# SixTen and Associates
## Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
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June 20, 2003


RECEIVED
JUN 24 2003
COMMISSION ON
STATE MANDATES


Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Clovis Unified School District and
Santa Monica Community College District
Statutes of 2002/ Chapter 455
Public Contracts (K-14)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Clovis Unified School District and Santa Monica Community College District test claim for the above referenced mandate.

I have been appointed by the Districts as their representative for the test claim. The Districts request that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

William McGuire,
Associate Superintendent, Business Services
Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611-0599 AND

Cheryl Miller,
Associate Vice President, Business Services
Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, CA 90405-1628

The Commission regulations provide for an informal conference of the interested parties within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: William McGuire, Associate Superintendent, Business Services
Clovis Unified School District
Cheryl Miller, Associate Vice President, Business Services
Santa Monica Community College District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

RECEIVED
JUN 24 2003
COMMISSION ON STATE MANDATES

**TEST CLAIM FORM**

Claim No. 02-TC-35

Local Agency or School District Submitting Claim

**CLOVIS UNIFIED SCHOOL DISTRICT** and **SANTA MONICA COMMUNITY COLLEGE DISTRICT**

| Contact Person | Telephone Number |
|---|---|
| Keith B. Petersen, President<br>SixTen and Associates | Voice: 858-514-8605<br>Fax: 858-514-8645 |

Claimant Address

| | |
|---|---|
| Clovis Unified School District<br>1450 Herndon Avenue<br>Clovis, California 93611-0599 | Santa Monica Community College District<br>1900 Pico Boulevard<br>Santa Monica, California 90405-1628 |

Representative Organization to be Notified

| | |
|---|---|
| Dr. Carol Berg, Consultant, Education Mandated Cost Network<br>c/o School Services of California<br>1121 L Street, Suite 1060<br>Sacramento, CA 95814 | Voice: 916-446-7517<br>Fax: 916-446-2011 |

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

**Public Contracts K-14**

See: Attachment

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

| Name and Title of Authorized Representative | Telephone No. |
|---|---|
| William McGuire<br>Associate Superintendent Business Services<br>Clovis Unified School District | Voice: (559) 327-9115<br>Fax: (559) 327-9059 |

| Signature of Authorized Representative | Date |
|---|---|
| X | June 16, 2003 |

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

**TEST CLAIM FORM**

Claim No.

Local Agency or School District Submitting Claim

**CLOVIS UNIFIED SCHOOL DISTRICT** and **SANTA MONICA COMMUNITY COLLEGE DISTRICT**

Contact Person

Keith B. Petersen, President
SixTen and Associates

Telephone Number

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611-0599

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

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**Public Contracts (K-14)**

See: Attachment

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District

Telephone No.

Voice (310) 434-4221
Fax: (310) 434-3607

Signature of Authorized Representative

x Cheryl Miller

Date

June 18, 2003

Attachment To:
COSM Form CSM 2 (1/91)
Test Claim of Clovis Unified School District
Chapter 455, Statutes of 2002
Public Contracts (K-14)

Chapter 455, Statutes of 2002
Chapter 776, Statutes of 2000
Chapter 292, Statutes of 2000
Chapter 159, Statutes of 2000
Chapter 127, Statutes of 2000
Chapter 126, Statutes of 2000
Chapter 972, Statutes of 1999
Chapter 857, Statutes of 1998
Chapter 657, Statutes of 1998
Chapter 722, Statutes of 1997
Chapter 390, Statutes of 1997
Chapter 897, Statutes of 1995
Chapter 504, Statutes of 1995
Chapter 726, Statutes of 1994
Chapter 1195, Statutes of 1993
Chapter 1032, Statutes of 1993
Chapter 1042, Statutes of 1992
Chapter 799, Statutes of 1992
Chapter 294, Statutes of 1992
Chapter 933, Statutes of 1991
Chapter 785, Statutes of 1991
Chapter 1414, Statutes of 1990
Chapter 808, Statutes of 1990
Chapter 694, Statutes of 1990
Chapter 321, Statutes of 1990
Chapter 1163, Statutes of 1989
Chapter 863, Statutes of 1989
Chapter 330, Statutes of 1989
Chapter 1408, Statutes of 1988
Chapter 538, Statutes of 1988
Chapter 102, Statutes of 1987
Chapter 1060, Statutes of 1986
Chapter 886, Statutes of 1986
Chapter 1073, Statutes of 1985
Chapter 758, Statutes of 1984
Chapter 728, Statutes of 1984
Chapter 173, Statutes of 1984
Chapter 256, Statutes of 1983
Chapter 513, Statutes of 1982
Chapter 465, Statutes of 1982
Chapter 251, Statutes of 1982
Chapter 470, Statutes of 1981
Chapter 194, Statutes of 1981
Chapter 1255, Statutes of 1980
Chapter 631, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 921, Statutes of 1976

Public Contract Code Section 2000
Public Contract Code Section 2001
Public Contract Code Section 3300
Public Contract Code Section 6610
Public Contract Code Section 7104
Public Contract Code Section 7107
Public Contract Code Section 7109
Public Contract Code Section 9203
Public Contract Code Section 10299
Public Contract Code Section 12109
Public Contract Code Section 20100
Public Contract Code Section 20101
Public Contract Code Section 20102
Public Contract Code Section 20103.5
Public Contract Code Section 20103.6
Public Contract Code Section 20103.8
Public Contract Code Section 20104
Public Contract Code Section 20104.2
Public Contract Code Section 20104.4
Public Contract Code Section 20104.6
Public Contract Code Section 20104.50
Public Contract Code Section 20107
Public Contract Code Section 20110
Public Contract Code Section 20111
Public Contract Code Section 20111.5
Public Contract Code Section 20116
Public Contract Code Section 20650
Public Contract Code Section 20651
Public Contract Code Section 20651.5
Public Contract Code Section 20657
Public Contract Code Section 20659
Public Contract Code Section 22300

Business and Professions Code Section 7028.15

Title 5, California Code of Regulations
Section 59500
Section 59504
Section 59505
Section 59506
Section 59509

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

| | | |
|---|---|---|
| | ) | |
| | ) | No. CSM _____ |
| | ) | |
| | ) | Chapter 455, Statutes of 2002 |
| Test Claim of: | ) | Chapter 776, Statutes of 2000 |
| | ) | Chapter 292, Statutes of 2000 |
| | ) | Chapter 159, Statutes of 2000 |
| | ) | Chapter 127, Statutes of 2000 |
| Clovis Unified School District | ) | Chapter 126, Statutes of 2000 |
| | ) | Chapter 972, Statutes of 1999 |
| and | ) | Chapter 857, Statutes of 1998 |
| | ) | Chapter 657, Statutes of 1998 |
| Santa Monica | ) | Chapter 722, Statutes of 1997 |
| Community College District, | ) | Chapter 390, Statutes of 1997 |
| | ) | Chapter 897, Statutes of 1995 |
| | ) | Chapter 504, Statutes of 1995 |
| | ) | Chapter 726, Statutes of 1994 |
| Test Claimants. | ) | Chapter 1195, Statutes of 1993 |
| | ) | Chapter 1032, Statutes of 1993 |
| | ) | Chapter 1042, Statutes of 1992 |
| | ) | Chapter 799, Statutes of 1992 |
| | ) | Chapter 294, Statutes of 1992 |
| | ) | Chapter 933, Statutes of 1991 |
| | ) | Chapter 785, Statutes of 1991 |
| | ) | Chapter 1414, Statutes of 1990 |
| | ) | Chapter 808, Statutes of 1990 |
| | ) | Chapter 694, Statutes of 1990 |
| | ) | Chapter 321, Statutes of 1990 |
| | ) | (Continued on Next Page) |
| | ) | |
| | ) | Public Contracts (K-14) |
| | ) | |
| | ) | TEST CLAIM FILING |

