

DSA/OPSC Program Review Expert Workgroup Meeting Minutes

December 9, 2010, 2:00 p.m. – 4:30 p.m.
Ziggurat, 8th Floor Executive Board Room

In attendance:

Expert Workgroup Members

Stephen Amos, DGS (Chair)
Kathleen Moore, CDE (Vice Chair)
Lindle Hatton, CSUS (Facilitator)
Chip Smith, DSA
Dick Cowan, Davis Reed Construction
Jenny Hannah, Kern COE (via teleconference)
Lisa Silverman, OPSC
Fred Yeager, CDE
Kurt Cooknick, AIACC
Gary Gibbs, CBIA

Additional Attendees

Susan Stuart, Susan Stuart & Associates (for Carri
Matsumoto, LBUSD)
Eric Bakke, LAUSD (for James Sohn)
Masha Lutsuk, DSA
Lisa Constancio, CDE
Shanna Everts, SAB
Yvonne Newton, DGS (Notetaker)

Welcome

- The Facilitator welcomed those in attendance and all present introduced themselves.

Sub-Group Updates/Discussion – All

- Financial Hardship Equity Workgroup
 - Copies of a letter to DGS Director Ron Diedrich from a stakeholder group that coalesced around issues of concern under the Financial Hardship Program (FHP) were distributed. DGS met with the signers of the letter.
 - History of FHP in recent years:
 - A study of the FHP was conducted in 2007. The Board accepted the report and some of the recommendations.
 - In 2008, there was a discussion about what further changes should be made.
 - The fiscal crisis of 2009 stopped all pending actions.
 - OPSC prepared an overview report (OCT 2010 – SAB) of FH program and the challenges of bringing forward regulatory changes to address program issues.
 - A meeting was held that included the FH workgroup, Chair of EWG, and OPSC staff. The FH workgroup chose to address three issues:
 - ✓ DSA priority processing
 - ✓ Concurrent reviews
 - ✓ Eligibility of site expenditures with FH design funds
 - Question: does the EWG wish to address the FHP issues?
 - Answer: No one in the EWG participates in the FHP or has the expertise to address the issues.
 - Representatives of the FHP stakeholder group will be invited to attend the January 2011 EWG meeting to give a report.

- **ACTION ITEM: Stephen Amos** will send a formal letter of invitation to the FHP stakeholder group, inviting them to present their position to the EWG at the January 13, 2011 EWG meeting.
- Training
 - Through a collaborative effort of DSA, OPSC and CDE, a training session is to be offered once per quarter to the industry at large and stakeholders. The first session will be scheduled for February.
 - Location of the quarterly training sessions shall rotate with one class per year being offered in the southern region, the middle region and the northern region of the State. The fourth quarter class may be offered over the web.
 - Each training session shall include:
 - An overview of the required steps in the school construction application and approval process as they pertain to the processes and activities of CDE, DSA and OPSC
 - The message of collaboration among the departments involved in the process
 - A formalized method of soliciting and receiving feedback from the attendees, for the purpose of clarifying and improving the training material and presentation
 - Stephen Amos and Kathleen Moore shall be monitors of the training and incorporation of feedback into future training.
 - Department of Toxic Substances Control (DTSC) Participation:
 - It is proposed that the processes required by DTSC prior to school construction approval be included in the training.
 - It is proposed that DTSC representatives be invited to participate in the EWG.
- Grant Adequacy Panel
 - Question to discuss: "What does grant adequacy mean?"
 - Grant adequacy has been a ten year challenge.
 - Dependent upon transition to the new administration, CDE is exploring the possibility of working with an outside source on the issue of grant adequacy.
 - There are a lot of moving pieces within the grant adequacy process, many of which are beyond the control of the EWG.
 - The situation is changing rapidly. Legislative changes are needed within the next two years.
 - Grant adequacy needs to be addressed within the context of other issues.
 - Comments:
 - We need to dialogue with the main players in a collaborative manner. It might be effective for the Panel to meet after the first of the year once administrative positions have solidified.
 - The 21st Century group released a study in October 2010 that includes a poll of how various states fund school construction projects.
 - AB 127 provides the SAB with the authority to annually adjust grant amounts by up to six percent, which feeds into the larger issue of grant adequacy: what to build, and how to build it?

