



LOS ANGELES COMMUNITY COLLEGE DISTRICT

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OFFICE OF THE CHANCELLOR

TO: Members of the Board of Trustees

FROM: Dr. Francisco Rodriguez, Chancellor

DATE: March 3, 2017

SUBJECT: BOARD LETTER FOR MARCH 8, 2017 MEETING

Board Meeting Location

Next week's Board meeting will be held at **West Los Angeles College**. The meeting times and locations are as follows:

<u>Meetings</u>	<u>Time</u>	<u>Location</u>
Legislative & Public Affairs	3:00	Fine Arts Building, Room 103
Convene for Public Session	4:30 p.m.	Fine Arts Building, Room 100
Convene for Closed Session	4:30 p.m. – 6:30 p.m.	Winlock Lounge, Library and Heldman Learning Resource Center, 2 nd Floor
Reconvene for Public Session	6:30 p.m.	Fine Arts Building, Room 100

Parking

Parking for Board Members and Chancellor will be located in the **South Parking Structure, Level 2**. A campus map has been included for your convenience.

Legislative & Public Affairs Committee (Fong, Chair; Eng, Vice Chair; Kamlager, Member)

The committee will meet from 3:00 p.m. to 4:15 p.m. in the **Fine Arts Building, Room 103**. The agenda may be viewed by clicking on the following link:

<http://www.laccd.edu/Board/StandingCommittees/Documents/2016-2017StandingCommitteeAgendas/cmm-legislative%20public%20affairs%20committee%203-8-17.pdf>

Included in this letter is explanatory information related to an agenda Item:

Enclosed for your information is a memo from John Dacey, Lead Construction Counsel, regarding FPD2: Award of Design-Build Agreement for the South Gate Educational Center Project at the South Gate Campus of East Los Angeles College, which will be presented for Board approval at the March 8th Board meeting. ***(Refer to Attachment A)***

Confidential Matters

The attached correspondence is confidential and should not be shared with other persons.

- **Office of General Counsel**

- Enclosed for your review is the District-related litigation report. **(Refer to Attachment B)**
- Enclosed for your review is background information regarding pending litigation cases. **(Refer to Attachment C)**
- Enclosed for your review is an update report pertaining to complaints of discrimination/harassment. **(Refer to Attachment D)**
- Enclosed for your review is an update report pertaining to the status of personnel actions. **(Refer to Attachment E)**

- **Office of Human Resources**

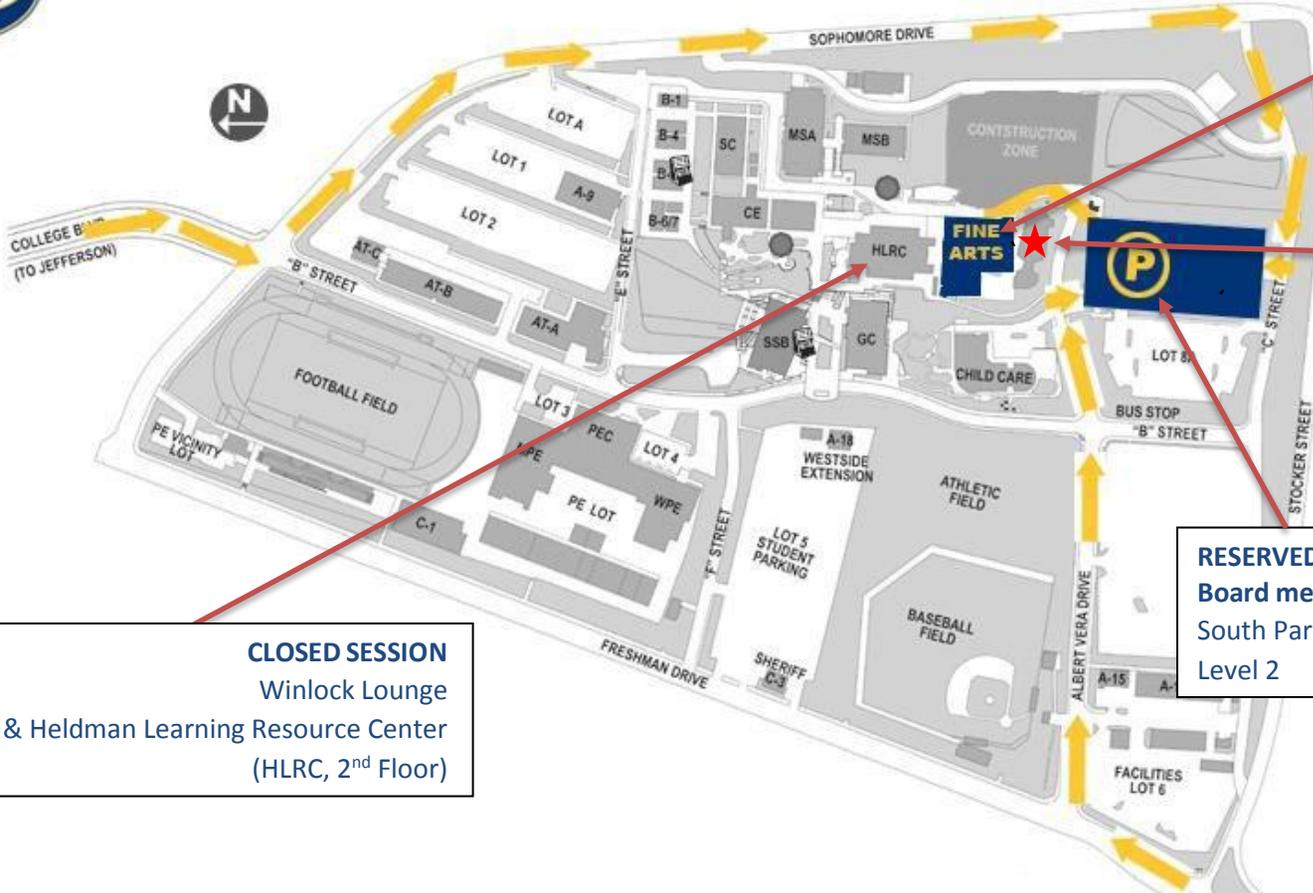
- I will be recommending authorization to send a March 15th letter to one faculty member for non-renewal of contract. ***Please disregard the material that was sent to you on the February 8th Board Letter, as new material was prepared for the March 15th letter being discussed during the Closed Session on March 8th. (Refer to Attachment F)***

