



LOS ANGELES COMMUNITY COLLEGE DISTRICT

CITY • EAST • HARBOR • MISSION • PIERCE • SOUTHWEST • TRADE-TECHNICAL • VALLEY • WEST

District Citizens' Oversight Committee **Table of Contents for** **Construction Update Background Materials** June 20, 2014

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Board of Trustees

Los Angeles Community College District

ACTION

Com. No. BT2

Division

Board of Trustees

Date: April 30, 2014

Subject: **RESOLUTION – AFFIRM COMMITMENT TO PROTECT CAPITAL INVESTMENTS THROUGH UNDERSTANDING AND MANAGEMENT OF TOTAL COST OF OWNERSHIP**

The following resolution is presented by Trustees Veres and Svonkin:

- WHEREAS, Buildings are among the most expensive capital assets owned by the District and must be regularly maintained to operate properly, effectively, and efficiently; and
- WHEREAS, Building lifecycle costs include acquisition costs to build, buy, and/or lease; and
- WHEREAS, Building lifecycle costs include daily maintenance costs to perform cleaning, trash handling, gardening, and other activities; and
- WHEREAS, Building lifecycle costs include periodic maintenance costs to perform corrective, preventive, and predictive actions; and
- WHEREAS, Building lifecycle costs include utility costs that include electricity, gas, water, and sewer; and
- WHEREAS, Building lifecycle costs include capital renewal costs that include periodic replacement of major building components and utilities infrastructure such as HVAC (heating, ventilation and air conditioning), roofing, infrastructure, fire-life-safety code compliance, safety, streets, and tunnels; and
- WHEREAS, Building lifecycle costs include end-of-life costs that factor demolition for new construction or for major renovation; and
- WHEREAS, All of the above building lifecycle costs must be properly managed and staffed to maintain and protect the District's capital investments and equipment warranties; now, therefore, be it
- RESOLVED, That the District endeavors to ensure full value from its operations and maintenance resources by performing a cost-benefit analysis on facilities maintenance and operations activities; and be it further
- RESOLVED, That the District will implement effective and efficient management tools to measure and track the performance of its facilities so that it can provide a consistently high-quality environment Districtwide for students, faculty, and staff to teach, work, and learn; and be it further
- RESOLVED, That the District will create objective Districtwide criteria for cleanliness supported by a funding level that will provide adequate staffing and equipment to maintain appropriate safety and maintenance standards.

Chancellor and
Secretary of the Board of Trustees

By _____ Date _____

Eng _____	Santiago _____
Field _____	Svonkin _____
Moreno _____	Veres _____
Pearlman _____	Griggs _____ Student Trustee Advisory Vote



Board of Trustees

Los Angeles Community College District

ACTION

Com. No. BT2

Division

Board of Trustees

Date: May 28, 2014

Subject: **RESOLUTION – WATER USE AND CONSERVATION**

The following resolution is presented by Trustees Svonkin and Veres:

- WHEREAS, California is facing severe water shortfalls in one of the driest years in state history; and
- WHEREAS, A statewide water conservation campaign has been established to make all Californians aware of the drought and encourage reduced water usage; and
- WHEREAS, The LACCD has taken a leadership role in water conservation since its first bond, Proposition A, passed in 2001; and
- WHEREAS, The LACCD has conducted a water reuse feasibility study; and
- WHEREAS, The LACCD's conservation actions embrace sustainable standards and guidelines for construction and renovation projects that include permeable surfaces around all structures, installation and use of waterless urinals, design and construction of swales in new or renovated parking lots, permeable concrete in walkways and driveways; and
- WHEREAS, The District has incorporated sustainable landscape guidelines that include the replacement of grass with field turf on the majority of college athletic fields, the use of drought-resistant plants, the installation of smart irrigation, and the installation of purple pipe for irrigation where purple pipe supply is available; and
- WHEREAS, The bond program includes \$25 million for storm water projects to meet state and federal storm water regulations; now, therefore, be it
- RESOLVED, That the District identify and accelerate the implementation of water use and water conservation projects such as project-specific recycled water implementation, connection to Los Angeles Department of Water and Power (LADWP) or other municipal recycled water lines, if available, and re-use of water collected for storm water management; and be it further
- RESOLVED, That the District work closely with other water agencies within its jurisdiction such as the LADWP, the Metropolitan Water District, and the city of Monterey Park to share ideas, to collaborate on common water conservation approaches, and to jointly educate students and staff; and be it further
- RESOLVED, That a water usage baseline be established to help identify key strategies for further water efficiency opportunities and to track progress.

