

---

# SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

---

**Bill No:** AB 2031 **Hearing Date:** June 13, 2018  
**Author:** O'Donnell  
**Version:** February 6, 2018  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Ian Johnson

**Subject:** Public contracts: school facility projects: bidding requirements.

## SUMMARY

This bill removes the January 1, 2019 sunset date on the requirement of general contractors and specified subcontractors to complete and submit a prequalification questionnaire and financial statement prior to bidding on school construction projects.

## BACKGROUND

Existing law:

- 1) Requires school districts with an average daily attendance (ADA) over 2,500 to establish a process for prequalifying general contractors and if utilized, each electrical, mechanical and plumbing contractor for public works projects over \$1 million and funded by state school facility bond funds. (Public Contract Code (PCC) Section 20111.6)
- 2) Requires the governing board of a school district meeting the requirements in (1) to do the following:
  - a) Require prospective bidders for a construction contract to complete and submit to the governing board of the school district a standardized prequalification questionnaire and financial statement.
  - b) Adopt and apply a uniform system of rating bidders based on the completed questionnaires and financial statements. (PCC Section 20111.6)
- 3) Requires the questionnaire, financial statement and the uniform system of rating bidders to cover, at a minimum, the issues covered by the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations. (PCC Section 20111.6)
- 4) Authorizes the governing board of a school district to establish a process to prequalify a person, firm, or corporation on a quarterly or annual basis. Specifies that a prequalification shall be valid for one calendar year following the date of initial prequalification. (PCC Section 20111.6)
- 5) Requires, on or before January 1, 2018, the Director of DIR to submit a report to the Legislature evaluating whether, during the years the prequalification

requirement is in effect, violations of the Labor Code on school district projects have decreased as compared to the same number of years immediately preceding the enactment of the requirement, and recommend any improvements. (PCC Section 20111.6)

- 6) Requires the governing board of a school district to competitively bid and award to the lowest bidder contracts involving the following:
  - a) An expenditure of \$50,000 or more for the purchase of equipment, materials, or supplies, services (except for construction services), and repairs.
  - b) An expenditure of \$15,000 or more for a public contract project defined as construction, reconstruction, erection, alteration, renovation, improvement, demolition, repair, painting or repainting of any publicly owned, leased, or operated facility. (PCC Sections 20111 and 22002)
- 7) Establishes the Local Agency Public Construction Act, which authorizes a public entity to establish a prequalification process and requires the Department of Industrial Relations, in collaboration with affected agencies and interested parties, to develop model guidelines for rating bidders, and drafting a standardized questionnaire that may be used by public entities. (PCC 20100 et seq.)
- 8) Establishes the Leroy F. Greene School Facilities Act of 1998 and requires the State Allocation Board (SAB) to allocate to applicant school districts prescribed per-unhoused-pupil state funding for construction and modernization of school facilities, including hardship funding, and supplemental funding for site development and acquisition. (Education Code 17070.35)

## ANALYSIS

This bill removes the January 1, 2019 sunset date on the requirement of general contractors and specified subcontractors to complete and submit a prequalification questionnaire and financial statement prior to bidding on school construction projects. Further, this bill removes the requirement for the Director of the DIR to complete a report to the Legislature.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The prequalification process requires contractors and major subcontractors to provide detailed information regarding the company and its financial status.”

Contractors are assigned points on a rating system based on the information provided. Local educational agencies can exclude bids from companies that do not meet minimum points and can limit the size of projects a company may bid on based on the points earned. Prequalification may be conducted annually or quarterly.”

“While there is no guarantee that a company that meets minimum points will not have financial problems or provide substandard work, this process reduces the risk of selecting a contractor based solely on a low bid. These prequalification requirements are set to sunset on January 1, 2019.”

