
Office of Public School Construction Addresses Prohibition of Piggyback Contracting for Permanent Modular Buildings

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Written by:
Arne Sandberg
Partner
Walnut Creek

Alyse Pacheco Nichols
Associate
Walnut Creek

On July 7, 2021, the Office of Public School Construction (OPSC) issued a mass email to all California school districts and county offices of education reiterating that the Public Contract Code (PCC) does not allow a school district “to acquire factory-built modular building components via piggyback contracting.” “Piggyback contracting” is a procurement method for “personal property” that allows a school district to avoid competitive bidding when another public agency has an existing contract with a vendor, in which case the school district can purchase the property either through that public agency or directly from that vendor. (PCC §20118.) In essence, the school district is “piggybacking” off the contract of another public agency.

As referenced in OPSC’s email, in January 2006 the California Attorney General concluded that modular buildings that would be set on permanent foundations must be competitively bid rather than piggybacked. The Attorney General’s opinion addressed “modular structural components for the installation of classrooms and other school buildings and facilities ... on permanent foundations,” where the components would be “attached at the building site.” The Attorney General stated that “[p]lainly, building structures to be permanently affixed to land do not have the characteristics of the listed ‘personal property’ [in PCC section 20118];” “Section 20118 makes no mention of buildings, structures, classrooms, facilities, or construction projects;” and “[w]e therefore conclude that a school district may not, without advertising for bids, ... acquire factory-built modular building components for installation on a permanent foundation.”

The State Allocation Board (SAB) promptly accepted the Attorney General opinion, but since then the SAB and OPSC have been mostly silent on the issue. In recent years, use of piggyback contracting for modular buildings on permanent foundations seems to have increased, which may have led to the OPSC’s July 7, 2021 email reminder.

Takeaways

This notice serves as a caution to school districts that OPSC’s position is that the use of piggyback contracting for modular buildings on permanent foundations is prohibited and may result in a loss of State facilities grant funding or other State funding.

However, the analysis may differ for *portable (a.k.a. relocatable) single classroom buildings*, which often are manufactured and delivered in just one or two pieces for simpler installation and relocation. The Attorney General opinion specifically chose not to opine whether piggybacking would be allowed for purchase and installation of portables, and the SAB and OPSC apparently have not taken a formal position on the issue. Therefore, especially as to portable buildings on permanent foundations, it remains unclear whether a court would apply the reasoning of the Attorney General opinion and bar piggybacking, or would decide that piggybacking could be used. Interestingly, the OPSC's July 7, 2021 email appears to take an informal position that piggybacking could potentially be used for portable or relocatable buildings, but not if the site and installation work exceeds the \$15,000 bid threshold of PCC section 20111.

In short, when considering contract options for portable buildings on either permanent or temporary foundations, local educational agencies should—as recommended by the OPSC in its email— “confer with your legal counsel ... so that you do not jeopardize State funding.”

If you have any questions regarding the OPSC email, the 2006 Attorney General opinion, or piggyback contracting in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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