Chapter 1163, Statutes of 1989
Chapter 863, Statutes of 1989
Chapter 330, Statutes of 1989
Chapter 1408, Statutes of 1988
Chapter 538, Statutes of 1988
Chapter 102, Statutes of 1987
Chapter 1060, Statutes of 1986
Chapter 886, Statutes of 1986
Chapter 1073, Statutes of 1985
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Chapter 728, Statutes of 1984
Chapter 173, Statutes of 1984
Chapter 256, Statutes of 1983
Chapter 513, Statutes of 1982
Chapter 465, Statutes of 1982
Chapter 251, Statutes of 1982
Chapter 470, Statutes of 1981
Chapter 194. Statutes of 1981
Chapter 1255, Statutes of 1980
Chapter 631, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 921, Statutes of 1976

Public Contract Code Sections:
2000, 2001, 3300, 6610, 7104, 7107, 7109, 9203, 10299, 12109, 20100, 20101, 20102, 20103.5, 20103.6, 20103.8, 20104, 20104.2, 20104.4, 20104.6, 20104.50, 20107, 20110, 20111, 20111.5, 20116, 20650, 20651, 20651.5, 20657, 20659 and 22300

Business and Professions Code Section 7028.15

Title 5, California Code of Regulations Sections 59500, 59504, 59505, 59506 and 59509

## PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for

costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Clovis Unified School District is a "school district" as defined in Government Code section 17519.[1]

## PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts, county offices of education, and community college districts to use standardized questionnaires and financial statements, maintaining those questionnaires and financial statements confidential not subject to public inspection, rating bidders on the basis of those questionnaires and financial statements, prequalifying bidders, following required dispute resolution procedures (including meet and confer requirements, attending mediations, and mandatory judicial arbitrations), detailing specific reason for changes to plans and specifications, verifying contractor licensing status, specifying bid procedures for additive and deductive contract items, paying interest on certain claims, receiving and returning bidder's security, and requiring bidders to participate with minority and women business enterprises in contracts, require competitive bidding for certain purchases, services and repairs and complying with the requirements of Minority, Women, and Disabled Veteran Business Enterprise Participation Goals for Community Colleges.

[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

SECTION 1. LEGISLATIVE HISTORY PRIOR TO 1975

Education Code Section 15951[2] required school districts to let contracts to the lowest responsible bidder who shall give required security, or else reject all bids, when the expenditure was for more than $5,000 for work to be done, or $8,000 for materials or supplies to be furnished, sold or leased to the district.

Education Code Section 15952[3] required school districts, for the purpose of securing bids, to publish, at least once a week for two weeks in a newspaper of general circulation, a call for bids stating the work to be done or materials or supplies to be furnished and the time when and the place where bids will be opened. No bids could be received after that time.

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[2] Education Code Section 15951, as amended by Chapter 321, Statutes of 1973, Section 1:

"The governing board of any school district shall let any contracts involving an expenditure of more than five thousand dollars ($5,000) for work to be done or more than eight thousand dollars ($8,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

[3] Education Code Section 15952, as amended by Chapter 1010, Statutes of 1965, Section 1:

"For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place where bids will be opened. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time."

Education Code Section 15954[4] created an exception to the advertisement for bids when contracting, leasing, acquiring or purchasing from any public corporation.

Education Code Section 15954.5[5] created another exception when purchasing materials, equipment or supplies through the Department of General Services.

Education Code Section 15955[6] permitted continuing contracts not to exceed five

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[4] Education Code Section 15954, as amended by Chapter 1496, Statutes of 1967:

"Notwithstanding any other provision of Sections 15951 to 15960, inclusive, the governing board of any school district without advertising for bids may authorize by contract, lease, requisition or purchase order, any public corporation or agency within the county whose superintendent of schools has jurisdiction over such school district, including the county, any city, town, district, or other school district of such county under the jurisdiction of the same county superintendent of schools, to lease data processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors and other personal property for the district in the manner in which such other public corporation or agency is authorized by law to make such leases or purchases. Upon receipt of any such personal property, provided the same complies with the specifications set forth in the contract, lease, requisition or purchase order, the school district shall draw a warrant in favor of such other public corporation or agency for the amount of the approved invoice, including the reasonable costs to such other public corporation or agency for furnishing the services incidental to the lease or purchase of such personal property."

[5] Education Code Section 15954.5, as added by Chapter 1084, Statutes of 1971:

"Nothing in this code shall preclude the governing board of any school district from purchasing materials, equipment or supplies through the Department of General Services pursuant to Government Code Section 14814."

[6] Education Code Section 15955, as amended by Chapter 2120, Statutes of 1961:

"Continuing contracts for work to be done, services to be performed, or for apparatus or equipment to be furnished, sold, built, leased, installed, or repaired for the district, or for

years for work, services, apparatus or equipment with accepted vendors. Continuing contracts for materials or supplies were not to exceed three years.

Education Code Section 15955.1[7] provided that contracts for the rental, lease or lease-purchase of motor vehicles (other than school buses), equipment or systems could not exceed five years.

Education Code Section 15955.2[8] provided that continuing contracts for the lease of electronic data-processing systems could be made with an acceptable lessor until the

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materials or supplies to be furnished, sold or leased to the district may be made with an accepted vendor or lessor as follows: for work or services, or for apparatus or equipment, not to exceed five years; for materials or supplies, not to exceed three years."

[7] Education Code Section 15955.1, as added by Chapter 1178, Statutes of 1969:

"Contracts for the rental, lease, or lease-purchase of motor vehicles, other than schoolbuses, equipment or systems to be furnished, built or installed for the district may be made for a period not to exceed five years, such contracts to be renewable at the option of the district for an additional period not to exceed five years; provided, that rate of the renewal contract is not greater than the rate set in the existing contract. For the sole purpose of identifying that portion of each annual rental or lease payment which may represent tax exempt reimbursement to the vendor, lessor or their assignees, bidders may include in their bids abstractions of their quotations indicating the pricing structure used to compute the annual rental or lease payments."

[8] Education Code Section 15955.2, as amended by Chapter 545, Statutes of 1971:

"Continuing contracts for the lease of electronic data-processing systems may be made with an acceptable lessor until the governing board of the school district determines that it is in the best interests of that school district to replace the present electronic data-processing systems. The governing board may make such contracts with an acceptable lessor who is one of the three lowest responsible bidders."

governing board determined that it was in the best interest of the district to replace those systems. The section required the governing board to make those lease contracts with one of the three lowest bidders.

Education Code Section 15955.5[9] provided that, to meet emergency situations, or to meet temporary peak workloads, the governing board could contract for electromechanical or electronic data processing work for a period not to exceed 90 days.

Education Code Section 15956[10] provided that, in an emergency, when repairs,

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[9] Education Code Section 15955.5, as added by Chapter 294, Statutes of 1963:

"The governing board of a school district may contract for electromechanical or electronic data processing work to be done, or related services to be performed, for a period not to exceed 90 days, to meet emergency situations, or to meet temporary peak workloads, or on a temporary basis for specific projects when it is determined by the governing board, in its judgment, to be essential to the district to accomplish the work or services within established time limits, and when the personnel commission finds that it is not practical to employ temporary personnel pursuant to Article 5 (commencing with Section 13701) of Chapter 3 of Division 10. In emergency situations arising between regularly scheduled meetings of the personnel commission, the approval of the personnel director shall constitute authority for an interim contract. The findings of the personnel director shall be effective until the next regular meeting of the personnel commission."

