

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, February 22, 2006

PIGGYBACK CONTRACTS AND PUBLIC CONTRACT CODE COMPLIANCE RELATED TO
PERMANENT MODULAR SCHOOL FACILITIES

PURPOSE OF REPORT

To present a follow up report regarding piggyback contracts and Public Contract Code (PCC) compliance relative to modular school facilities for installation on permanent foundations.

DESCRIPTION

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 PCC Section 20118 to acquire and install factory built modular building components that result in the assembly of permanent schools without further competitive bid.

AUTHORITY

PCC Section 20118

Notwithstanding Sections 20111 and 20112, the governing board of any school district without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the school district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase of the personal property.

PCC Section 20111

School districts are required to competitively bid any contract equal to or greater than:

- \$50,000 for non-public works contracts identified as the purchase or lease of equipment, materials, or supplies; non-construction related services; or repairs or maintenance that would not be considered public contracts
- \$15,000 for public projects (as defined under PCC Section 22002 to include the erection, alteration or renovation of a publicly owned or leased facility).

The districts with contracts that meet or exceed the above cost parameters are required to let the contract to the lowest responsible bidder, and ensure that the bidder presents a form of security (such as a bonded surety).

STAFF COMMENTS

Staff has received the Attorney General's office opinion (see Attachment), which concludes, "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." At the January 2006 SAB meeting, a board member requested that all contracts for modular construction on a permanent foundation signed as of January 25, 2006 must be competitively bid in order to retain or receive funding consideration by the Board. In addition, Staff was requested to notify all school districts and county offices of education of the Attorney General's opinion and of the impact to project apportionments.

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, which may include as an example a separate wall and floor system 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.

STAFF COMMENTS (cont.)

Last year after the initial report was presented to the SAB in February 2005, Staff sent out an advisory to all districts and county offices of education. The advisory notified districts that the Board expressed concern and questioned the legality of piggyback contracts for modular facilities on permanent foundations, and referred districts to the details of the report. Currently, to ensure that districts are aware of the interpretation of the law and the January 25, 2006 effective date, Staff has posted an advisory to the Office of Public School Construction (OPSC) Web site. In addition, Staff has sent out a mass mailer to all Superintendents, and included an Advisory Action article in the January 2006 edition of the OPSC Advisory Actions Newsletter, which was mailed to all county offices of education and all districts within the State of California.

Staff has received numerous calls from districts, architects, and modular construction companies regarding the Attorney General's office opinion. The overall concern is the impact on construction contracts that are in the process or construction contracts that districts were planning to piggyback in the near future to address immediate housing needs. As indicated by the Board, those projects that have construction contracts signed prior to January 25, 2006 will still be considered for funding. Therefore, the districts' concern lies with those projects where the district was planning to piggyback in the near future to address immediate housing needs.

RECOMMENDATIONS

1. Accept the Attorney General's Office opinion.
2. Direct Staff to provide additional notices to ensure that school districts are aware that all contracts for permanent modular construction signed after January 25, 2006 must be competitively bid in order to receive funding consideration by the Board.

This Item was approved by the State Allocation Board on February 22, 2006.