Let me know should you have any questions regarding next week's meeting.



9000 OVERLAND AVENUE (NEAR JEFFERSON) | CULVER CITY, CA 90230

**JEFFERSON
ENTRANCE**



**LEGISLATIVE & PUBLIC
AFFAIRS COMMITTEE**
Fine Arts (FA) Building,
Room 103

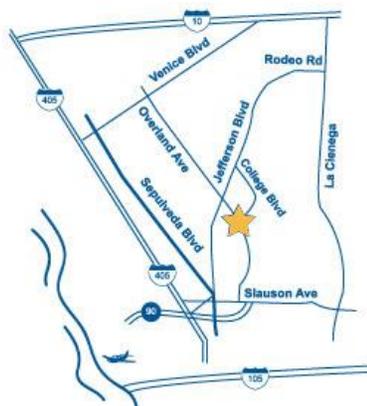
PUBLIC SESSION
Fine Arts Building
Auditorium (FA-100)

RESERVED PARKING
Board members and guests
South Parking Structure
Level 2

CLOSED SESSION
Winlock Lounge
Library & Heldman Learning Resource Center
(HLRC, 2nd Floor)

**Los Angeles Community College District
Board of Trustees Meeting**
Wednesday, March 8, 2017

**OVERLAND
ENTRANCE**





Board of Trustees

LOS ANGELES COMMUNITY COLLEGE DISTRICT
770 Wilshire Boulevard, Los Angeles, CA 90017 213/891-2000

AGENDA

**LOS ANGELES COMMUNITY COLLEGE DISTRICT
BOARD OF TRUSTEES
LEGISLATIVE & PUBLIC AFFAIRS COMMITTEE MEETING
West Los Angeles College
Fine Arts Building, Room 103
9000 Overland Avenue
Culver City, CA 90230
Wednesday, March 8, 2017
3:00 p.m. – 4:15 p.m.**

Committee Members

- Mike Fong, Chair
- Mike Eng, Vice Chair
- Sydney K. Kamlager, Member
- Robert B. Miller, Staff Liaison
- Marvin Martinez, College President Liaison
- Laurence B. Frank, College President Liaison Alternate

Agenda

(Items may be taken out of order)

- I. ROLL CALL
- II. PUBLIC SPEAKERS*
- III. NEW BUSINESS
 - A. Federal Update
 - B. State Update
 - C. Update on Immigration Legislation Introduced in the California State Legislature for 2017-2018 Session
- IV. OLD BUSINESS
- V. DISCUSSION
- VI. SUMMARY – NEXT MEETING.....Mike Fong
- VII. ADJOURNMENT

*Members of the public are allotted three minutes time to address the agenda issues.

