

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1581

Introduced by Assembly Member Buchanan

February 3, 2014

An act to amend ~~17070.51~~, *repeal, and add Section 17407* of the Education Code, *and to amend Section 20111.6 of the Public Contract Code*, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1581, as amended, Buchanan. ~~School facilities.~~ *facilities: construction contracts.*

Existing law requires, until January 1, 2019, the governing board of a school district that enters into a contract for a public project, as defined, for which the board uses moneys received pursuant to the Leroy F. Greene School Facilities Act of 1998 or moneys from future state school bonds for a public project that involves a projected expenditure of \$1,000,000 or more, to require prospective bidders for a construction contract to complete and submit a standardized prequalification questionnaire and financial statement. Existing law requires the questionnaire and statement to be verified under oath by the bidder and for the district to adopt and apply a uniform system of rating bidders on the basis of the questionnaire and statement.

Existing law also authorizes the governing board to enter into an agreement with the lowest responsible bidder to construct, or provide for the construction of, a building to be leased and used by the district upon a designated site. Existing law requires the instrument to provide that the title to the building and site to vest in the district at the end of the lease.

This bill would, until January 1, 2019, require a prospective bidder for a contract with a school district, for construction of a building to be leased and used by the school district upon a designated site, to comply with the above-described prequalification questionnaire and financial statement requirements when the agreement is for a public project using moneys received pursuant to the Leroy F. Greene School Facilities Act of 1998 or moneys from future state school bonds that involves a projected expenditure of \$1,000,000 or more. By requiring additional persons to complete a questionnaire and statement that is verified under oath and increasing the duties of local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law, the Leroy F. Greene School Facilities Act of 1998, requires the State Allocation Board to allocate to applicant school districts, prescribed per-unhoused-pupil state funding for construction and modernization of school facilities, including hardship funding, and supplemental funding for site development and acquisition. The board is required to impose specified penalties if a material inaccuracy is found in an eligibility or funding application.~~

~~This bill would make nonsubstantive changes in the provision regarding penalties for material inaccuracies.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17407 of the Education Code is amended
- 2 to read:
- 3 17407. (a) The governing board of any school district may
- 4 enter into an agreement with any person, firm, or corporation under
- 5 which that person, firm, or corporation shall construct, or provide

1 for the construction of, a building to be used by the district upon
2 a designated site and lease the building and site to the district. The
3 instrument shall provide that the title to the building and site shall
4 vest in the district at the expiration of the lease, and may provide
5 the means or method by which the title to the building and site
6 shall vest in the district prior to the expiration of the lease, and
7 shall contain ~~such~~ other terms and conditions as the governing
8 board of the district deems to be in the best interest of the district.

9 The

10 (b) *The* agreement entered into shall be with the lowest
11 responsible bidder who shall give the security that any board
12 requires. The board may reject all bids. For the purpose of securing
13 bids the board shall publish at least once a week for two weeks in
14 some newspaper of general circulation published in the district,
15 or if there is no paper, then in some paper of general circulation
16 circulated in the county, a notice calling for bids, stating the
17 proposed terms of the agreement and the time and place where
18 bids will be opened.

19 (c) *If the agreement meets the criteria of subdivision (a) of*
20 *Section 20111.6 of the Public Contract Code, the person, firm, or*
21 *corporation entering into an agreement with the governing board*
22 *of a school district under this section shall be subject to the same*
23 *requirements for prospective bidders described in Section 20111.6*
24 *of the Public Contract Code.*

25 (d) *This section shall remain in effect only until January 1, 2019,*
26 *and as of that date is repealed, unless a later enacted statute, that*
27 *is enacted before January 1, 2019, deletes or extends that date.*

28 SEC. 2. *Section 17407 is added to the Education Code, to read:*

29 17407. (a) *The governing board of any school district may*
30 *enter into an agreement with any person, firm, or corporation*
31 *under which that person, firm, or corporation shall construct, or*
32 *provide for the construction of, a building to be used by the district*
33 *upon a designated site and lease the building and site to the*
34 *district. The instrument shall provide that the title to the building*
35 *and site shall vest in the district at the expiration of the lease, and*
36 *may provide the means or method by which the title to the building*
37 *and site shall vest in the district prior to the expiration of the lease,*
38 *and shall contain other terms and conditions as the governing*
39 *board of the district deems to be in the best interest of the district.*

