

# CLIENT NEWS BRIEF

## Lease-Leaseback Contractors and Subcontractors Must Prequalify

One day after the Court of Appeals affirmed the legitimacy of school districts entering into lease-leaseback contracts under Education Code section 17406 without public bidding (See [2014 Lozano Smith Client News Brief No. 62](#)), the Governor signed into law a bill requiring prequalification for lease-leaseback contractors in certain circumstances. Since January 1, 2014, school districts with an average daily attendance of at least 2,500 have been required to prequalify contractors and mechanical, electrical and plumbing subcontractors on public work projects that involve an expenditure of \$1,000,000 or more and are funded in whole or in part by state school construction bond funds. Up until now, it appeared that this prequalification requirement only applied to competitively bid projects. Assembly Bill (AB) 1581, signed into law by Governor Brown on September 18, 2014, now requires prequalification of contractors on lease-leaseback projects as well.

For projects awarded on or after January 1, 2015, the Education Code now requires that general contractors and certain mechanical, engineering and plumbing subcontractors on lease-leaseback projects must meet the prequalification requirements under Public Contract Code section 20111.6. Like general contractors and applicable subcontractors on competitively bid projects, contractors on lease-leaseback projects must timely complete and submit a school district's prequalification questionnaire and financial statement.

School districts have the option to prequalify contractors on competitively bid projects on a per-project, quarterly, or annual basis. Importantly, AB 1581 requires school districts to prequalify lease-leaseback contractors on a quarterly or annual basis only. Contractors prequalified on a quarterly or annual basis retain their prequalification status for one year.

AB 1581 also modifies Public Contract Code section 20111.6 outside of the context of lease-leaseback. The existing statutory language requires submission of prequalification questionnaires and financial statements at least 10 days before the fixed date for opening sealed bids. AB 1581 expressly permits school districts to require such submission at an earlier date, giving school districts more time to process and approve or deny those prequalification applications. Similarly, while projects awarded this year require the contractor to be deemed prequalified 5 days before bid opening, AB 1581 expressly permits school districts to set a longer time before the bid for prequalification to be completed.

AB 1581 also provides greater specificity as to the contractors who are deemed "bidders" under the statute and therefore required to prequalify. For both competitively bid and lease-leaseback contracts, "general engineering contractors" and "general building contractors" as defined in the Business and Professions Code are considered bidders if they will directly contract with the awarding school district. Additionally, mechanical, electrical and plumbing contractors holding specified licenses are also considered bidders under the statute and required to prequalify as well.

The prequalification requirement expires on January 1, 2019 of both lease-

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leaseback and competitively bid projects, unless that date is modified by the legislature.

Lozano Smith has developed a prequalification application packet for prequalifying contractors. If you would like to receive a copy of those application materials, or if you have any questions regarding prequalification and/or the lease-leaseback construction delivery method, please contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).