

Assembly Bill No. 566

CHAPTER 214

An act to amend Sections 17406 and 17407 of, and to add Section 17407.5 to, the Education Code, and to amend Section 20111.6 of the Public Contract Code, relating to school facilities.

[Approved by Governor August 17, 2015. Filed with
Secretary of State August 17, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 566, O'Donnell. School facilities: leasing property: construction contracts.

Existing law authorizes the governing board of a school district, without advertising for bids, 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 school district and provides that the title to the building shall vest in the school district at the end of the lease. Existing law, until January 1, 2019, also requires the instrument, if funds for the instrument derive from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond for a public project that involves a projected expenditure of \$1,000,000 or more, to provide that the person, firm, or corporation that constructs the building shall comply with specified prequalification requirements.

Existing law also authorizes the governing board of a school district 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 school district upon a designated site if the instrument provides that the title to the building and site shall vest in the school district at the end of the lease. Existing law, until January 1, 2019, requires the agreement, if funds for the agreement derive from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond for a public project that involves a projected expenditure of \$1,000,000 or more, to provide that the person, firm, or corporation that constructs the building shall comply with specified prequalification requirements.

This bill would, until January 1, 2019, require the instrument and agreement to provide that the person, firm, or corporation that constructs the building to comply with specified prequalification requirements in this context regardless of the funding source for the public project. The bill would require that certain conditions relating to the use of a skilled and trained workforce on the project or contract be satisfied before the governing board of a school district may enter into a contract with any entity for the

construction, or for providing for the construction of, a building to be leased or used by the school district.

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, as provided.

This bill would impose these requirements on a public project if funding for the project includes reimbursement from any future state school bond.

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

SECTION 1. Section 17406 of the Education Code, as amended by Section 1 of Chapter 408 of the Statutes of 2014, 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 a person, firm, or corporation real property that belongs to the school 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 before the expiration of that term, and shall contain other terms and conditions as the governing board of the school district may deem to be in the best interest of the school district.

(2) For a public project, as defined in subdivision (c) of Section 22002 of the Public Contract Code, regardless of its funding source, an instrument created pursuant to paragraph (1) 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 subdivisions (b) to (m), inclusive, of 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) A 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 17407 of the Education Code, as amended by Section 3 of Chapter 408 of the Statutes of 2014, is amended to read:

17407. (a) The governing board of a school district may enter into an agreement with a 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 school district upon a designated site and lease the building and site to the school district. The instrument shall provide that the title to the building and site shall vest in the school 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 school district before the expiration of the lease, and shall contain other terms and conditions as the governing board of the school district deems to be in the best interest of the school district.

(b) The agreement entered into shall be with the lowest responsible bidder who shall give the security that a governing board of a school district requires. The governing board of a school district may reject all bids. For the purpose of securing bids the governing board of a school district shall publish at least once a week for two weeks in a newspaper of general circulation published in the school district, or if there is no newspaper, then in a newspaper 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) For a public project, as defined in subdivision (c) of Section 22002 of the Public Contract Code, regardless of its funding source, an agreement entered into pursuant to subdivision (a) 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 subdivisions (b) to (m), inclusive, of 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. 3. Section 17407.5 is added to the Education Code, to read:

17407.5. (a) The governing board of a school district shall not enter into an agreement pursuant to Section 17406 or 17407 with any entity unless the entity provides to the governing board of the school district an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(b) For purposes of this section:

(1) “Apprenticeable occupation” means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

(2) “Chief” means the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) “Skilled and trained workforce” means a workforce that meets all of the following conditions:

(A) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief.

(B) (i) As of January 1, 2016, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(ii) As of January 1, 2017, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(iii) As of January 1, 2018, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(iv) As of January 1, 2019, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(C) For an apprenticeable occupation in which no apprenticeship program had been approved by the chief before January 1, 1995, up to one-half of the graduation percentage requirements of subparagraph (B) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the chief’s approval of an apprenticeship program for that occupation in the county in which the project is located.

(4) “Skilled journeyperson” means a worker who either:

(A) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and

approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(B) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

(c) An entity's commitment that a skilled and trained workforce will be used to perform the project or contract may be established by any of the following:

(1) (A) The entity's agreement with the governing board of the school district that the entity and its subcontractors at every tier will comply with the requirements of this section and that the entity will provide to the governing board of the school district, on a monthly basis while the project or contract is being performed, a report demonstrating that the entity and its subcontractors are complying with the requirements of this section.

(B) If the entity fails to provide to the governing board of the school district the monthly report pursuant to subparagraph (A), the governing board of the school district shall immediately cease making payments to the entity pursuant to the instrument or agreement described in Section 17406 or 17407.

(C) The monthly report provided to the governing board of the school district pursuant to this paragraph shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.

(2) If the governing board of a school district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract and that includes the requirements of this section, the entity's agreement that it will become a party to that project labor agreement.

(3) Evidence that the entity has entered into a project labor agreement that includes the requirements of this section and that will bind the entity and all its subcontractors at every tier performing the project or contract.

SEC. 4. 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 received, including funds reimbursed, 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 school district enters into a contract meeting the criteria of subdivision (a), then the governing board of the school district shall require that prospective bidders for a construction contract complete and submit to the governing board of the school 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 governing board of the school 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 before the date fixed for the public opening of sealed bids or has not been prequalified for at least five business days before that date. The school district may require the completed questionnaire and financial statement for prequalification to be submitted more than 10 business days before the fixed date for the public opening of sealed bids. The school district may also require the prequalification more than five business days before the fixed date.

(g) (1) The governing board of the school 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 governing board of the school district 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 school 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 before the dates fixed for the public opening of sealed bids. The school district may require the list to be made available more than five business days before 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.