Chancellor and
Secretary of the Board of Trustees

By _____ Date _____

Eng _____	Santiago _____
Field _____	Svonkin _____
Moreno _____	Veres _____
Pearlman _____	Griggs _____
	Student Trustee Advisory Vote



Los Angeles Community College District PROGRAM MANAGEMENT SERVICES

“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

*District Citizens' Oversight Committee
June 20, 2014*



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“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

Advisory:

The Chief Facilities Executive, Program Management Office, and Lead Construction Counsel, all advise this Committee that:

- (1) the District's current “practice” of interpreting the rule found in Public Contract Code section 20659 is not in the District's best interest, not required by law, and should be changed; and
- (2) Facilities is changing that “practice” for Design Bid Build (“DBB”) projects so that unnecessary terminations, claims, and costs can be avoided.



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“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

Brief Factual Background:

At the direction of the Chief Facilities Executive, the Lead Construction Counsel and the PMO undertook efforts to determine if the District was bound by the prior “practice” regarding how change orders on Design-Bid-Build projects are handled.

We have determined that the current practice is:

1. Not a Board Policy; and
2. Not a Board Rule.

As such, the Chief Facilities Executive can institute a different approach in addressing such change orders on such projects.



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“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

Public Contract Code § 20659:

“If **any change or alteration** of a contract governed by the provisions of this article is ordered by the governing board of the community college district, such change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor.”

The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

- (a) The amount specified in Section 20651 or 20655, whichever is applicable to the original contract; or
- (b) 10% of the original contract price.

(It should be noted that the singular, not plural is used in the law)



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“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

District’s Current “Practice” re: “10% Rule”:

The District’s current “practice” interprets the “10% Rule” as:
the cumulative % total of all change orders on a project cannot exceed more than 10% of the original contract amount; and
also counts “add” and “deduct” percentages against the 10% (i.e., if there has been 4% in “adds” and 6% in “deducts” then the “10%” has been reached and there can be no more change orders on that project, even though the net overall sum is a 2% reduction of the original contract price!).

This unnecessarily ties the District’s hands.



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“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

District’s Current “Practice” re: “10% Rule”:

Because of the current District interpretation and practice, and over the life of the Bond Program to date, at East 12 projects were terminated for convenience.

Had the District used a different interpretation permitted by law, these projects could have been dealt with differently saving the District substantial dollars.



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“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

Public Contract Code § 20659:

PCC § 20659 expressly states:

“If **any** change or alteration ... is ordered by the governing board The board may authorize the contractor to proceed with performance of **the** change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed ... (b) Ten percent of the original contract price.”

The statute uses the singular, not the plural. It does not say that **all** changes cannot exceed 10%. It says “any” and “the”, meaning in the plain words of the statute that **any** change and/or **the** change ordered cannot exceed 10% of the original contract value.



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“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

Public Contract Code § 20659:

The Independent Review Panel noted that:

“There is no appellate case law on the subject. However, the California Attorney General’s Office has issued at least one opinion on a sister statute (PCC § 20118.4) related to K-12 school change orders stating that the former interpretation (10% for each change order) controls.” (Report, January 4, 2012, § V. B. 5. A., pg. 17)

That AG Opinion concluded as such stating that there were sufficient safeguards in other statutes regarding competitive bidding to protect against “fraud, favoritism and corruption.” Some of those protections include that the change cannot be substantial (over 10%) per change and must also be needed to achieve the original scope of work.



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“10% Change Order Rule” DESIGN-BID-BUILD PROJECTS

District’s New Practice re: PCC § 20659 change orders:

Therefore, Facilities is changing the current “practice” regarding the “10% rule” for all current and future DBB projects as follows:

The change order practice for DBB projects will be consistent with, and follow, the AG’s Opinion that **“any”** and/or **“the”** change and/or alteration (meaning “each” change) cannot exceed 10% of the original contract amount. Such changes orders will also have to comply with all other applicable law.

Before rolling out the new practice, we wanted this Committee to have an opportunity to preview the rationale for it.