1 (b) *The agreement entered into shall be with the lowest*
2 *responsible bidder who shall give the security that any board*
3 *requires. The board may reject all bids. For the purpose of*
4 *securing bids the board shall publish at least once a week for two*
5 *weeks in some newspaper of general circulation published in the*
6 *district, or if there is no paper, then in some paper of general*
7 *circulation circulated in the county, a notice calling for bids,*
8 *stating the proposed terms of the agreement and the time and place*
9 *where bids will be opened.*

10 (c) *This section shall become operative on January 1, 2019.*

11 SEC. 3. *Section 20111.6 of the Public Contract Code is*
12 *amended to read:*

13 20111.6. (a) This section shall apply only to public projects,
14 as defined in subdivision (c) of Section 22002, for which the
15 governing board of the district uses funds received pursuant to the
16 Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5
17 (commencing with Section 17070.10) of Part 10 of Division 1 of
18 Title 1 of the Education Code) or any funds from any future state
19 school bond for a public project that involves a projected
20 expenditure of one million dollars (\$1,000,000) or more.

21 (b) If the governing board of the district enters into a contract
22 meeting the criteria of subdivision (a), then the governing board
23 of the district shall require that prospective bidders for a
24 construction contract, *including a contract for the construction of*
25 *a building to be used and leased by the district pursuant to Sections*
26 *17406 and 17407 of the Education Code*, complete and submit to
27 the board of the district a standardized prequalification
28 questionnaire and financial statement. The questionnaire and
29 financial statement shall be verified under oath by the bidder in
30 the manner in which civil pleadings in civil actions are verified.
31 The questionnaires and financial statements shall not be public
32 records and shall not be open to public inspection.

33 (c) The board of the district shall adopt and apply a uniform
34 system of rating bidders on the basis of the completed
35 questionnaires and financial statements.

36 (d) The questionnaire and financial statement described in
37 subdivision (b), and the uniform system of rating bidders described
38 in subdivision (c), shall cover, at a minimum, the issues covered
39 by the standardized questionnaire and model guidelines for rating

1 bidders developed by the Department of Industrial Relations
2 pursuant to subdivision (a) of Section 20101.

3 (e) Each prospective bidder shall be furnished by the school
4 district letting the contract with a standardized proposal form that,
5 when completed and executed, shall be submitted as his or her bid.
6 Bids not presented on the forms so furnished shall be disregarded.

7 (f) A proposal form required pursuant to subdivision (e) shall
8 not be accepted from any person or other entity that is required to
9 submit a completed questionnaire and financial statement for
10 prequalification pursuant to subdivision (b) or from any person or
11 other entity that uses a subcontractor that is required to submit a
12 completed questionnaire and financial statement for
13 prequalification pursuant to subdivision (b), but has not done so
14 at least 10 business days prior to the date fixed for the public
15 opening of sealed bids or has not been prequalified for at least five
16 business days prior to that date.

17 (g) The board of the district may establish a process for
18 prequalifying prospective bidders pursuant to this section on a
19 quarterly or annual basis and a prequalification pursuant to this
20 process shall be valid for one calendar year following the date of
21 initial prequalification.

22 (h) This section shall not preclude the governing board of the
23 district from prequalifying or disqualifying a subcontractor.

24 (i) For purposes of this section, bidders shall include the general
25 contractor and, if utilized, all electrical, mechanical, and plumbing
26 subcontractors.

27 (j) If a public project covered by this section includes electrical,
28 mechanical, or plumbing components that will be performed by
29 electrical, mechanical, or plumbing contractors, a list of
30 prequalified general contractors and electrical, mechanical, and
31 plumbing subcontractors shall be made available by the school
32 district to all bidders at least five business days prior to the dates
33 fixed for the public opening of sealed bids.

34 (k) For purposes of this section, electrical, mechanical, and
35 plumbing subcontractors are contractors licensed pursuant to
36 Section 7058 of the Business and Professions Code, specifically
37 contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38,
38 C-42, C-43, and C-46 licenses, pursuant to regulations of the
39 Contractors' State License Board.

1 (l) This section shall not apply to a school district with an
2 average daily attendance of less than 2,500.