If requested, the agenda shall be made available in appropriate alternate formats to persons with a disability, as required by Section 202 of the American with Disabilities Act of 1990 (42 U.S.C. Section 12132), and the rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, for whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. To make such a request, please contact the Executive Secretary to the Board of Trustees at 213/891-2044 no later than 12 p.m. (noon) on the Tuesday prior to the Committee meeting.



LOS ANGELES COMMUNITY COLLEGE DISTRICT

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To: Board of Trustees
Francisco C. Rodriguez, Chancellor

From: John P. Dacey, Lead Construction Counsel *FPD*

cc: Tom Hall, Interim Chief Facilities Executive

Date: March 2, 2017

Re: Item FPD 2 on March 8, 2017 Board Agenda - Award of Design-Build Agreement for the South Gate Educational Center Project at the South Gate Campus of East Los Angeles College.

I. ACTION ITEM FPD 2 - AWARD OF DESIGN-BUILD AGREEMENT FOR THE SOUTH GATE EDUCATIONAL CENTER PROJECT AT THE SOUTH GATE CAMPUS OF EAST LOS ANGELES COLLEGE (“PROJECT”).

Item FPD 2 on the March 8, 2017 Board Agenda asks the Board to adopt a resolution for the Project that:

1. Ratifies implementation of the Design-Build system of project delivery;
2. Ratifies the Request for Qualifications and Proposals process (Procurement Number CS-13-16-E-BAFO) conducted by Staff;
3. Authorizes the award of one (1) Design-Build Agreement to a single Design-Build Entity (“DBE”); and
4. Authorizes District Staff, specifically the Chancellor and/or the Interim Chief Facilities Executive to enter into the Design-Build Agreement for the Project.

II. PURPOSE OF THIS MEMORANDUM

The purpose of this Memorandum is to set forth Staff’s and the PMO’s findings regarding why the Design-Build delivery method, as authorized by Education Code sections 81700, et. seq., should be used for the Project.

III. APPLICABLE LAW FOR DESIGN-BUILD CONTRACTS

Education Code sections 81700 et seq. specifically authorize community college districts to utilize the Design-Build delivery method as a safe and cost efficient alternative to competitive bidding because the Legislature has determined that it can produce accelerated completion of

projects, provide for cost containment, reduce construction complexity, and reduce exposure to risk for community college districts. The Legislature has also determined that the cost-effective benefits to community college districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

The foregoing Code sections also require that governing boards of community college districts shall make written findings that use of the design-build process *will accomplish one of the following objectives*: (1) reduce comparable project costs; (2) expedite the project's completion, or (3) provide features not achievable through the traditional design-bid-build method.

IV. STAFF'S, PMO'S AND LCC'S FINDINGS OF FACT

District Staff, the PMO, and Lead Construction Counsel ("LCC") have reviewed these statutory objectives and concluded that the design-build delivery method should be used for the Project because: (1) it will reduce comparable Project costs (2) it will expedite the Project's completion; and/or (3) it provides features not achievable through the traditional design-bid-build method, including cost containment and shifting the risk of loss for design deficiencies to the Design-Build Entity, for the following reasons:

1. "Reduced Comparable Project costs"

The Legislature has recognized that "the cost-effective benefits" to a community college district under the Design-Build delivery method are achieved by shifting the liability and risk for cost containment and Project completion to the design-build entity".

Using the Design-Build delivery method on the Project will achieve this goal/factor, that cannot be achieved using the design-bid-build (hard/low bid) method because: (1) responsibility for errors, omissions, and other deficiencies in the design and construction documents obtained by the District under the design-bid-build (hard/low bid) method from an architect hired by the District are, vis a vis the contractor, the responsibility of the District. Under design-bid-build, a district hires an architect to design a project. The errors, omissions, and other deficiencies in the design and construction documents are usually a predominant cause of additional project costs over and above the original contract award amount because under design-bid-build, the contractor has no responsibility for such errors, omissions and/or deficiencies. These errors, omissions and deficiencies translate to increased costs to the District during construction in the following ways: (1) delay damages; (2) extra work/change order claims by the contractor; and (3) in-fighting between the public entity owner and the architect/engineering team hired by the public entity owner. All of the foregoing also translates into additional time, claims, construction manager time, attorney fees, expert fees, and other significant costs.

Conversely, under the Design-Build delivery method, the contractor, known as the Design Build Entity, must "design and construct" the project. As such, those responsibilities and resultant costs just mentioned as being the District's responsibility all shift to the Design-Build Entity and have to be borne by the Design-Build Entity. This greatly reduces costs compared to a project procured under the design-bid-build delivery method and achieves the risk shifting

benefits contemplated by the statutes. As such, the use of Design-Build for the Project will achieve these cost savings and risk shifting benefits. For these reasons alone, the Design-Build delivery method should be used for the Project.

