

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, February 23, 2005

PIGGYBACK CONTRACTS AND BUILDING CODE COMPLIANCE RELATED TO
PERMANENT MODULAR SCHOOL FACILITIES

PURPOSE OF REPORT

The present a follow up report regarding piggyback contracts and building code compliance related to permanent modular school facilities.

DESCRIPTION

The Board requested additional information related to the Division of the State Architect (DSA) inspection processes, specifically as they apply to modular buildings. The Board was especially interested to know:

- How are in-plant and on-site inspectors selected, approved and held accountable, to ensure that modular buildings are inspected per the requirements of the State Building Code?
- Are there projects where entire schools are being constructed with modular buildings and if so, are these facilities being constructed in accordance with the competitive bidding requirements of the Public Contract Code (PCC)?

BACKGROUND

At the December 2004 SAB meeting, in response to the Board's request, Staff presented a report detailing current practices related to the construction of permanent modular school facilities. The Board requested additional information regarding the criteria by which inspectors are selected, approved and held accountable regarding the inspection of this type of project. The Board also expressed continued concern as to the legality of piggyback contracts in relation to the competitive bidding requirements contained in the PCC. The Board requested further information on districts that are utilizing modular buildings and the piggyback provisions to construct entire schools.

DISCUSSION

In-plant Inspections

The attached report provided by the DSA (see Attachment A) outlines the criteria currently being utilized by the DSA for in-plant inspections. Inspectors must meet the qualifications for a DSA Certified In-plant Inspector or a Class 1 Inspector. By establishing and enforcing these qualifications for in-plant inspectors the DSA believes it can ensure that the modular facilities are held to the California Building Code requirements.

On-site Inspections

The DSA also ensures that all on-site inspections are conducted by inspectors with qualifications meeting the requirements appropriate to the type of project being constructed. Selection of the DSA-approved on-site inspectors is the responsibility of the school district and its design professional.

Competitive Bidding

In the December report, SAB Legal Counsel opined that if its interpretation is adopted by the courts, the work required to set and install the modular buildings would not be authorized under the "piggyback" statute. The December 8, 2004 SAB Report is attached for a review of the full Legal Counsel opinion (see Attachment B).

After further review, Staff maintains the position that since there are no reported California cases that address the legality of the use of piggyback contracts in relation to permanent modular school facilities, no authoritative foundation exists to determine the legality of these practices. Until a California court addresses the issue of piggyback contracts, legislative action would be required to clarify the interaction between these contracts and PCC requirements.

DISCUSSION (cont.)

At this time, Staff cannot report the number of schools which may be constructed in their entirety with modular buildings as it does not have the availability of data to make this determination.

RECOMMENDATION

Accept this report.

BOARD ACTION

The State Allocation Board accepted this report on February 23, 2005. In addition, the Board requested Staff to send a letter on behalf of the Board, to 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.

Attachment A
DEPARTMENT OF GENERAL SERVICES
Division of the State Architect
Report on the Inspection of Factory
Manufactured School Buildings
for the State Allocation Board
February 10, 2005

The Office of Public School Construction has requested a report for presentation to the State Allocation Board regarding the selection of inspectors and how these inspectors are then monitored and held accountable. In order to completely respond to these issues this report will also include qualifications of inspectors and verification of the construction.

Qualifications of Inspectors

The Division of the State Architect (DSA) has developed examinations and grants certification for several classes of inspectors. In order to qualify to take the examination the inspector candidate must show three years of experience gained in the classification of construction appropriate to the examination class. Each examination consists of a plan reading part and a code part. To pass either part of the examination applicants must obtain a minimum score in each section in addition to an overall minimum score for that part. To become certified applicants must pass both parts of the examination. All projects are "classified" by the DSA during plan review. An individual must hold a certificate of the appropriate class to apply for the position of "Project Inspector" for a specific project. Individuals must be evaluated and approved by the owner, project architect, structural engineer and the DSA for each specific project prior to start of construction. Class I Inspectors may be approved for any type of school construction. The construction of school buildings in a manufacture's facilities can be inspected by In-Plant Inspectors or Class I Inspectors. Welding inspection at the factory is required to be performed by American Welding Society, Certified Welding Inspectors. DSA does not do an independent certification for welding inspectors. DSA training for all DSA certified inspectors is offered 12 times each year. All inspectors must take a test for re-certification every four years.

Selection of Inspectors

In-Plant Inspectors for specific school district projects are selected by the school district. In-Plant Inspectors for manufacturer's stockpile projects, whose buildings are subsequently bought or leased by individual school districts after factory construction, are selected either by the leasing company or the manufacturer. The inspector must either be a DSA certified In-Plant or Class I Inspector. For each project the design professional in general responsible charge and the structural engineer must accept the selected inspector. All certified inspectors when selected for a project must be approved by DSA using Form DSA-5, Project Inspector Qualification Record (See Exhibit 1).

The welding inspector can be an independent contractor selected in a manner similar to that described above for In-Plant Inspectors or can be an employee or subcontractor of the materials testing laboratory. Laboratories must have DSA acceptance to work on school projects and are selected by the school district. Inspection at the school site is done by inspectors of any class type. They are selected by the school district, accepted by the design professional in general responsible charge and the structural engineer, and approved by DSA on Form DSA-5.

Monitoring Inspectors

DSA employs District Structural Engineers to provide oversight of the inspection of the construction in the factory and at the school site. During periodic visits to the manufacturing plant and the school site these field engineers verify that the inspector is on-site, providing complete personal inspection of every part of the work and submitting reports as required by Part 1, Title 24, of the California Code of Regulations. The field engineers also spot check the critical elements of the construction. The inspector works under the general direction of the design architect or structural engineer and under the supervision of DSA.

The design architect or engineer who provides general direction to the inspector shall immediately notify the school board and DSA if the project inspector is found to be unable or unwilling to perform inspection duties properly.

Accountability of Inspectors

If inspectors fail to perform their duties the school district or design professionals can recommend that DSA withdrawal the inspector's approval. Upon concurrence by DSA the inspector's duties and responsibilities for the inspection of the project are ended. Since DSA has authority for approval of the inspector for each project, poor performing inspectors may not be approved for future critical or complex projects.

Verification of the Construction

At the completion of the construction of every project the inspector must submit a verified report to DSA, signed under penalty of perjury, showing that of his or her personal knowledge of the work has been performed and materials have been used and installed in every material respect in compliance with the approved plans and specifications. Failure to submit a verified report or submission of a false verified report is cause for removal of an inspector's certification.

Material test reports for the DSA accepted laboratories and reports of inspections by welding inspectors are submitted to DSA within 14 days of the tests or welding inspections. The reports are required to show that the materials were sampled and tested in accordance with the regulations and approved plans. The reports shall state whether or not the material tested complies with the requirements. When reports show non-complying material was installed, corrections to work must take place to achieve compliance.