[10] Education Code Section 15956, as enacted by Chapter 2, Statutes of 1959, Section 15956:

"In an emergency when any repairs, alterations, work or improvement is necessary to permit the continuance of existing school classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids."

alterations, work or improvement was necessary to permit the continuance of existing school classes or to avoid danger to life or property, the governing board could, by unanimous vote and with the approval of the county superintendent of schools, make a contract in writing, or otherwise, for the performance of labor and furnishing of materials or supplies without advertising for or inviting bids.

Education Code Section 15957[11] provided that the governing board of each school district could make repairs, alterations or additions to school buildings, repair or build apparatus or equipment, make improvements on the school grounds and erect new buildings by day labor or force account when the cost of labor did not exceed $3,500, or the total number of hours on the job did not exceed 350 hours. The amount was reduced to $3,000 for school districts within a city with a population of over 1,900,000.

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[11] Education Code Section 15957, as amended by Chapter 1373, Statutes of 1970, Section 1:

"In each school district, the governing board may make repairs, alterations or additions to school buildings, repair or build apparatus or equipment, make improvements on the school grounds, and erect new buildings by day labor, or by force account, whenever the total cost of labor on the job does not exceed three thousand five hundred dollars ($3,500) or the total number of hours on the job does not exceed 350 hours, whichever is greater, provided that in any school district situated wholly or partly within a city containing a population of over 1,900,000 according to the 1950 federal census, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment by day labor or by force account whenever the total cost of labor on the job does not exceed three thousand dollars ($3,000) or the total number of hours on the job does not exceed 750 hours, whichever is greater.

For purposes of this section, day labor shall include the use of maintenance men, whether employed on a permanent or temporary basis."

Education Code Section 15957.5[12] provided that the governing board of a school district, with an average daily attendance of 400,000 or more, could employ certificated employees as classified employees during vacation periods or other days when not required to perform certificated services, to repair or build apparatus or equipment related to their certificated duties, even though the total cost of labor exceeds $1,000.

Education Code Section 15958[13] provided that the governing board of a school district could purchase supplementary textbooks, library books, educational films, audiovisual materials, test materials or workbooks in any amount without taking estimates or advertising for bids. Test materials, educational films and audiovisual

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[12] Education Code Section 15957.5, as added by Chapter 1019, Statutes of 1961:

"The governing board of any district defined hereafter, in addition to any other authority granted by law, may employ as classified employees, in accordance with rules and regulations established by the Personnel Commission, any certificated employees of the district or districts during vacation periods, or on any other day or days when the certificated employee is not required to perform services for the district, to repair or build apparatus or equipment related to their duties as certificated employees even though the total cost of labor exceeds one thousand dollars ($1,000). This section applies only when the average daily attendance of any school district, or of two or more school districts governed by governing boards of identical personnel, is 400,000 or more, as shown by the annual report of the county superintendent of schools for the preceding school year."

[13] Education Code Section 15958, as amended by Chapter 1367, Statutes of 1967:

"The governing board of any school district may purchase supplementary textbooks, library books, and educational films, audiovisual materials, test materials, or workbooks in any amount needed for the operation of the schools of the district without taking estimates or advertising for bids. Test materials, educational films, and audiovisual materials may be leased for a period not exceeding 10 years."

materials could be leased for a period not to exceed 10 years.

Education Code Section 15960[14] required the governing board of a school district to determine the method of payment for construction contracts, including progress payments.

Education Code Section 15961[15] provided that the power to contract could be delegated to its district superintendent, or to such persons as the superintendent may designate. The delegation could be limited as to time, money or subject matter.

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[14] Education Code Section 15960:

"The governing board of any school district shall determine the method of payment for construction contracts, including progress payments for completed portions of the work or for materials delivered on the ground or stored subject to the control of the board and unused."

[15] Education Code Section 15961, as amended by Chapter 940, Statutes of 1972:

"Wherever in this code the power to contract is invested in the governing board of the school district or any member thereof, such power may by a majority vote of the board be delegated to its district superintendent, or to such persons as he may designate, or if there be no district superintendent then to such other officer or employee of the district as the board may designate. Such delegation of power may be limited as to time, money or subject matter or may be a blanket authorization in advance of its exercise, all as the governing board may direct; provided, however, that no contract made pursuant to such delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board, said approval or ratification to be evidenced by a motion of said board duly passed and adopted. In the event of malfeasance in office, the school district official invested by the governing board with such power of contract shall be personally liable to the school district employing him for any and all moneys of the district paid out as a result of such malfeasance."

Education Code Section 15962[16] provided that the governing board could delegate to an officer or employee the authority to purchase supplies, materials, apparatus or equipment involving expenditures of less than $10,000. All such transactions were required to be reviewed by the governing board every 60 days.

Education Code Section 15962.5[17] provided that the governing board of a school district, with an average daily attendance of not less than 60,000, could authorize its district superintendent, or his designee, to expend up to $100 per transaction for work done, compensation for employees or consultants, and purchases of equipment,

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[16] Education Code Section 15962, as amended by Chapter 940, Statutes of 1972:

"The governing board by majority vote may adopt a rule, delegating to such officer or employee of the district as the board may designate, the authority to purchase supplies, materials, apparatus and equipment. No such rule shall authorize any officer or employee to make any purchases involving an expenditure by the district of ten thousand dollars ($10,000) or more. The rule shall prescribe the limits of the delegation as to time, money, and subject matter. All transactions entered into by such officer or employee shall be reviewed by the governing board every 60 days.

In the event of malfeasance in office, the school district officer or employee invested by the governing board with the power to contract shall be personally liable for any and all moneys of the district paid out as a result of such malfeasance."

[17] Education Code Section 15962.5, as added by Chapter 940, Statutes of 1972:

"The governing board of any school district with an average daily attendance of not less than 60,000 may by majority vote authorize its district superintendent, or such person as he may designate, to expend up to one hundred dollars ($100) per transaction for work done, compensation for employees or consultants , and purchases of equipment, supplies, or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to this section. In the event of malfeasance in office, the school district official invested by the governing board with authority to act under this section shall be personally liable for any and all moneys of the district paid out as a result of such malfeasance."

supplies or materials, without ratification.

Education Code Section 15963[18] provided that if any change or alteration of a contract was ordered by the governing board, the change or alteration was to be in writing and the cost agreed upon between the governing board and the contractor. The board was authorized to proceed without the formality of securing bids if the cost of the change or alteration did not exceed specified amounts or 10 percent of the original contract price. School districts with an average daily attendance of 400,000, or more, were authorized to contract for changes or alterations, other than for the construction of

[18] Education Code Section 15963, as amended by Chapter 514, Statutes of 1967:

"If any change or alteration of a contract governed by the provisions of this article (commencing with Section 15951) is ordered by the governing board of the district, such change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

(a) The amount specified in Section 15951, 15953, or 15957, whichever is applicable to the original contract; or

(b) Ten percent (10%) of the original contract price.