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Los Angeles Community College District PROGRAM MANAGEMENT SERVICES

New Protest Procedure

*District Citizens' Oversight Committee
June 20, 2014*



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New Protest Procedure

ADVISORY:

The Chief Facilities Executive, Program Management Office, and Lead Construction Counsel, all advise that we will be working with the Chancellor to administratively institute **a new Protest Procedure for Bond Program procurements** as outlined herein.

RATIONALE:

The current Protest Procedure causes **unnecessary delay and expense**, is **not required under applicable law**, and appears to have been **used to further existing contract durations** for the self interest of only the protester.



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New Protest Procedure

CURRENT PROTEST PROCEDURE: "PP – 04 – 09"

The current procedure:

- Ties the District's hands and lets proposer's, even those disqualified, found to be non-responsive, and/or non-responsible, drive the protest process which can extend for many months, unjustifiably placing the control of the process in such third parties' hands to the public's detriment;
- Does not permit the District to control the process to protect its and the public's best interests; and
- Is NOT required by applicable law.



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New Protest Procedure

CURRENT PROTEST PROCEDURE: "PP – 04 – 09"

The steps in the current procedure are:

1. Third party files a Protest with the Chief Facilities Executive ("CFE") within 5 business days of NOITA (II B 1);
2. CFE sends Protest to intended awardee for comment (II B 2 (b) and (c));
3. Protester uses Public Record Act Request to contend it "cannot submit meaningful protest without all documents", thereby placing District at risk;



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New Protest Procedure

CURRENT PROTEST PROCEDURE: “PP – 04 – 09”

The current steps continued:

4. CFE issues a decision on the Protest (II B 2);
5. Protester has right to appeal to Chancellor’s Office within five business days of CFE’s decision (II B 3 (a) and (b));
6. Chancellor issues decision to Protester and all Proposers (II B 3);
7. Protestor has right to appeal to full Board and request a public hearing at next regularly scheduled Board Meeting (II B 4 (a) and (b)); and
8. Board issues a decision (II B 4).



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New Protest Procedure

CURRENT PROTEST PROCEDURE: “PP – 04 – 09”

At its most expedient, and assuming the CFE’s and Chancellor’s reviews take only 7 days each (with 2 of those days for input from potential awardees), and using 4 weeks to get materials to the Board at the “next regularly scheduled meeting”, the current procedure (at a minimum) takes approximately:

57 days (~2 months)

At its most expedient. This however rarely occurs.

During this Time the District’s policy precludes an Award



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New Protest Procedure

Examples of Unnecessary Delays under "PP – 04 – 09":

Current PLA/LCP procurement: 106 days - 3 ½ months

No Board Hearing. Chancellor Decision to re-procure services to "... save the taxpaying public the time and expense, as well as further delay, in procuring these necessary and important services."

Recent M&DR procurement: 120 days – 4 months

No Board Hearing. Chancellor Decision to deny Appeal issued and Protester decided not to Appeal to the Board.



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New Protest Procedure

Examples of Unnecessary Delays under "PP – 04 – 09":

Prior OCIP Insurance Broker Services: 365 + days (1 + year)

Multiple Protests and Appeals to the Board, successive re-procurements resulting in further protests and appeals, causing extensions of existing provider services as new contract could not be awarded during protest and appeal processes as per existing Board policy and procedure.

These three examples alone have cost the District in excess of \$25,000.00 in legal fees, not to mention the additional staff time needed to participate in the protests, appeals, and the new re-procurements.



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New Protest Procedure

Consequences:

In addition to the unnecessary delays and expenses involved in the procurement of needed professional and contracting services for the Bond Program because proposers are permitted to “control” the protest process, keeping the current protest procedure can seriously jeopardize the successful completion of the Bond Program, from both a cost and time standpoint, thereby also jeopardizing the passage of future bond measures.



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New Protest Procedure

The Law:

There is **no statutory basis for bid protests** on public projects; **therefore** there are **no statutory or uniform procedures** for bid protests. A public entity is not required to have them. Some federal law requires protest procedures when certain federal funds are involved. Therefore, each public entity is free to create their own protest procedures, or not.

California law does permit an award of contract even if a protest has been filed. Public Contract Code section 5110.

If a public entity does not have a protest procedure, a disappointed bidder's remedy is a Writ to the local Superior Court.

