relatively new process that may not be well understood by the design and construction industry.

Some concerns of the LLB contracting method include:

• District legal counsel may be unfamiliar with the LLB contract forms. However, larger firms representing most California public school districts are typically experienced with its common documents/contract.

• Removal of the design/bid/build approach requirement for construction projects may result in higher initial pricing for Districts. Evidence suggests that a collaborative approach during preconstruction produces tighter, more efficient drawings that result in smoother and more cost-effective projects overall. Competitive bidding of trades, along with post-bid negotiation, results in competitive pricing while minimizing risk of extensive change orders and potential schedule delays.

• Most District concerns arise from misconceptions, but as there is a great deal of flexibility within the confines of the law - Agreements can (and should) be specifically structured to allay concerns, including requiring local trade participation, the use of a District’s list of prequalified contractors and Project Labor Agreement (PLA) participation, etc.
CASE EXAMPLES

San Antonio School - Alum Rock Union Elementary School District
San Jose, CA

Blach performed lease-leaseback services for the Alum Rock Union Elementary School District’s $179 million facilities bond, funded by Measure G. The company completed the construction of a new 46,000 s.f. campus located on the existing San Antonio School site in 2011. The new school features a new two-story classroom building, new multi-purpose building with exterior stage, new administration building and a new kindergarten building. In addition, the project’s scope includes two new soccer fields, basketball courts and new playgrounds.

As a result of leveraging the lease-leaseback delivery method and the early collaboration with the design team during the preconstruction phase, the construction schedule was reduced by six weeks. Blach Construction complied with the District’s Project Labor Agreement and will be able to return significant funds to the District as savings to the GMP from the truncated schedule and value engineering performed during the preconstruction phase.

Solar Installation - Orchard School District
San Jose, CA

Blach provided preconstruction and lease-leaseback services for the installation of a 240 kW photovoltaic system and shade structure to the District as part of its ongoing energy and sustainability upgrades.

As a result of leveraging the lease-leaseback method, this project was able to be priced prior to DSA’s final review, allowing crews to start work immediately upon receiving approval. It also allowed the District to participate in the subcontractor interviews, ensuring its concerns about product quality and post-project relationships were addressed.

District-wide Modernization Program - Millbrae School District
Millbrae, CA

Blach was selected by the District to lead its $30 million renovation and modernization program, funded by the Measure X bond, which was passed by voters in 2008. The program includes various upgrade and renovation projects, such as the historic restoration of the bell tower at Taylor Middle School.

As a result of the flexibility afforded by the lease-leaseback method, this District embarked on approximately $20 million in summer modernization work. This volume of work, scheduled to complete in such a short time period, would have been a sizable risk using low bid subcontractors. With the Lease-leaseback method, Blach will deliver the work within the budget and schedule using prequalified subcontractors with a proven track record of success.