The governing board of any school district, or of two or more school districts governed by governing boards of identical personnel, having an average daily attendance of 400,000 or more as shown by the annual report of the county superintendent of schools for the preceding year, may also authorize any change or alteration of a contract for reconstruction or rehabilitation work other than for the construction of new buildings or other new structures, where the cost of the change or alteration is in excess of the limitations in subdivisions (a) and (b) but does not exceed 25 percent of the original contract price, without the formality of securing bids, when such change or alteration is a necessary and integral part of the work under the contract and the taking of bids would delay the completion of the contract. Changes exceeding 15 percent of the original contract price shall be approved by an affirmative vote of not less than 75 percent of the members of the governing board."

new buildings, where the cost did not exceed 25 percent of the original contract price when the change or alteration was a necessary and integral part of the work under contract and the taking of bids would delay completion of the contract.

Education Code Section 17005[19] provided that perishable foodstuffs and seasonal commodities needed in the operation of cafeterias should be purchased in accordance with rules and regulations adopted by the governing board notwithstanding the provisions of this code.

Education Code Section 19412[20] (part of the State School Building Aid Law of 1949) prohibited a school district from expending any money apportioned under that law unless the contracts under which the funds were expended had been let after competitive bids pursuant to this code.

SECTION 2. LEGISLATIVE HISTORY AFTER 1974

A. Local Agency Public Construction Act

Chapter 465, Statutes of 1982, Section 11, added Public Contract Code Section

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[19] Education Code Section 17005:

"Perishable foodstuffs and seasonal commodities needed in the operation of the cafeterias may be purchased by the school district in accordance with rules and regulations for such purchase adopted by the governing board of said district notwithstanding any provisions of this code in conflict with such rules and regulations."

[20] Education Code Section 19412:

A school district shall not expend money apportioned under this chapter (Sections 19401 to 19486, inclusive) unless the contracts under which the funds are expended have been let after competitive bids thereafter pursuant to this code."

20100[21] to provide that the chapter may be cited as the "Local Agency Public Construction Act". Section 20110[22] provides that the provisions of this part shall apply to contracts awarded by school districts subject to Part 21 (commencing with Section 35000) of Division 3 of Title 2 of the Education Code.

Chapter 513, Statutes of 1982, Section 4, added Public Contract Code Section 12109[23] which provides that the Director of General Services may make the services of the department available, upon such terms and conditions as may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the purchase or lease of electronic data processing goods or services."

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[21] Public Contract Code Section 20100, added by Chapter 465, Statutes of 1982, Section 11:

"This chapter may be cited as the Local Agency Public Construction Act."

[22] Public Contract Code Section 20110, added by Chapter 465, Statutes of 1982, Section 11:

"The provisions of this part shall apply to contracts awarded by school districts subject to Part 21 (commencing with Section 35000) of Division 3 of Title 2 of the Education Code."

[23] Public Contract Code Section 12109, added by Chapter 513, Statutes of 1982, Section 4:

"The Director of General Services may make the services of the department under this chapter available, upon such terms and conditions as may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the purchase or lease of electronic data-processing goods or services."

Chapter 728, Statutes of 1984, Section 6, amended Public Contract Code Section 12109 to make technical changes.

Chapter 758, Statutes of 1984, Section 2, added Public Contract Code Section 20102[24] which provides that, when plans and specifications have been prepared by a public agency and, subsequently, the public agency decides to perform the project by day's labor, the public agency shall perform the work in strict accordance with the plans and specifications. Section 20102 also requires school districts to justify any such revisions of the plans and specifications detailing the specific reasons for the change or changes and have the change(s) approved by the district or its project director and placed in the project file. The section had a sunset date of January 1, 1991.

Chapter 1073, Statutes of 1985, Section 2, added Public Contract Code Section

[24] Education Code Section 20102, added by Chapter 758, Statutes of 1984, Section 2:

"Notwithstanding any other provision of this part to the contrary, where plans and specifications have been prepared by a public agency, whose activities are subject to this part, in order for a public project to be put out for formal or informal bid, and, subsequently, the public agency elects to perform the work by day's labor, the public agency shall perform the work in strict accordance with these plans and specifications.

Revisions of the plans and specifications may be made once a justification detailing the specific reasons for the change or changes has been approved by the public agency or its project director and a copy of the change and its justification is placed in the project file.

This section shall remain in effect only until January 1, 1991, and as of such date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1991, deletes or extends such date."

3300[25] which provides that any public entity, as defined in Section 1100, shall specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded. The specification shall be included in any plans prepared for a public project and in any notice inviting bids required pursuant to this code.

Chapter 1408, Statutes of 1988, Section 11, added Public Contract Code Section 22300[26] which requires that provisions shall be included in any invitation for bid and in

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[25] Public Contract Code Section 3300, added by Chapter 1073, Statutes of 1985, Section 2:

"(a) Any public entity, as defined in Section 1100, the University of California, and the California State University shall specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded. The specification shall be included in any plans prepared for a public project and in any notice inviting bids required pursuant to this code.

This requirement shall apply only with respect to contractors who contract directly with the public entity.

(b) A contractor who is not awarded a public contract because of the failure of an entity, as defined in subdivision (a), to comply with that subdivision shall not receive damages for the loss of the contract."

[26] Public Contract Code Section 22300, added by 1408, Statutes of 1988, Section 11:

"Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Section 562. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be

returned to the contractor.

Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors in public contract procedures.

The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between

_____

whose address is

_____

_____

hereinafter called "Owner,"

_____

whose address is

_____

_____

hereinafter called "Contractor," and

_____

whose address is

_____

_____

hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

1

(1) Pursuant to Section 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for ____ in the amount of ____ dated ____ (hereinafter referred to as the "Contract"). When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of ____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) Alternatively, the Owner may make payments directly to Escrow Agent in the amount of retention for the benefit of the Owner until such time as the escrow created hereunder is terminated.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account. These expenses and payment terms shall be determined by the Owner, Contractor and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the escrow agent from the owner of the default, the escrow agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

any contract documents to permit the substitution of securities for any moneys withheld

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (4) to (6), inclusive, of this agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows

| On behalf of the Owner: | On behalf of the Contractor: |
|---|---|
| Title | Title |
| Name | Name |
| Signature | Signature |
| Address | Address |

On behalf of the Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above

| Owner | Contractor |
|---|---|
| Title | Title |
| Name | Name |
| Signature | Signature |

This part shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1992, deletes or extends that date."

by a public agency to ensure performance under a contract, subject to stated exceptions.

Chapter 330, Statutes of 1989, Section 1, added Public Contract Code Section 7104[27] which, at subdivision (a), requires that any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four

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[27] Public Contract Code Section 7104, added by Chapter 330, Statutes of 1989, Section 1:

"Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

(a) That the contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) That the public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.

(c) That, in the event that a dispute arises between the public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties."

feet below the surface shall contain a clause which provides the following:

(a) That the contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(1) Material that the contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

Subdivision (b) requires the public entity to promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, it shall issue a change order under the procedures described in the contract. Subdivision (c) provides that, in the event that a dispute arises between the public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall

proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

Chapter 863, Statutes of 1989, Section 1, added Business and Professions Code Section 7028.15[28]. Subdivision (e), provides that, a licensed contractor shall not submit

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[28] Business and Professions Code Section 7028.15, added by Chapter 863, Statutes of 1989, Section 1:

"(a) It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:

(1) The person is particularly exempted from the provisions of this chapter.

(2) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code.

(b) If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(c) This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.

(d) This section shall not affect the right or ability of a licensed architect, or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.

