

July 5, 2022

TO: ALL SCHOOL DISTRICTS AND COUNTY SUPERINTENDENTS OF SCHOOLS

School districts that use piggyback contracts for modular facilities are ineligible for state funding from State Allocation Board administered programs.

In 2006, Office of Public School Construction (OPSC) staff presented the Attorney General's (AG) Opinion 05-405 dated January 24, 2006, to the State Allocation Board (SAB), which concluded that school districts must competitively bid contracts to acquire modular school facilities for installation on a permanent foundation. At the direction of the SAB at the January and February 2006 meetings, staff provided numerous notices to ensure that school districts were aware that all contracts related to acquisition and installation of permanent modular facilities signed after January 25, 2006, must be competitively bid to receive funding consideration by the SAB.

As a result of recent communications between staff and stakeholders, staff has learned that alternate interpretations of the AG opinion to acquire and install modular school facilities exist. On February 23, 2022, staff presented the current SAB members with a copy of the original Board reports and the AG's opinion, to remind all stakeholders of the Public Contract Code (PCC) requirements.

At the June 22, 2022, SAB meeting, staff presented a follow up item regarding piggyback contracts and PCC compliance relative to modular school facilities. After staff's presentation, discussion from the SAB members, and public comment, the SAB took the following action:

Provide a grace period for SAB-administered programs for projects with construction contracts signed on or within sixty calendar days (through August 21, 2022) of this Board action. Create a new process to begin after this grace period where Staff evaluates the contracts during the time of application processing and prior to fund release to ensure no piggyback contracts have been used for modular facilities.

With this action,

- Staff will continue to process and present applications that signed piggyback contracts prior to the conclusion of the grace period.
- Via this email, OPSC is notifying all District Superintendents and District Representatives on file with OPSC, as well as all stakeholders on OPSC's master email subscription list, that consistent with the PCC and the AG Opinion, modular school facilities must be competitively bid.
- OPSC has created a webpage to advise school districts of the Public Contract Code requirements and its applicability to state funding.
- OPSC has established a specific process during application processing and/or in advance of fund release for thoroughly reviewing contracts to ensure that funds are not released for projects that use piggyback contracts for modular school facilities.
- For any contracts entered into after fund release (after OPSC's review), staff will work with the State Controller's Office to amend the K-12 Audit Guide for Appendices B and C, to ensure that as part of the project audit, and the K-12 local auditor would review the contracts for compliance.

OPSC resource webpage summarizes the SAB's piggyback contract policy, OPSC's updated processing procedures, links to all prior SAB Agenda items, OPSC's notifications, and the AG's opinion. The webpage can be found [here](#):

For questions, please contact Michael Watanabe, Chief of Program Services, at Michael.Watanabe@dgs.ca.gov.