Most protesters will more likely file a protest (no consequences), then file a Writ proceeding in Court against a public entity (consequences).



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New Protest Procedure

Proper Effect of a Protest Procedure:

However, it is prudent to have a protest procedure, because without one, the public entity would not hear of a complaint until a Writ is filed with the Superior Court. However, it is not prudent to have a procedure controlled by third parties and one that ties the District's hands needlessly and contrary to law (as the District policy currently does).

Bid protest procedures should be crafted by the public entity to encourage it to analyze the protested bid against the public entity's own bid requirements, but not preclude the public entity from maintaining control of the process.



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New Protest Procedure

General Outline of Proposed (new) Protest Procedure:

1. Require a protest to be filed with the Chancellor, who can delegate the decision to the Chief Facilities Executive ("CFE"), within five business days of the issuance of a NOITA;
2. The filing of a Public Records Act Request will not extend the five day deadline within which to file a protest;
3. The filing of a protest **will not suspend the award process**;
4. The Chancellor or CFE will issue a decision within 7 to 10 business days (can extend decision if needed);



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New Protest Procedure

General Outline of Proposed (new) Protest Procedure:

5. One Appeal, filed within 3 business days of Decision, to 3 person appeal panel (FMPOC Committee (3 Board Members)) - hearing to be set within 7 business days (and before any award of contract goes to full Board);
6. Failure of a protester to follow this process will bar the protester from filing a Writ in the Superior Court; and
7. If any funding requirements require additional protest terms, such terms will be included in any such procurement.



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New Protest Procedure

Effect and Benefits of the Proposed (new) Protest Procedure:

1. The District (not third party) controls the process;
2. Proposers and Bidders are given a fair opportunity to point out legitimate flaws in the intended award;
3. If a protest has merit, the District will of course uphold the protest and act upon the discretion provided to it under applicable law;
4. If a protest has no merit, the District will proceed with the intended award as the law permits it to do (PCC section 5110);
5. The failure of a protester to follow this process will bar the protester from filing a Writ in the Superior Court;



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New Protest Procedure

Effect and Benefits (continued):

6. This will reduce protest disposition time from several months, and historically much more time, down to approximately 33 calendar days (vs. ~ 60 days in policy now);
7. Greatly reduce expense to the District regarding each procurement, not to mention eliminating a substantial risk to the successful conclusion of the Bond Program as a whole, and the passage of new future bond measures; and
8. Discourage questionable protests, some of which historically appear to have been made to further existing contract durations for the self interest of only the protester.



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New Protest Procedure

CONCLUSION:

The Chief Facilities Executive, Program Management Office, and Lead Construction Counsel, will work with the Chancellor to administratively institute **a new Protest Procedure for Bond Program procurements** as outlined herein.

We will also discuss with the Chancellor and the General Counsel whether the current Protest Procedure, as a whole, should be changed for the benefit of the District and the taxpayers.



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LOS ANGELES COMMUNITY COLLEGE DISTRICT

CITY • EAST • HARBOR • MISSION • PIERCE • SOUTHWEST • TRADE-TECHNICAL • VALLEY • WEST

LACCD Settled Claims Report District Citizens' Oversight Committee June 20, 2014

February 6, 2014 – June 10, 2014

1	Case	Hartford Fire Insurance Company
	Description	Interpleader of Remaining Contract Funds
	Sub-Contractor	N/A
	General Contractor	Chegin Enterprises, Inc. dba SMC Construction Company
	Project	Landscape and Specific Master Plan
	Campus	Pierce College
	Claim Amount	\$196,881.00
	Settlement Amount	\$186,881.00 - District Pays Settlement Out of Remaining Contract Funds and Receives \$10,000 for Attorney's Fees
2	Case	District's Claim Against McMurray Stern, Inc.
	Description	Defective Work
	Sub-Contractor	McMurray Stern, Inc.
	General Contractor	J.D. Diffenbaugh
	Project	Library Resource Center
	Campus	Los Angeles Valley College
	Claim Amount	\$207,000.00
	Settlement Amount	McMurray Stern, Inc. Agreed to Replace All Defective Work at No Cost to District
3	Case	EPS Corporate Holdings, Inc. v. USS Cal Builders, Inc., LACCD, et al.
	Description	Stop Notice Lawsuit
	Sub-Contractor	EPS Corporate Holdings, Inc.
	General Contractor	USS Cal Builders, Inc.
	Project	Building A Restoration and Modernization
	Campus	Los Angeles Trade Technical College
	Claim Amount	\$2,500.00
	Settlement Amount	District Dismissed From Action - No Money Paid by District for Dismissal.

