



The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE November 12-13, 2013

SUBJECT: Request for Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange		Item Number: 1.7	
		Attachment: No	
CATEGORY:	College Finance and Facilities Planning	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Frederick E. Harris, Assistant Vice Chancellor	Consent/Routine	X
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	
		Information	

ISSUE: This item requests approval for a waiver of the sealed bid process defined in Education Code sections 81365 et seq., made pursuant to the requirements of Education Code sections 81250 and 81252.

BACKGROUND: The West Hills Community College District is requesting a waiver of the requirements relating to the lease of community college buildings and property in Education Code sections 81365 et seq. The district seeks a waiver of the bid process requirements and the drafting of other agreements and documents because these provisions typically apply when a community college district is offering to lease or sell property to the public, whereas here the West Hills Community College District will be in effect leasing property to itself.

The district intends to enter into a lease/lease-back transaction involving two facilities at its Coalinga campus. The district will form a separate IRS 501(c)(4) non-profit corporation to provide a vehicle that will satisfy requirements of tax credit investors who purchase tax credit allocations under the Federal New Markets Tax Credit program (a federal program that encourages investment in qualified low-income communities). Investor participation in the New Markets Tax Credit program will result in economic benefit to the district. Because of various New Markets Tax Credit program guidelines, the separate IRS 501(c)(4) non-profit corporation will lease the facilities from, and back to, the district. Since the district will be leasing the facilities from an entity created by the district for this transaction, the public is not invited to bid or participate in the transaction.

RECOMMENDED ACTION: It is recommended that the Board of Governors approve West Hills Community College District's request for a waiver of Education Code sections 81365 et seq.

ANALYSIS: The West Hills Community College District is requesting a waiver of the sealed bid process defined in Education Code sections 81365 et seq., made pursuant to the requirements of Education Code sections 81250 and 81252 so that the district, in conjunction with the Central Valley New Market Tax Credit Fund LLC, can enter into a financing transaction involving the Agricultural Science/Technical Education Facility and solar farm at the district's Coalinga campus. The purpose of this transaction is to secure federal tax credits which will generate significant revenues for future district development projects as allowed under section 45D of the Internal Revenue Code of 1986.

In order to proceed with this transaction, the district will enter into a lease/lease-back transaction involving both facilities. The Agricultural Science/Technical Education facility is already constructed and occupied. The solar farm is under construction and scheduled for completion at the end of October 2013. The district retains ownership of the facilities.

Board of Governor's Waiver Authority

Education Code section 81250 allows the governing board of a community college district to request a waiver of all or part of any section of the California Education Code, division 7, part 49 chapter 2. Education Code sections 81365 et seq. are included in chapter 2 of the Education Code.

The district meets the following requirements that must be met in order for the Board of Governors to approve the waiver per Education Code section 81252 as described below:

1. The district must provide the written notice required by Education Code section 81250(b). The West Hills Community College District provided 30-day notice of the intent to seek a waiver at its August 27, 2013 Board of Trustees meeting.
2. Not Applicable (This section says the district must make a good faith effort to reach agreement with any public agency that sought to acquire the site pursuant to Education Code section 81363.5. Education Code section 81363.5 is only applicable to sales or leases with option to purchase; neither is the case in this instance.)
3. The waiver will not substantially increase state costs or decrease state revenues. The waiver will not increase state costs, but rather will result in savings through a federal tax credit program.
4. The waiver will further the ability of the district to meet the educational needs of the community because the waiver will result in economic benefit to the district.