- 2) **Public project competitive bidding.** Under current law, school districts are required to competitively bid any public works contract over \$15,000 and award the contract to the lowest responsible bidder. Alternative methods for awarding contracts include: (1) design-build, with a school district issuing a request for proposal for both the design and construction of projects; (2) best value, allowing school districts to consider factors other than cost; and (3) job order contracting, based on prices for specific construction tasks.
- 3) **Prequalification process for prospective bidders.** In 2012, AB 1565 (Fuentes), Chapter 808, Statutes of 2012, established a five-year pilot requiring school districts using state bond funds must establish a prequalification process requiring prospective bidders for public works contracts of \$1 million or more to complete a standardized questionnaire and submit financial statements. This requirement is intended to mitigate the risk of school districts entering into contracts with substandard companies.

The questionnaire is provided by school districts, and may require contractors to provide detailed information regarding (1) the company's financial status, including whether the company has been in bankruptcy or involved in a civil lawsuit; (2) licensing information; (3) prior public contracting experience; (4) whether the contractor has been involved or been found to have violated any federal, state or local laws; and (5) whether the contractor has violated any labor and health and safety laws.

Since the enactment of AB 1565, several other contracting methods have also incorporated a prequalification requirement, including lease-leaseback, design-build, and job order contracting. This bill eliminates the January 1, 2019 sunset date to make the prequalification requirement permanent and strikes the obsolete reporting requirement.

- 4) **Lease-leaseback and lease-to-own.** Lease-leaseback is a process whereby a governing board of a school district may, through a competitive bidding process, rent district property for a minimum of \$1 a year to any person, firm, or corporation. The person, firm, or corporation constructs the school building and rents the facility back to the school district. At the end of the lease, the district resumes title to the building and site.

In a lease-to-own agreement, the governing board of a school district may, through a competitive bidding process, enter into a contract with a person, firm, or corporation to construct the building on a designated site and lease the property to the school district. The school district gets the title at the end of the lease.

- 5) **Job order contracting.** Job order contracting is a procedure that allows for the awarding of contracts based on prices for specific construction tasks rather than

bids for a specific project. A catalog or book identifies all work that could be performed, typically maintenance or modernization, and the unit prices for each of those tasks. The tasks are based on accepted industry standards and prices include the cost of materials, labor, and equipment for performing the work, but exclude overhead and profit. A contractor, who has been prequalified, rather than bid a total price for the project, will bid an adjustment factor, which reflects specified costs, to the preset unit prices.

Selection of the contractors is based on the lowest responsible bidder. This process is intended to reduce costs and accelerate completion of smaller projects; it is not generally viewed as an appropriate method of contracting for large, complex construction projects that require extensive or innovative design or are likely to encounter changes and revisions during constructions.

- 6) ***Arguments in support.*** The Los Angeles Unified School District (LAUSD) supports the bill and states, “The Los Angeles Unified School District has utilized a prequalification process ever since the LAUSD began work on its \$20 billion school construction program and has seen a multitude of benefits in prequalifying our bidders. When schools were trying to build schools during the Great Recession, school districts were receiving bids from a number of contractors that may or may not be qualified or capable to build schools in California. Current law also requires a school district to accept the lowest responsible bidder which can result in low bids and high change orders costing millions more in additional work. By prequalifying all bidders, the LAUSD has been able to control costs and ensure projects are completed on time.”

## **SUPPORT**

Air Conditioning Sheet Metal Association  
 Air Conditioning & Refrigeration Contractors Association  
 California Chapters of the National Electrical Contractors Association  
 California Federation of Teachers  
 California Legislative Conference of the Plumbing, Heating, and Piping Industry  
 California State Association of Electrical Workers  
 California State Pipe Trades Council  
 International Union of Elevator Contractors  
 Los Angeles Unified School District  
 Northern California Allied Trades  
 State Building and Construction Trades Council  
 United Contractors  
 Wall and Ceiling Alliance  
 Western States Council of Sheet Metal Workers  
 Western Wall & Ceiling Contractors Association

## **OPPOSITION**

None received

-- END --