



February 8, 2006

To: All School Districts and County Superintendents of Schools

Subject: **CRITICAL INFORMATION REGARDING SCHOOL FACILITY PROGRAM (SFP) FUNDING
PIGGYBACK CONTRACTS AND PERMANENT MODULAR CONSTRUCTION**

Last year, at the February 2005 State Allocation Board (SAB) meeting, the Board requested that Staff request a formal opinion regarding the legality of the use of Public Contract Code Section 20118 to acquire and install factory built modular building components that result in the assembly of permanent schools without further competitive bid. The Office of Public School Construction has received a formal opinion from the Attorney General's office regarding this issue. The opinion concludes that, "A school district may not without advertising for bids, contract with another public agency to acquire factory-built modular building components for installation on a permanent foundation."

It is important to note that the Attorney General's office opinion is in regard to modular building components, which refers to a facility comprised of multiple pre-manufactured building components, such as separate wall and floor systems, that are transported to a site where all components are installed on a permanent foundation. The opinion does not address portable or relocatable classrooms as defined by Education Code Section 17070.15(j), which typically are factory-built as two complete building modules that are simply connected on-site and placed on temporary foundations.

The SAB stipulated at the January 2006 SAB meeting that any contracts for modular construction on a permanent foundation signed after January 25, 2006, must be competitively bid. Those SFP projects that have construction contracts of this type signed prior to this date that were not competitively bid will continue to be considered for funding. However, for construction contracts signed after January 25, 2006, it is critical that your district be aware that these projects must be competitively bid so that State funding is not jeopardized.

The Attorney General's office opinion will be presented in a report for discussion at the February 22, 2006 SAB meeting. A copy of the opinion can be viewed on our website: www.opsc.dgs.ca.gov. If you have any questions regarding piggyback contracts and modular construction, please contact your district's legal counsel.

Sincerely,

A handwritten signature in black ink that reads "Luisa M. Park".

LUISA M. PARK
Executive Officer
Office of Public School Construction

LMP:KV:kv