(e) A licensed contractor shall not submit a bid to a public agency unless his or her contractor's license number appears clearly on the bid, the license expiration date is stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. Any bid not containing this information, or a bid containing information which is subsequently proven false, shall be considered nonresponsive and shall be rejected by the public agency."

a bid to a public agency unless his or her contractor's license number appears clearly on the bid, the license expiration date is stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. Any bid not containing this information, or a bid containing information which is subsequently proven false, shall be considered nonresponsive and shall be rejected by the public agency.

Chapter 1163, Statutes of 1989, Section 1, added Section 20107[29] which requires that bids shall be accompanied by prescribed security and school districts were required to return the security to unsuccessful bidders. Therefore, for the first time, school districts were required to receive from, and return security to, bidders.

Chapter 321, Statutes of 1990, Section 1, amended Business and Professions Code Section 7028.15[30], subdivision (e), to delete the requirement that the contractor's

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[29] Public Contract Code Section 20107, added by Chapter 1163, Statutes of 1989, Section 1:

"All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the school district.

(c) A certified check made payable to the school district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made."

[30] Business and Professions Code Section 7028.15, added by Chapter 863, Statutes of 1989, Section 1, as amended by Chapter 321, Statutes of 1990, Section 1:

"(e) ~~A licensed contractor shall not submit a bid to a public agency unless his or~~

license number appears clearly on the bid, the license expiration date is stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. The amendment also, for the first time, requires that, unless one of the foregoing exceptions applies, a local public agency shall, before awarding a bid, verify that the contractor was properly licensed when the contractor submitted the bid. The amendment also made technical changes.

Chapter 321, Statutes of 1990, Section 2, added Public Contract Code Section 20104[31] which, for the first time, requires school districts, where federal funds are

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~~her contractor's license number appears clearly on the bid, the license expiration date is stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. Any bid not containing this information, or a bid containing information which is subsequently proven false,~~ Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a bid, verify that the contractor was properly licensed when the contractor submitted the bid."

[31] Public Contract Code Section 20104, added by Chapter 321, Statutes of 1990, Section 2:

"In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. The agency shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of

involved, to obtain verification from the Registrar of Contractors, before the first payment for work or material, that the contractor was properly licensed at the time the contract was awarded.

Chapter 694, Statutes of 1990, Section 8, added Public Contract Code Section 9203[32] which requires local agencies, on any contract for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars ($5,000), to withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it

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the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder."

[32] Public Contract Code Section 9203, added by Chapter 694, Statutes of 1990, Section 8:

"Payment on any contract with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars ($5,000), shall be made as the legislative body prescribes upon estimates approved by the legislative body, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed."

may make any of the remaining progress payments in full for actual work completed.

Chapter 694, Statutes of 1990, Section 9, amended Public Contract Code Section 20102 to make a technical change and to delete the January 1, 1991 sunset date.

Chapter 808, Statutes of 1990, Section 1, amended Public Contract Code Section 20107[33] to make it clear that the bid and security requirements only pertained to "construction work".

Chapter 1414, Statutes of 1990, Section 1, renumbered Public Contract Code Section 20104 as Section 20103.5.

Chapter 1414, Statutes of 1990, Section 2, added Article 1.5 (Resolution of Construction Claims) to Chapter 1 of Part 3 of the Public Contract Code to add Sections 20104, 20104.2, 20104.4, 20104.6 and 20104.8.

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[33] Public Contract Code Section 20107, added by Chapter 1163, Statutes of 1989, Section 1, as amended by Chapter 808, Statutes of 1990, Section 1:

"All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
(a) Cash.
(b) A cashier's check made payable to the school district.
(c) A certified check made payable to the school district.
(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.
Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made."

New Public Contract Code Section 20104[34] provides that the Article only applies to public works claims of $375,000, or less, which arise between a contractor and a local agency. "Claim" is defined therein as (a) a time extension, (b) payment of money or damages arising from work done and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the local agency. Therefore, for the first time, school districts are required to comply with the dispute resolution procedures of Article 1.5 to resolve claims, as defined, when the public works project is for $375,000, or less.

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[34] Public Contract Code Section 20104, added by Chapter 1414, Statutes of 1990, Section 2:

> "(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between a contractor and a local agency.
>
> (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
>
> (b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.
>
> (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
>
> (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
>
> (d) This article applies only to contracts entered into on or after January 1, 1991."

Section 20104.2[35], subdivision (b), requires a school district to respond to a

[35] Public Contract Code Section 20104.2, added by Chapter 1414, Statutes of 1990, Section 2:

"For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars ($50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed,

written claim (excluding tort claims) of less than $50,000, in writing, within 45 days or request additional documentation within 30 days; and the district's written response, as further documented, shall be submitted to the claimant within 15 days after receipt of the additional documentation. Subdivision (c) requires districts to respond to a written claim (excluding tort claims) of over $50,000 and less than or equal to $375,000, in writing, within 60 days or request additional documentation within 30 days; and the district's written response, as further documented, shall be submitted to the claimant within 30 days after receipt of the additional documentation. Subdivision (d) requires the district to meet and confer, within 30 days, upon the claimant's notification that it disputes the district's written response or if the district fails to respond timely, Subdivision (e) provides that, following the meet and confer conference, if the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to the Government Code provisions for the filing of claims against public entities.

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respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) If following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer process."

Section 20104.4[36] provides procedures for all civil actions to resolve claims subject to this article. Subdivision (a) requires the court to submit the matter to nonbinding arbitration, unless waived by all parties. In the event the matter remains in dispute, subdivision (b) requires the matter be submitted to judicial arbitration, to which the Civil Discovery Act of 1986 shall be applicable, and the fees of the arbitrator shall be paid equally by the parties. In the event any party requests a trial de novo after the

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[36] Public Contract Code Section 20104.4, added by Chapter 1414, Statutes of 1990, Section 2:

"The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) In addition to Chapter 2.5 (commencing with Section 1141.10) ofTitle 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process."

decision of the judicial arbitration, but does not obtain a more favorable judgment, that party shall be required to pay the other party's attorney fees in addition to the payment of costs and fees.

Section 20104.6[37], subdivision (a), requires school districts to pay money as to any portion of a claim which is undisputed. Subdivision (b) requires local agencies to pay interest at the legal rate on any arbitration award or judgment commencing on the date the suit is filed in a court of law.

Section 20104.8[38] provided a sunset date to the article of January 1, 1994.

Chapter 785, Statutes of 1991, Section 2, amended Business and Professions

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[37] Public Contract Code Section 20104.6, added by Chapter 1414, Statutes of 1990, Section 2:

"(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law."

[38] Public Contract Code Section 20104.8, added by Chapter 1414, Statutes of 1990, Section 2:

"(a) This article shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.
(b) As stated in subdivision (c) of Section 20104, any contract entered into between January 1, 1991, and January 1, 1994, which is subject to this article shall incorporate this article. To that end, these contracts shall be subject to this article even if this article is repealed pursuant to subdivision (a)."

Code Section 7028.15[39], subdivision (e), to add a provision that a citation may be issued to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. Subdivision (g) was added to provide that a public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing agency made an inquiry to the board for the purposes of verifying the license status of any person or contractor and the board failed to respond to the inquiry within three business days.

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[39] Business and Professions Code Section 7028.15, added by Chapter 863, Statutes of 1989, Section 1, as amended by Chapter 785, Statutes of 1991, Section 2:

"(e) Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a ~~bid~~ contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. Notwithstanding any other provision of law, unless one of the foregoing exceptions applies, the registrar may issue a citation to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. The amount of civil penalties, appeal, and finality of such citations shall be subject to Sections 7028.7 to 7028.13, inclusive. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed pursuant to this chapter is void.

