



June 2022

OPSC/SAB HAS GRANTED DISTRICTS A 60-DAY GRACE PERIOD TO ENTER MODULAR PIGGYBACK CONTRACTS

The State Allocation Board (“SAB”) took action at its meeting on June 22, 2022 to approve a proposal made by Office of Public School Construction (“OPSC”) staff to allow a 60-day grace period for districts wishing to use the piggyback procurement method to obtain modular building components to be placed on permanent foundations and receive funding from the School Facilities Program (“SFP”). **THEREFORE:**

IF YOU ARE CONTEMPLATING USING MODULAR BUILDINGS ACQUIRED THROUGH A PIGGYBACK CONTRACT ON A PROJECT FUNDED IN WHOLE OR IN PART THROUGH AN SFP PROGRAM, YOUR PIGGYBACK CONTRACT MUST BE DATED AND APPROVED BY YOUR BOARD ON OR BEFORE AUGUST 21, 2022.

Background

Earlier this year, we issued a client update alerting you that through a series of actions, OPSC had taken a firm position that it will no longer fund projects for permanent modular facilities that used the piggyback procurement method. Our update followed the February 23, 2022 SAB meeting where OPSC staff had formally rendered their “legal” opinion regarding piggyback contracts and Public Contract Code compliance relative to the procurement of modular building components.

Since that time, school facilities advocates statewide, namely the Coalition for Adequate School Housing (CASH), have been working hard on this issue.

At the SAB’s meeting on June 22, 2022, OPSC staff gave a follow-up presentation. OPSC staff clarified that there was no question as to whether districts could legally use piggyback contracting to procure modular building components. They can. However, staff stated that it is the OPSC's understanding that as a state agency, OPSC cannot bring piggyback projects forward to the SAB for receipt of state funds due to the 2006 Attorney General’s opinion.

Accordingly, OPSC staff presented the SAB with two options to address compliance going forward:

Option 1 - Take no action

No action is necessary for the Board to continue to follow previous Board action based on the Attorney General's opinion. School districts would continue to be ineligible for state funding for projects where piggyback contracting for modular components to be placed on permanent foundations is known prior to recommendation for funding, Staff would return the application to the district.

Option 2 - Provide a 60-day grace period

Provide a grace period for Board-administered programs for projects with construction contracts signed, before on or within 60-calendar days of the Board's action yesterday. 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 for modular building components have been used.

The Board took action to approve Option 2, which means that districts wishing to use the piggyback procurement method to obtain modular building components to be placed on permanent foundations will have until **August 21, 2022**, to enter into piggyback contracts for modular building components without jeopardizing funding administered by OPSC/SAB.

The SAB indicated that it will seek an updated formal opinion from the State Attorney General and pursue legislation through Vice Chairman Patrick O'Donnell to provide clarity regarding the SAB's ability to award state school facility funds for LEA projects that use piggyback contracting for modular building components.

~ Candace B. Neal

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