



April 23, 2025

TO: Business Administrators
Los Angeles County School and Community College Districts
and Other Local Educational Agencies

FROM: Jenny Zermeno, Disbursement and Financial Systems Manager
Division of School Financial Services

SUBJECT: Lease-Leaseback Contracts

The purpose of this bulletin is to provide information regarding the Lease and Leaseback (LLB) contracts for public school construction projects, the policies adopted by the County Office about this method, and the minimum audit documentation requirements for voucher payments.

Overview of Lease-Leaseback

Available to school districts in Los Angeles County, the Lease-Leaseback method is an alternative option for completing construction/modernization projects.

Education Code (EC) Section 17406 authorizes school districts to enter into agreements with any person, firm, or corporation to lease real property for a minimum rental of \$1 per year if the instrument by which this property is leased requires the lessee to construct, or provide for the construction of, a building to be used by the school district and provides that the title to the building shall vest in the school district at the end of the lease. The school board is required to award a lease-leaseback contract through a competitive solicitation process to the proposer providing the best value to the school district.

Education Code (EC) Section 81336 authorizes community college districts to also enter into lease and leaseback agreements.

In LLBs, the district enters into two leases with the builder for the project in order to create the lease-leaseback structure—a Site Lease and a Facilities Lease. The Site Lease is the document in which the district will lease the underlying site, or portion thereof, to the builder for a minimum lease of \$1 per year. The Facilities Lease is the document the builder will use to sublease the site and the project to the district. At the end of the lease term, the district will retain the facility without future lease terms.

Requirements before entering into a Lease-Leaseback Agreement

While EC 17406/81336 authorizes the district to enter into LLB agreements, there are statutes to be complied with before entering into such agreements.

EC 17402/81332 – Before the governing board enters into a lease, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites.

EC 17417/81344 requires the board, in a regular open meeting, to adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article.

The resolution shall contain the following:

1. Describe the available site upon which the building will be constructed.
2. Describe the building to be constructed.
3. State that the building will be constructed according to the plans and specifications adopted by the governing board.
4. State the minimum yearly rental, and the maximum number of years (not to exceed 99 years).
5. State that the proposals submitted shall designate the rental amount to be paid by the district.
6. Set a time, not less than three (3) weeks thereafter, for a public meeting of the Board to receive sealed proposals from any person, firm, or corporation.
7. The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality obtained from Director of the Department of Industrial Relations (EC 17424/81350).

Minimum Contract Provisions

The following Contract Provisions should be included in the LLB agreements:

1. The agreement should state that the general prevailing rates will be paid as required in EC 17424/81350.
2. A provision on progress payments to the builder for the construction services in a sum equal to no more than 95% of the value of construction performed up to the last day of previous month as required in Public Contract Code 9203. Due to State Bill 293, retention cannot be more than five percent (5%) of the completed portion of the contract. If the district plans to withhold a higher retention amount, it must make a finding that the project is “substantially complex” thus requires a higher retention amount.
3. Guaranteed maximum sum, the total sum to be paid to the builder for the project, including architectural fees and related design costs. This may also include or refer to a separate contingency fund. This contingency fund may be utilized for: (1) any unforeseen costs which are within the scope of the project; (2) any work modifications as defined in the construction

provisions documents; or (3) any additional unforeseen costs associated with the financing of the project. In addition, the Contingency Fund may be increased by any cost savings, as provided in the Construction Provisions. The LLB agreement should specify the purposes for which the contractor contingency fund may be used. Any funds remaining in the Contingency Fund after the completion of the project must be returned to the school district, as provided in the Construction Provisions.

4. The Payment Bond should be in place before commencement of any work (Civil Code 9550 and 9554). The Payment Bonds should be **equal** to the Guaranteed Maximum Sum. This amount should be paid by the builder and be included as a line item in the Guaranteed Maximum Sum. The project should be fully bonded. Bond arrangements should be discussed prior to finalizing the Construction Provisions.
5. The Construction Provisions must include adequate insurance and indemnification language to protect the school district.

Minimum Audit Requirements for Commercial Claims Unit to Approve Vouchers Related to the Lease and Leaseback Project

Planning Stage

1. Board Resolution to enter into a Lease and Leaseback agreement (Attachment 1)

Initial Payment

1. Proof of ownership of site
2. Division of State Architects (DSA) Approval of Plans and Soils Investigation Report Summary
3. Proof of Advertisement for Bid
4. Board Action (or Resolution) Approving and Awarding of Contracts/Agreements
5. Duly Signed Contracts/Agreements
 - a. Site Lease
 - b. Facilities Lease with the Construction Services Agreement to include, among others, provisions on:
 - i. Labor code requirements, i.e., prevailing wages, work hours, and apprenticeship issues
 - ii. Guarantee obligations
 - iii. Termination of contract
 - iv. Resolution of non-performance
 - c. Payment Schedule
 - d. Guaranteed Maximum Price

6. Performance and Payment Bond
7. Certification of Insurance
8. Certification of Application for payment with approval of the contractor, architect, inspector, district authorized representative

For Progress Payments

1. Certification and Application for payment with the approval of the contractor, architect, inspector, district authorized representative
2. Change Orders with Board Approval (should be within the context of the Contingency Fund Provision)
3. Stop Payment Notice(s) (if any)

For Final Payment

1. Application and Certificate for payment with the approval of the contractor, architect, inspector, district authorized representative
2. Release of Stop Payment Notice (if any)
3. Board Acceptance of Completed Project
4. Recorded Notice of Completion

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If you have any questions regarding this bulletin, please contact Diana Rodriguez at (562) 940-1684 or email Rodriguez_Diana@lacoe.edu or contact Bree Santana at (562) 922-7430 or email Santana_Bree@lacoe.edu.

Approved:
Nkeiruka Benson, Director
Division of School Financial Services

JZ:ei

SFS-A57-2024-2025

_____ District
Resolution # _____

**Adoption to enter into a Lease and Leaseback (LLB) Agreement for the
_____ Project**

WHEREAS, Section 17406/81336 of the Education Code of the State of California provides the district may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the district during the term thereof, and provides that title to that building shall vest in the district at the expiration of that term; and

WHEREAS, the district have complied with EC 17402/81332 and declare __ (site name and description) _____ is the available site which the building will be constructed; and

WHEREAS, the building (name and describe building) will be constructed according to the plans and specifications approved pursuant to Sections 17280/81130; and

WHEREAS, minimum yearly rental is set at \$ _____ until _____; and

WHEREAS, per EC 17424/81350, the general prevailing rate of per diem wages obtained from the Director of the Department of Industrial Relations for each type of workman needed for the construction of the building is \$ _____, and the general prevailing rate for holiday and overtime work is \$ _____. Work performed by any workman employed upon the project in excess of eight hours during any one calendar day shall be permitted at not less than 112 times the basic rate of pay; and

WHEREAS, the board has reviewed the LLB agreements; and

WHEREAS, the board has determined that the terms are in the best interest of the district _____ (could describe specifics as to how the board got to this determination) ; and

BE IT FURTHER RESOLVED that the _____ District, declare its intention to enter into a lease and leaseback agreement with (builder) pursuant to Education Code 17406/81336.

PASSED AND ADOPTED by vote of the members of the Governing Board/Board of Trustees of

District	Month/Day/Year	Number of members
AYES:	NOES:	ABSENT

I, _____, Clerk/Secretary of the Governing Board hereby certify that the foregoing copy of the Resolution is true, full and complete copy of the Resolution passed by the governing board of _____ School District at a meeting held on the day of _____, 20____.

Signature: _____
Clerk/Secretary of the Governing Board
(Print Name)