(f) ,,,

(g) A public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing agency made an inquiry to the board for the purposes of verifying the license status of any person or contractor and the board failed to respond to the inquiry within three business days. For purposes of this section, a telephone response by the board shall be deemed sufficient."

1 Chapter 933, Statutes of 1991, amended Public Contract Code Section 22300[40]

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[40] Public Contract Code Section 22300, added by 1408, Statutes of 1988, Section 11, as amended by Chapter 933, Statutes of 1991, Section 1:

"(a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Section 562. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in California as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. The contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the contractor.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d) The Legislature hereby declares that the provisions of this section are of

statewide concern and are necessary to encourage full participation by contractors in public contract procedures.

(e) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between

_____
whose address is
_____
_____
_____
hereinafter called "Owner,"
_____
whose address is
_____
_____
_____
hereinafter called "Contractor," and
_____
whose address is
_____
_____
_____
hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for ____ in the amount of ____ dated ____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of ____, and shall designate the Contractor as the beneficial owner.

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(2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) ~~Alternatively, the Owner may make payments directly to Escrow Agent in the amount of retention for the benefit of the Owner~~ When the owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created hereunder this contract is terminated. The contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (4) to (6), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to

to letter the major paragraphs and to amend subdivision (b) to add provisions relating to subcontractors. Subdivision (b)(4) was amended to additionally require the contractor to pay the escrow expenses of the owner. In addition, the sunset date was deleted and

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receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows

| On behalf of the owner: | On behalf of the contractor: |
|---|---|
| Title | Title |
| Name | Name |
| Signature | Signature |
| Address | Address |

On behalf of the escrow agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above

| Owner | Contractor |
|---|---|
| Title | Title |
| Name | Name |
| Signature | Signature |

~~This part shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1992, deletes or extends that date.~~"

other technical changes were made.

Chapter 294, Statutes of 1992, amended Business and Professions Code Section 7028.15 to make technical changes.

Chapter 799, Statutes of 1992, Section 2, added Article 1.7 (Modifications; Performance; Payment) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code to add Section 20104.50[41] which requires each school district to review each request for

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[41] Public Contract Code Section 20104.50, added by Chapter 799, Statutes of 1992, Section 2:

"(a) (1) It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.

(2) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.

(b) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

(c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the

payment as soon as practicable after receipt and, within 7 days thereof, to return any request determined to be improper to the contractor along with a document setting forth, in writing, the reasons why the payment request is not proper. The district is also required to pay interest of any undisputed and properly submitted request if it fails to make a progress payment within 30 days of receipt.

Chapter 1042, Statutes of 1992, Section 1, added Public Contract Code Section 7107[42] which, at subdivision (c), requires a public agency to release the retention

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reasons why the payment request is not proper.

(d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).

(e) For purposes of this article:

(1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.

(2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.

(3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

(f) Each local agency shall require that this article, or a summary thereof, be set forth in the terms of any contract subject to this article."

[42] Public Contract Code Section 7107, added by Chapter 1042, Statutes of 1992, Section 1:

"(a) This section is applicable with respect to all contracts entered into on or after January 1, 1993, relating to the construction of any public work of improvement.

(b) The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 60 days after the date of completion of the work of improvement, the

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retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agent, of the work of improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

(d) Subject to subdivision (e), within 10 days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(g) If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261 of the Public Contract Code, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed

withheld from a contractor within 60 days after the date of completion of the work of improvement. In the event of a dispute between the public entity and the original contractor, the public agency may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. Subdivision (f) requires a public agency to pay a charge of 2 percent per month on an improperly withheld amount, in lieu of any interest otherwise due, in the event that retention payments are not made within the time periods required by this section. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

Chapter 1195, Statutes of 1993, Section 25.5, amended Public Contract Code Section 22300 to make technical changes.

Public Contract Codes Sections 20104, 20104.2, 20104.4 and 20104.6 expired on January 1, 1994, pursuant to the sunset date set forth in Section 20104.8.

Chapter 726, Statutes of 1994, Section 22, added new Public Contract Code Sections 20104, 20104.2, 20104.4 and 20104.6, effective September 22, 1994 which replaced the expired sections without change.

Chapter 504, Statutes of 1995, Section 1, added Public Contract Code Section 7109[43] to require a public entity, which determines that a project may be vulnerable to

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retentions.

(h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state."

[43] Public Contract Code Section 7109, added by Chapter 504, Statutes of 1995, Section 1:

graffiti, may do one or more of the following:

(1) Include a provision in the public works contract that specifies requirements for antigraffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti.

Chapter 722, Statutes of 1997, Section 1, added Public Contract Code Section 20103.6[44]. Subdivision (a) requires any school district, subject to this chapter, in the

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"(a) For purposes of this section:

(1) "Antigraffiti technology" means landscaping, paint, or other covering resistant to graffiti, or other procedures to deter graffiti.

(2) "Graffiti" means any unauthorized inscription, work, figure, or design that is marked, etched, scratched, drawn, or painted on any structural component of any building, structure, or other facility regardless of its content or nature and regardless of the nature of the material of the structural component.

(3) "Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(b) If a public entity determines that a project may be vulnerable to graffiti and the public entity will be awarding a public works contract after January 1, 1996, for that project, it is the intent of the Legislature that the public entity may do one or more of the following:

(1) Include a provision in the public works contract that specifies requirements for antigraffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti."

[44]Public Contract Code Section 20103.6, added by Chapter 722, Statutes of 1997, Section 1:

"(a) (1) Any local agency subject to this chapter shall, in the procurement of architectural design services requiring an expenditure in excess of ten thousand

procurement of architectural design services of more than $10,000 to include, in any request for proposals, a disclosure of any contract provision that would require the contracting architect to indemnify and hold harmless the district against any and all liability, whether or not caused by the activity of the architect. Subdivision (b) requires a school district, in the event it fails to comply with subdivision (a), to (1) be precluded from requiring the selected architect to agree to such a contract provision, (2) cease discussions with the selected architect and reopen the request for proposals, or (3) mutually agree to an indemnity clause acceptable to both parties.

Chapter 857, Statutes of 1998, Section 3, amended subdivision (d) of Public Contract Code Section 7107[45] to change the time that a contractor must pay his or her

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dollars ($10,000), include in any request for proposals for those services or invitations to bid from a prequalified list for a specific project a disclosure of any contract provision that would require the contracting architect to indemnify and hold harmless the local agency against any and all liability, whether or not caused by the activity of the contracting architect.

(2) The disclosure statement shall be prominently set forth in bold type.

(b) In the event a local agency fails to comply with paragraph (1) of subdivision (a), that local agency shall (1) be precluded from requiring the selected architect to agree to any contract provision requiring the selected architect to indemnify or hold harmless the local agency against any and all liability not caused by the activity of the selected architect, (2) cease discussions with the selected architect and reopen the request for proposals or invitations to bid from a qualification list, or (3) mutually agree to an indemnity clause acceptable to both parties.

(c) This section shall become operative on July 1, 1998."

[45] Public Contract Code Section 7107, added by Chapter 1042, Statutes of 1992, Section 1, as amended by Chapter 857, Statutes of 1998, Section 3:

"(d) Subject to subdivision (e), within ~~10~~ seven days from the time that all or any portion of the retention proceeds are received by the original contractor, the original

subcontractors from 10 to 7 days and made other technical changes.

Chapter 897, Statutes of 1998, Section 13, amended Public Contract Code Section 22300[46], subdivision (b), to delete the portion pertaining to subcontractors. A

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contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract."