- If you have a state program whose purpose is to help a local program with their local responsibility to provide funding, the local entity may limit their participation to matching the state funds, when they are actually free to provide a greater amount.
- Other studies have probably already generated most of what would be reported in a new program.
- The School Facility Program is responsible for contributing State funds to build quality schools throughout the State. The question to ask is “What is next after Proposition 1D funds are exhausted?”
- How viable are future bonds for financing school construction?
- The larger conversation that needs to take place is what are other options besides bonds to fund school construction? The State may not have funds for school construction.
- We need to brainstorm for new solutions to incorporate into the process. We will be better served to address financing options, rather than limiting discussion to grant adequacy only.
- How should the future financing of school facilities be structured?
 - Explore other options
 - Explore methods used by other states, utilizing the 21st Century report.
- Adequacy of Funds for Off-site Mitigations (consistent with Marina Decision)
 - The intent of the off-site development grant is to compensate the grant applicant for specific site requirements not covered in the per pupil base grant. Off-site costs are directly related to local jurisdictions’ requirements and ordinances for development.
 - There appear to be three areas of disconnect in matching the grant to actual project expenses:
 - Physical area limited by the grant to “two immediately adjacent sides of the site.” The current OPSC interpretation - two sides of the site must be adjacent to each other - prevents funding for mitigation measures immediately adjacent to two sides of the site, but not to each other.
 - Commonly, mitigation measures are required outside of the immediately adjacent sides of the site. OPSC frequently disallows these mitigation measures because they fall outside of the adjacent sides of the site.
 - Local mitigations not interpreted to be covered by regulation: The result is that districts have a project expense that is interpreted as not being covered by the grant. The costs for the disallowed mitigation measures can be staggering to the district’s budget and the result is to cause more of a financial burden to the local match.
 - Does a district have the ability not to make the offsite improvements imposed on them by the local jurisdictions if the expense is disallowed by OPSC? Is it the intent of the regulation not to pay for a necessary mitigation measure? Districts are asked to cooperate and coordinate with local jurisdictions when planning new school sites, and the SFP program should align the funding for these requirements.
 - Comments:

- Should all State requirements (Americans with Disabilities Act [ADA], etc) be in effect for minor school update projects? Modernization has many State requirements (ADA, etc) that can take most of the available funds for minor projects.
 - There needs to be balance. Most off-site mitigations seem reasonable, are part of the project, and deserve their share of funds. Districts, feeling that they do not receive adequate compensation for these off-site improvements, look for sites to buy that already have curbs/sidewalks, etc. This puts the cost into the real estate, which is allowable.
 - Are we protecting State funds or short-changing the students? This is one of the most complex gray areas of the whole program. Interpretation needs to be tight to avoid local abuse by both private and government entities.
 - Frequently, off-site mitigations must be met to fulfill local regulations, and must be paid for from the district's funds.
 - Give agencies an opportunity to review and respond to the White Paper.
 - So many measures and regulations have been added that it is hard to determine what portion is actually spent on actual construction of schools.
 - Question: How do we close out the Proposition 1D dollars?
 - Bigger question: What is in the future?
 - **ACTION ITEM: Lisa Silverman** will have her staff review the regulations and answer the question: "What room for interpretation exists?"
 - **ACTION ITEM: The EWG** will form a panel of people to identify and discuss options to consider the future of school construction funding. The EWG will draft questions for the panel to answer.
- DSA Closeouts
 - Laura Knauss and Scott Gaudineer were not available to present their white paper, "New projects held up due to DSA project close-out issues." The paper was distributed for review and will be presented and discussed at the January 13, 2011 meeting.
 - Presentation by Chip Smith, State Architect
 - DSA needs to integrate the work of the EWG and its sub-groups into a cohesive plan.
 - Conclusions from Chip Smith to the EWG:
 - ✓ DSA close-out has evolved into a document-fixated process at the expense of construction oversight during construction.
 - Onsite inspectors will approve a project and submit a 100% verified report, yet other documents will indicate problems that prohibit certification of the project. The situation is compounded by code requirement complexities;
 - Architects, engineers and inspectors have an "umbrella role." Their documents should be first tier – the most important, because they directly monitor the construction work. Regulations over the past 25 years have put more emphasis on second tier party documents.
 - It is unclear what the law says regarding linked projects – a current alteration project linked to a previous uncertified, completed project.

- ✓ Plan of Action:
 - Accomplish as many improvements to the process as possible administratively;
 - Address changes to regulations through an emergency regulation package;
 - Engage EWG stakeholders affected by the process.
 - Solve the training gap for DSA inspectors – currently they are code-trained rather than process-trained;
 - Attempt to answer the question: “What is certification; how does it connect to DSA?”
- ✓ Currently DSA reviews 3,000 projects a year, or about 200 projects per month. Between 50% and 60% of completed projects are closed uncertified.

Status Updates on Progress of Short-Term Issues

- MOU – Stephen Amos and Kathleen Moore
 - This MOU is not a perfect document, but it is a good foundation for moving forward. A document is only as good as the relationships involved with its administration.
 - Stephen Amos and Kathleen Moore signed the MOU.

Next Steps - Agenda Items for the January 13, 2011 Meeting

- The following Sub-Group Teams will present their reports:
 - James Sohn and Bill Savidge: Cost of Building Schools Methodology
 - Lisa Silverman, Bill Savidge and Dick Cowan: Lease/Purchase
 - Lisa Silverman, Bill Savidge and Dick Cowan: Life Cycle Cost
- Discussion: “How does the EWG wish to handle public dissemination of EWG work in progress?”

Upcoming EWG Meeting Schedule

- Thursday, January 13, 2011, 2:00 p.m.–5:00 p.m., Ziggurat, 8th Floor Board Room