

## CLIENT NEWS BRIEF

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### **LEGISLATION REQUIRING AWARD OF STATE CONTRACTS TO BIDDERS MEETING DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOALS APPEARS INAPPLICABLE TO SCHOOL DISTRICTS**

Public Contract Code Section 10115.2 formerly allowed award of certain State contracts to bidders meeting or making "good faith efforts" toward including disabled veteran business enterprises in their bids to meet the awarding agencies' percentage participation goals. Recently chaptered legislation (ABX4 21), effective immediately, amends the Public Contract Code (Sections 10115.2, 10115.15, 10430, 10472 and 12112) to require award of such contracts to the lowest responsible bidder *meeting* such goals, and no longer allows award of such contracts to bidders merely making "good faith efforts" toward meeting those goals. However, this new requirement does not appear to apply to award of contracts by school districts.

More specifically, the new legislation amends portions of the Public Contract Code regarding contracting by State agencies which California's Attorney General had opined did not apply to contracts for construction of school facilities under the former Leroy F. Green State School Building Lease-Purchase Law. (74 Ops.Cal.Att.Gen. 16.) Although school districts are considered state agencies for some purposes, generally another part of the Public Contract Code applies to contracts awarded by school districts.

However, Education Code Section 17076.11 requires any school district using State funds for construction or modernization of a school building to have an annual participation goal of at least three percent of the overall dollar amount spent by the school district, for disabled veteran business enterprises. The legislative history indicates that award is not restricted to a bidder meeting the goal. Many school districts have interpreted Section 17076.11 to allow award of contracts to bidders making "good faith efforts" similar to those formerly allowed by Public Contract Code Section 10115.2 for award of State contracts. Although such "good faith efforts" are no longer sufficient for award of State contracts under Public Contract Code Section 10115.2, the recent legislation does not appear to affect the ability of a school district to award a contract to a bidder making such "good faith efforts" under Education Code Section 17076.11.

Although not binding legal precedent, a Department of General Services staff member recently confirmed our interpretation that the recent legislation "does not apply to a school district's

contracts, and therefore, the changes . . . that eliminated the good faith effort also do not apply." In the absence of specific case law interpreting the recent legislation, its application to contracts awarded by school districts remains uncertain. School districts should consult with their legal advisors regarding the potential legal effects of the specific facts and circumstances of each contract.

If you have any questions about the recent legislation or this Client News Brief, please contact one of our seven offices located statewide.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*



*Written by Judd Jordan (jjordan@lozanosmith.com). Judd is a shareholder in our Monterey office.*

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