[46] Public Contract Code Section 22300, added by 1408, Statutes of 1988, Section 11, as last amended by Chapter 857, Statutes of 1998, Section 13:

"(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. ~~The contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the contractor.~~

(c) ....

(d) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the

new Subdivision (d) was added to add a provision relating to contractors and subcontractors. Former subdivisions (d) and (e) were relettered as subdivisions (e) and (f) along with other technical changes.

Chapter 972, Statutes of 1999, Section 4, added Public Contract Code Section 20101[47]. Subdivision (a) requires public entities subject to this part to require from each

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contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.

(3) No contractor shall require any subcontractor to waive any provision of this section."

[47] Public Contract Code Section 20101, added by Chapter 972, Statutes of 1999, Section 4:

"(a) Except as provided in Section 20111.5, a public entity subject to this part may require that each prospective bidder for a contract complete and submit to the entity a standardized questionnaire and financial statement in a form specified by the entity, including a complete statement of the prospective bidder's experience in performing public works. The standardized questionnaire may not require prospective bidders to disclose any violations of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code committed prior to January 1, 1998, if a violation was based on a subcontractor's failure to comply with these provisions and the bidder had no knowledge of the subcontractor's violations. The Department of Industrial Relations, in collaboration with affected agencies and interested parties, shall develop model guidelines for rating bidders, and draft the standardized questionnaire, that may be used by public entities for the purposes of this part. The Department of Industrial Relations, in developing the standardized questionnaire, shall consult with affected public agencies, cities and counties, the construction industry, the surety industry, and other interested parties. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection; however, records of the names of contractors applying for prequalification status shall be public records subject to disclosure under Chapter 3.5

prospective bidder a standardized questionnaire and financial statement on a form developed by the Department of Industrial Relations. Subdivision (b) requires that districts requiring prospective bidders to complete and submit questionnaires and financial statements to adopt and apply a uniform objective system of rating bidders in

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(commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Any public entity requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. The uniform system of rating prospective bidders shall be based on objective criteria.

(c) A public entity may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and a prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(d) Any public entity requiring prospective bidders on a public works project to prequalify pursuant to this section shall establish a process that will allow prospective bidders to dispute their proposed prequalification rating prior to the closing time for receipt of bids. The appeal process shall include the following:

(1) Upon request of the prospective bidder, the public entity shall provide notification to the prospective bidder in writing of the basis for the prospective bidder's disqualification and any supporting evidence that has been received from others or adduced as a result of an investigation by the public entity.

(2) The prospective bidder shall be given the opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the public entity as to why the prospective bidder should be found qualified.

(3) If the prospective bidder chooses not to avail itself of this process, the proposed prequalification rating may be adopted without further proceedings.

(e) For the purposes of subdivision (a), a financial statement shall not be required from a contractor who has qualified as a Small Business Administration entity pursuant to paragraph (1) of subdivision (d) of Section 14837 of the Government Code, when the bid is no more than 25 percent of the qualifying amount provided in paragraph (1) of subdivision (d) of Section 14837 of the Government Code.

(f) Nothing in this section shall preclude an awarding agency from prequalifying or disqualifying a subcontractor. The disqualification of a subcontractor by an awarding agency does not disqualify an otherwise prequalified contractor."

order to determine both the minimum requirements permitted for qualification to bid and the type and size of contracts upon which each bidder shall be deemed qualified to bid. Subdivision (c) allows a district to prequalify prospective bidders on a quarterly basis which will be valid for one calendar year after qualification. Subdivision (d) requires districts to establish a process that allows prospective bidders to dispute their proposed prequalification rating prior to the closing time set for receipt of bids.

Chapter 126, Statutes of 2000, Section 1 amended Public Contract Code Section 9203 to letter the paragraph as subdivision (a) and to add a new subdivision (b)[48] which pertains only to county water authorities.

Chapter 127, Statutes of 2000, Section 30, added Public Contract Code Section 10299[49]. Subdivision (b) provides that school districts may, without further competitive

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[48] Public Contract Code Section 9203, added by Chapter 694, Statutes of 1990, Section 8, as amended by Chapter 126, Statutes of 2000, Section 1:

"(b) Notwithstanding the dollar limit specified in subdivision (a), a county water authority shall be subject to a twenty-five thousand dollar ($25,000) limit for purposes of subdivision (a)."

[49] Public Contract Code Section 10299, added by Chapter 127, Statutes of 2000, Section 30:

"(a) Notwithstanding any other provision of law, the director may consolidate the needs of multiple state agencies for information technology goods and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State agencies and local

bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services.

Chapter 159, Statutes of 2000, Section 1, added Public Contract Code Section 6610[50] which requires that notices inviting formal bids that include a requirement for any type of mandatory prebid conference, site visit, or meeting, shall include the time, date, and location of the mandatory prebid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory prebid site visit, conference or meeting shall not occur within a minimum of

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agencies may contract with suppliers awarded the contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed upon, to any school district empowered to expend public funds. These school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services. The state shall incur no financial responsibility in connection with the contracting of local agencies under this section."

[50] Public Contract Code Section 6610, added by Chapter 159, Statutes of 2000, Section 1:

"Notice inviting formal bids for projects by a public agency that include a requirement for any type of mandatory prebid conference, site visit, or meeting shall include the time, date, and location of the mandatory prebid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory prebid site visit, conference or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. This provision shall not apply to the Regents of the University of California."

five calendar days of the publication of the initial notice.

Chapter 292, Statutes of 2000, section 4, added Article 1.3 (Award of Contracts) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code which added Section 20103.8[51] which allows a local agency to require in a bid for a public works contract the inclusion of prices for items that may be added to, or deducted from, the scope of the work in the contract for which the bid is being submitted. A school district which includes a requirement that bidders include prices for items that may be added to, or deducted from, the scope of the work, when determining the lowest bid, is required to

[51] Public Contract Code Section 20103.8, added by Chapter 292, Statutes of 2000, Section 4:

"A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending upon available funds as identified in the solicitation.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined."

use one of three methods: (1) the lowest bid shall be the lowest bid price on the base contract without consideration of the prices of the additive or deductive items, (2) the lowest bid price shall be the lowest base price, plus the additive items, less the deductive items, (3) the lowest bid shall be the lowest base price, plus or minus those items taken in order specified in the solicitation, or (4) the lowest bid shall be determined in a manner preventing identification of the bidders before ranking all bidders.

Chapter 776, Statutes of 2000, Section 46, amended Public Contract Code Section 12109[52] to substitute "acquisition" for "purchase or lease" and the substitute the term "information technology" for "electronic data processing or telecommunications."

Chapter 455, Statutes of 2002, Section 3, amended Public Contract Code Section 20103.8[53] to add proposed subcontractors and suppliers to those not to be

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[52] Public Contract Code Section 12109, added by Chapter 513, Statutes of 1982, Section 4, as amended by Chapter 776, Statutes of 2000, Section 46, effective September 27, 2000:

"The Director of General Services may make the services of the department under this chapter available, upon ~~such~~ the terms and conditions ~~as~~ that may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the ~~purchase or lease~~ acquisition of ~~electronic data processing or telecommunications~~ information technology goods or services."

[53] Public Contract Code Section 20103.8, added by Chapter 292, Statutes of 2000, Section 4, as amended by Chapter 455, Statutes of 2002, Section 3:

"A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by

identified before ranking all bidders and made other technical changes.