4	Case	R&J Sheet Metal, Inc. v. Chegini Enterprise, Inc. dba SMC Construction Company, LACCD, et al.
	Description	Stop Notice Lawsuit
	Sub-Contractor	R&J Sheet Metal, Inc.
	General Contractor	Chegini Enterprise, Inc. dba SMC Construction Company
	Project	Media Arts Center
	Campus	Los Angeles Mission College
	Claim Amount	\$110,000.00
	Settlement Amount	District Dismissed From Action - No Money Paid by District for Dismissal.
5	Case	R&J Sheet Metal, Inc. v. Chegini Enterprise, Inc. dba SMC Construction Company, LACCD, et al.
	Description	Stop Notice Lawsuit
	Sub-Contractor	R&J Sheet Metal, Inc.
	General Contractor	Chegini Enterprises, Inc. dba SMC Construction Company
	Project	Media Arts Center
	Campus	Mission College
	Claim Amount	\$110,000.00
	Settlement Amount	District Dismissed From Action - No Money Paid by District for Dismissal.
6	Case	AWI Builders, Inc. v. LACCD
	Description	Withholding of Funds
	Sub-Contractor	N/A
	General Contractor	AWI Builders, Inc.
	Project	Weingart Stadium/East End Zone
	Campus	East Los Angeles College
	Claim Amount	\$310,376.50
	Settlement Amount	\$109,977.93 - No New Money Paid by District for Settlement.
7	Case	Morillo Construction, Inc. v. LACCD
	Description	Delay, Unresolved Change Order Proposals, Prompt Payment, Tort Damages
	Sub-Contractor	N/A
	General Contractor	Morillo Construction, Inc.
	Project	E-1 Student Services, G-1 Baum Center, Entry Plaza
	Campus	East Los Angeles College
	Claim Amount	\$5,476,000.00
	Settlement Amount	\$3,400,000.00 - District Paid New Money to Settle.

8	Case	Sinanian Development, Inc. ("SDI") Claim and LACCD Claim Against Hellmuth, Obata + Kassabaum, Inc. ("HOK")
	Description	Delay, Unresolved Change Order Proposals
	Sub-Contractor	N/A
	General Contractor	Sinanian Development, Inc.
	Project	Center for the Sciences
	Campus	Pierce College
	Claim Amount	\$6,979,214.00
	Settlement Amount	\$2,130,000.00 - District is contributing \$1,066,666.67; HOK and its sub-consultants contributing the remainder; SDI repairing defective work at no additional cost.
9	Case	Taisei Construction Company v. LACCD
	Description	Delay, Unresolved Change Orders, Prompt Payment; LACCD Submitted Claim for Defective Work
	Sub-Contractor	N/A
	General Contractor	Taisei Construction Company
	Project	Performing and Fine Arts Center
	Campus	East Los Angeles College
	Claim Amount	\$8,440,676.00
	Settlement Amount	\$3,206,868.00 - District's contribution is \$1,690,431.00 from remaining retention and contract balance; no new money paid by District for settlement; the District to receive \$4,300,000.00 for the defective work claim.
10	Case	Arch Insurance Company v. LACCD
	Description	Action to Recover Withheld Contract Funds
	Sub-Contractor	N/A
	General Contractor	FTR International, Inc.
	Project	North of Mall and Stadium ADA
	Campus	Pierce College
	Claim Amount	\$6,762,214.00
	Settlement Amount	\$4,000,000.00 - No New Money Paid by District for Settlement.
11	Case	The Board of Trustees of the Cement Masons Southern California v. Two Brothers Construction Corporation, LACCD, et al.
	Description	Failure to Pay Fringe Benefits Contributions to Trusts
	Sub-Contractor	Pointer Enterprises, Inc.
	General Contractor	Two Brothers Construction Company
	Project	Science Career and Mathematics Demolition
	Campus	East Los Angeles College
	Claim Amount	\$1,760.00
	Settlement Amount	District Dismissed From Action - No Money Paid by District for Dismissal.