

Assembly Bill No. 1581

CHAPTER 408

An act to amend, repeal, and add Sections 17406 and 17407 of the Education Code, and to amend Section 20111.6 of the Public Contract Code, relating to school facilities.

[Approved by Governor September 18, 2014. Filed with
Secretary of State September 18, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1581, Buchanan. School 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 authorizes the governing board to lease real property for a minimum rental of \$1 per year if the instrument by which this property is leased requires the lessee to construct or provide for the construction of a building to be used by the district.

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 the lease instrument and the agreement with the lowest responsible bidder to include a requirement for the person, firm, or corporation that constructs a building to be leased and used by the school district upon a designated site, including, but not limited to, the prime contractor and, if used, electrical, mechanical, and plumbing subcontractors, 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 bill would also, among other things, require the governing board to establish a process to prequalify a person, firm, or corporation, including, but not limited to, the prime contractor and, if used, an electrical, mechanical, and plumbing subcontractor, to construct the leased building on a quarterly or annual basis, which would be valid for one calendar year following the date of the initial prequalification.

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.

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

SECTION 1. Section 17406 of the Education Code is amended to read:

17406. (a) (1) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which this property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain other terms and conditions as the governing board may deem to be in the best interest of the school district.

(2) If the instrument meets the criteria of subdivision (a) of Section 20111.6 of the Public Contract Code, the instrument shall also require that a person, firm, or corporation that constructs the building, including, but not limited to, the prime contractor and, if used, electrical, mechanical, and plumbing subcontractor, shall be subject to the same prequalification requirements for prospective bidders described in Section 20111.6 of the Public Contract Code, including the requirement for the completion and submission of a standardized prequalification questionnaire and financial statement that is verified under oath and is not a public record.

(b) Any rental of property that complies with subdivision (a) as it reads on the day that the lease is entered into shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

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

SEC. 2. Section 17406 is added to the Education Code, to read:

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which this property is let requires the lessee to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

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

SEC. 3. Section 17407 of the Education Code is amended to read:

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

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

(c) If the agreement meets the criteria of subdivision (a) of Section 20111.6 of the Public Contract Code, the agreement shall also require that a person, firm, or corporation that constructs the building, including, but not limited to, the prime contractor and, if used, electrical, mechanical, and plumbing subcontractor, under this section shall be subject to the same prequalification requirements for prospective bidders described in Section 20111.6 of the Public Contract Code, including the requirement for the

completion and submission of a standardized prequalification questionnaire and financial statement that is verified under oath and is not a public record.

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

SEC. 4. Section 17407 is added to the Education Code, to read:

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

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

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

SEC. 5. Section 20111.6 of the Public Contract Code is amended to read:

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

(b) If the governing board of the district enters into a contract meeting the criteria of subdivision (a), then the governing board of the district shall require that prospective bidders for a construction contract complete and submit to the board of the district a standardized prequalification questionnaire and financial statement. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(c) The board of the district shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements. This system shall also apply to a person, firm, or corporation

that constructs a building described in Section 17406 or 17407 of the Education Code.

(d) The questionnaire and financial statement described in subdivision (b), and the uniform system of rating bidders described in subdivision (c), shall cover, at a minimum, the issues covered by the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations pursuant to subdivision (a) of Section 20101.

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

(f) A proposal form required pursuant to subdivision (e) shall not be accepted from any person or other entity that is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (b) or from any person or other entity that uses a subcontractor that is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (b), but has not done so at least 10 business days prior to the date fixed for the public opening of sealed bids or has not been prequalified for at least five business days prior to that date. The district may require the completed questionnaire and financial statement for prequalification to be submitted more than 10 business days prior to the fixed date for the public opening of sealed bids. The district may also require the prequalification more than five business days prior to the fixed date.

(g) (1) The board of the district may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly or annual basis and a prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(2) The board shall establish a process to prequalify a person, firm, or corporation, including, but not limited to, the prime contractor and, if used, an electrical, mechanical, and plumbing subcontractor, to construct a building described in Section 17406 or 17407 of the Education Code on a quarterly or annual basis. A prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(h) This section shall not preclude the governing board of the district from prequalifying or disqualifying a subcontractor of any specialty classification described in Section 7058 of the Business and Professions Code.

(i) For purposes of this section, bidders shall include both of the following:

(1) A prime contractor, as defined in Section 4113, that is either of the following:

(A) A general engineering contractor described in Section 7056 of the Business and Professions Code.

(B) A general building contractor described in Section 7057 of the Business and Professions Code.

(2) If utilized, each electrical, mechanical, and plumbing contractor, whether as a prime contractor or as a subcontractor, as defined in Section 4113.

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

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

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

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

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

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

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

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

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

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