

School Districts Will Be Required To Prequalify Bidders For Some State Funded Construction Projects Beginning In 2014

On September 30, the Governor signed Assembly Bill (AB) 1565, adding Section 20111.6 to the Public Contract Code. The bill requires a school district with ADA over 2,500 to prequalify bidders for construction contracts awarded on or after January 1, 2014 if (1) the contract value is \$1,000,000 or more, and (2) the project is funded, in whole or in part, with State bond funds. In addition, the prequalification forms used by the district must cover, at a minimum, the issues covered by the model forms developed by the California Department of Industrial Relations ("DIR"). Section 20111.6 becomes inoperative on January 1, 2019.

Under existing law, Public Contract Code section 20111.5, a school district is permitted, but not required, to prequalify bidders on construction projects awarded by public bid under Section 20111. If a district elects to use prequalification, it must use a standardized questionnaire and uniform rating system to evaluate prospective bidders. The DIR has published model prequalification forms for use by public agencies, which some school districts have chosen to use. However, under Section 20111.5, school districts are not required to use them and may develop their own forms, which can differ significantly from the DIR forms.

For districts with ADA over 2,500, AB 1565 carves out State bond-funded projects valued at \$1,000,000 or more and makes prequalification mandatory. Moreover, unlike existing law, it requires that the questionnaire and rating system used for such projects include, at a minimum, all issues covered in the DIR model forms. The bill, however, still does not require a district to use the DIR forms. Additionally, the bill requires prequalification of electrical, mechanical and plumbing subcontractors.

Prequalification can be a time-consuming and expensive process depending on many factors, such as the size and type of project, the depth of the local contractor community, and the district's staff resources. As a practical matter, AB 1565 will force many districts that have not elected to use prequalification in the past to do so for contracts to be awarded in 2014. In anticipation of this change, and with the goal of minimizing costs and keeping projects on schedule, districts should begin planning how they will integrate prequalification into their procedures. For districts that already use prequalification and have developed their own forms, it will be important to review those forms to ensure that they satisfy the requirement that they include issues covered by the DIR forms.

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Finally, one important unanswered question is whether the bill applies to projects that use alternative delivery methods, such as Lease-Leaseback under Education Code section 17406. Districts are encouraged to consult legal counsel to discuss the use of such delivery methods in light of the bill.

If you have any questions regarding AB 1565, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#) or download our [Client News Brief App](#).

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