3 (m) (1) This section shall apply only to contracts awarded on
4 or after January 1, 2014.

5 (2) *The amendments made to this section by the act adding this*
6 *paragraph shall apply only to contracts awarded on or after*
7 *January 1, 2015.*

8 (n) (1) On or before January 1, 2018, the Director of Industrial
9 Relations shall (A) submit a report to the Legislature evaluating
10 whether, during the years this section has applied to contracts,
11 violations of the Labor Code on school district projects have
12 decreased as compared to the same number of years immediately
13 preceding the enactment of this section, and (B) recommend
14 improvements to the system for prequalifying contractors and
15 subcontractors on school district projects.

16 (2) A report to be submitted pursuant to this subdivision shall
17 be submitted in compliance with Section 9795 of the Government
18 Code.

19 (o) This section shall become inoperative on January 1, 2019,
20 and, as of July 1, 2019, is repealed.

21 *SEC. 4. No reimbursement is required by this act pursuant to*
22 *Section 6 of Article XIII B of the California Constitution for certain*
23 *costs that may be incurred by a local agency or school district*
24 *because, in that regard, this act creates a new crime or infraction,*
25 *eliminates a crime or infraction, or changes the penalty for a crime*
26 *or infraction, within the meaning of Section 17556 of the*
27 *Government Code, or changes the definition of a crime within the*
28 *meaning of Section 6 of Article XIII B of the California*
29 *Constitution.*

30 *However, if the Commission on State Mandates determines that*
31 *this act contains other costs mandated by the state, reimbursement*
32 *to local agencies and school districts for those costs shall be made*
33 *pursuant to Part 7 (commencing with Section 17500) of Division*
34 *4 of Title 2 of the Government Code.*

35 ~~SECTION 1. Section 17070.51 of the Education Code is~~
36 ~~amended to read:~~

37 ~~17070.51. (a) If a certified eligibility or funding application~~
38 ~~related information is found to have been falsely certified by a~~
39 ~~school district, architect, or design professional, hereinafter referred~~

1 to as a material inaccuracy, the Office of Public School
2 Construction shall notify the board.

3 (b) The board shall impose the following penalties if an
4 apportionment and fund release has been made based upon
5 information in the project application or related materials that
6 constitutes a material inaccuracy.

7 (1) Pursuant to a repayment schedule approved by the board of
8 no more than five years, the school district shall repay to the board,
9 for deposit into the 1998 State School Facilities Fund, the 2002
10 State School Facilities Fund, or the 2004 State School Facilities
11 Fund, as the case may be, an amount proportionate to the additional
12 funding received as a result of the material inaccuracy including
13 interest at the rate paid on moneys in the Pooled Money Investment
14 Account or at the highest rate of interest for the most recent issue
15 of state general obligation bonds as established pursuant to the
16 Chapter 4 (commencing with Section 16720) of Part 3 of Division
17 4 of Title 2 of the Government Code, whichever is greater.

18 (2) The board shall prohibit the school district from
19 self-certifying certain project information for subsequent
20 applications for project funding for a period of up to five years
21 following the date of the finding of a material inaccuracy or until
22 the school district's repayment of the entire amount owed under
23 paragraph (1). Although a school district that is subject to this
24 paragraph may not self-certify, the school district shall not be
25 prohibited from applying for state funding under this chapter. The
26 board shall establish an alternative method for state or independent
27 certification of compliance that shall be applicable in these cases.
28 The process shall include, but shall not be limited to, procedures
29 for payment by the school district of increased costs associated
30 with the alternative certification process.

31 (e) For a school district found to have provided a material
32 inaccuracy when a funding apportionment has occurred, but no
33 fund release has been made, the board shall direct its staff to reduce
34 the apportionment as necessary to reflect the actual nature of the
35 project and to disregard the inaccurate information or material,
36 and paragraph (2) of subdivision (b) shall apply.

37 (d) For a school district found to have provided a material
38 inaccuracy when no funding apportionment or fund release has
39 been made, the inaccurate information or materials shall not be
40 considered, and paragraph (2) of subdivision (b) shall apply. The

- 1 ~~project may continue if the application, minus the inaccurate~~
- 2 ~~materials, is still complete.~~

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