2. “Expediting the Project’s completion”

Using the Design-Build delivery method will save time and expedite the Project’s completion when compared to the time it will take to design and build the Project using the design-bid-build delivery method (also referred to as hard/low bid contracting).

Based on Staff’s, the PMO’s, and LCC’s experience, if the Project were to be developed and constructed using the design-bid-build delivery method, it would be necessary to use three steps that would take at least 53 months to complete, and most likely several more months. These three steps include: (1) hire Architect and Engineer to design the project and prepare 100% Construction Documents and obtain Division of the State Architect (“DSA”) approval thereon; (2) then pre-qualify contractors to ensure all participants are well-qualified to construct the project; and (3) then advertise for and award a construction contract under the design-bid-build delivery method and have construction start and complete. Each of the three steps would also require Board action adding more time to the overall procurement before construction could begin.

Conversely, using the Design-Build project delivery method provides integration of these procedural steps into one overall procurement step, including ensuring only well qualified contractors will design and build the Project. Based on the PMO’s evaluation, using the Design-Build delivery method, the anticipated total amount of time to design and complete construction of the Project will be reduced to 50 months. Staff and LCC concur.

Therefore, the proposed use of Design-Build is anticipated to meet the requirement of “expediting the project’s completion” because it will take 3 months less to achieve completion of the Project using the Design-Build method versus using the design-bid-build project delivery method. For this reason alone, the Design-Build delivery method should be used for the Project.

3. “Provide features not achievable through the traditional design-bid-build method”

The applicable law expressly recognizes by the language in and the purpose behind the statutes that using the Design-Build delivery method will simplify construction and reduce its complexity when compared to using the low/hard bid delivery method. These are features that are not achievable through the design-bid-build delivery method.

Generally speaking, most “construction complexity” on public works projects comes from incomplete, conflicting, uncoordinated, and/or construction documents that contain errors, omissions, ambiguities, conflicts and other deficiencies. This then creates polarizing positions between the public entity owner and architect, on the one hand, and the contractor and the public entity owner, on the other hand. As these situations are encountered, arguments ensue as to whether the construction documents are or are not incomplete, conflicting, uncoordinated, and/or

contain errors, omissions, deficiencies, etc. (all of which posits liability on the public entity) and/or whether or not the contractor knew or should have known (which may shift liability away from the public entity owner and onto the contractor). Such polarizing positions are greatly heightened in projects where a contractor’s expertise could be of great assistance in the design, but which is prohibited by law if the design-bid-build (hard/low bid) method of procurement is used. This increases risk to the public entity on such projects where the design-bid-build (hard/low bid) method of procurement is used.

Conversely, in the experience of District Staff, the PMO and the LCC, where a contractor’s expertise can be used to design and construct such projects as part of a design-build team, construction complexity is significantly reduced as the entity that must build the project also designs it pursuant to performance/project criteria established by the public entity owner. This is what is being done on the subject. The Design-Build Entity has to design and build the Project; it is in its own best interests to ensure that there are no incomplete, conflicting, uncoordinated, errors, omissions, deficiencies, etc. in the design and construction documents. If there are any found during construction, the Design-Build Entity has to bear the risk of loss and cost to overcome same. The Design-Build Entity would also be liable to the public entity owner for delay in the completion of the Project caused by the time needed to correct incomplete, conflicting, uncoordinated, errors, omissions, deficiencies, etc. in the design and construction documents (which otherwise would be the responsibility of the public entity owner). These are all features that are not achievable under the design-bid-build delivery method. For this reason alone, the Design-Build delivery method should be used for the Project.

V. ADDITIONAL CONSIDERATIONS

In the item before the Board, the Highest Scorer is also the Proposer who submitted the lowest price:

		Harper	Swinerton	Pinner
Overall Total Scoring		595	594	558
Total Price		\$ 74,403,521.00	\$ 89,888,439.00	\$ 93,550,000.00

VI. CONCLUSIONS

As mentioned above, the Design-Build statutes require that the governing board of a community college district make written findings that use of the design-build process *will accomplish one of the following objectives*: (1) reduce comparable Project costs; (2) expedite the Project's completion, *or* (3) provide features not achievable through the traditional design-bid-build method. The foregoing findings by District Staff and the PMO demonstrate that *not only one*, but all three of the requirements to use the Design-Build delivery method are present for the Project and warrant use of the Design-Build method for the Project.