B. Laws Pertaining to School Districts

Chapter 921, Statutes of 1976, Section 1, added Education Code Section 15957.1[54] to make it unlawful to split or separate any project into smaller work orders or projects for the purpose of evading the provisions of this article requiring competitive bidding.

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subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items~~, depending upon available funds as identified~~ that, when in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

(e) Nothing in this section shall preclude the prequalification of subcontractors."

[54] Education Code Section 15957.1, added by Chapter 921, Statutes of 1976, Section 1:

"It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding."

Chapter 1010, Statutes of 1976, Section 2, recodified and renumbered the above referrenced Education Code Sections:

| 1959 Code Section | 1010/76 Section |
|---|---|
| 15951 | 39640 |
| 15952 | 39641 |
| 15954 | 39642 |
| 15954.5 | 39643 |
| 15955 | 39644 |
| 15955.1 | Deleted |
| 15955.2 | 39645 |
| 15955.5 | 39646 |
| 15956 | 39648 |
| 15957 | 39649 |
| 15957.1 | 39649.5 |
| 15957.5 | 39650 |
| 15958 | 39651 |
| 15960 | 39652 |
| 15961 | 39656 |
| 15962 | 39657 |
| 15962.5 | 39658 |
| 15963 | 39659 |

17005 39873

19412 15711

Chapter 36, Statutes of 1977, Section 452, added Education Code Section 39649.5 as enacted by Chapter 1010, Statutes of 1976 and restated the provisions of Section 15957.1.

Chapter 631, Statutes of 1977, Section 2, amended Education Code Section 39640[55] to increase the amounts excluded from competitive bidding from $5,000 to $8,000 for work to be done, and from $8,000 to $12,000 for materials or supplies.

Chapter 1255, Statutes of 1980, Section 3, amended Education Code Section 39649.5[56] to require school districts, for the first time, to maintain job orders or similar

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[55] Education Code Section 39640 (formerly 15951), as amended by Chapter 631, Statutes of 1977, Section 2:

"The governing board of any school district shall let any contracts involving an expenditure of more than ~~five thousand dollars ($5,000)~~ eight thousand dollars ($8,000) for work to be done or more than ~~eight thousand dollars ($8,000)~~ twelve thousand dollars ($12,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

[56] Education Code Section 39649.5, added by Chapter 36, Statutes of 1977, Section 452, as amended by Chapter 1255, Statutes of 1980, Section 3:

"It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than

records indicating total costs expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years. The amendment also permits informal bidding on projects estimated to cost less than the limits set in Section 39469 and requires school districts, for the first time, to publish annually a notice inviting contractors to register so they can be notified of future informal bidding projects and requires the district to give notice to all those who have registered of all informal bid projects.

Chapter 194, Statutes of 1981, Section 1, amended Education Code Section 39640[57] to increase the amounts excluded from competitive bidding from $8,000 to

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three years after completion of the project.

Notwithstanding the provisions of Section 39640, informal bidding may be used on projects estimated by the district to cost up to and including the limits set forth in Section 39649. For the purposes of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in such manner as the district deems appropriate."

[57] Education Code Section 39640 (formerly 15951), as amended by Chapter 194, Statutes of 1981, Section 1:

"The governing board of any school district shall let any contracts involving an expenditure of more than ~~eight thousand dollars ($8,000)~~ twelve thousand dollars ($12,000) for work to be done or more than ~~twelve thousand dollars ($12,000)~~ sixteen thousand dollars ($16,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

$12,000 for work to be done, and from $12,000 to $16,000 for materials or supplies.

Chapter 465, Statutes of 1982, Sections 2 and 6, repealed Education Code Sections 39640 and 39649.5. Section 11 added Article 3 (School Districts) to Chapter 1 of Part 3 of the Public Contract Code, commencing with Section 20110. Section 20110[58] provides that the part shall apply to contracts awarded by school districts subject to Part 21, commencing with Section 35000 of the Education Code. Section 11 added Public Contract Code Section 20111 to replace former Education Code Section 39640, without change. Section 11 added Public Contract Code Section 20116 to replace former Education Code Section 39649.5, without change.

Chapter 173, Statutes of 1984, Section 3, amended Public Contract Code Section 20111[59] to increase the amounts excluded from competitive bidding from

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[58] Public Contract Code Section 20110, added by Chapter 465, Statutes of 1982, Section 11:

"The provisions of this part shall apply to contracts awarded by school districts subject to Part 21 (commencing with Section 35000) of Division 3 of Title 2 of the Education Code."

[59] Public Contract Code Section 20111, added by Chapter 465, Statutes of 1982, Section 11, as amended by Chapter 173, Statutes of 1984, Section 3:

"The governing board of any school district shall let any contracts involving an expenditure of more than ~~twelve thousand dollars ($12,000)~~ fifteen thousand dollars ($15,000) for work to be done or more than ~~sixteen thousand dollars ($16,000)~~ twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

$12,000 to $15,000 for work to be done, and from $16,000 to $21,000 for materials or supplies.

Chapter 886, Statutes of 1986, Section 33, added Public Contract Code Section 20111.5[60] which provides the procedures which shall apply to any contract entered into by any school district pursuant to the funding approval of any project under Chapter 22,

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[60] Public Contract Code Section 20111.5, added by Chapter 886, Statutes of 1986, Section 33:

"The following procedures shall apply to any contracts entered into by any school district pursuant to the funding approval of any district project under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code:

(a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 for a project funded under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded. A proposal form shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (a), for at least one day prior to that date."

commencing with Section 17700[61]:

(a) The governing board may require that each prospective bidder complete and submit to the district a standardized questionnaire and financial statement on a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works.

(b) Those school districts shall adopt and apply a uniform system of rating bidders on the basis of the questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Those school districts shall furnish each prospective bidder a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms furnished shall be disregarded.

Chapter 1060, Statutes of 1986, Section 2, added Public Contract Code Section 2000[62]. Subdivision (a), provides that, notwithstanding any other provision of law

[61] Education Code Section 17700 was later repealed by Chapter 277, Statutes of 1996, Section 1. Section 2 replaced the repealed section with new Education Code Section 17000. Both sections are known as the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

[62] Public Contract Code Section 2000, added by Chapter 1060, Statutes of 1986, Section 2:

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"(a) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the local agency relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the local agency for that participation, the local agency shall evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the local agency relating to participation in the contract by minority or women business enterprises.

(b) (1) The bidder attended any presolicitation or prebid meetings that were scheduled by the local agency to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A local agency may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the local agency for minority or women business enterprises that are interested in participating in the project.

This paragraph applies only if the local agency gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.

(4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, the local agency shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the local agency as minority or women business enterprises. If the local agency does not provide that list or source of lists to the bidder, the bidder may utilize the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this

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purpose.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the local agency.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the local agency or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the local agency to produce a level of participation sufficient to meet the goals and requirements of the local agency.

(c) The performance by a bidder of all of the criteria specified in subdivision (b) shall create a rebuttable presumption, affecting the burden of producing evidence, that a bidder has made a good faith effort to comply with the goals and requirements relating to participation by minority and women business enterprises established pursuant to subdivision (a).

(d) "Local agency," as used in this section, means a county or city, whether general law or chartered, city and county or district. "District," as used in this section, means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(e) "Minority or women business enterprise," as used in this section, means a business enterprise that meets both of the following criteria:

(1) A business that is at least 51 percent owned by one or more minority persons or women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority persons or women.

(2) A business whose management and daily business operations are controlled by one or more minority persons or women.

requiring a local agency to award contracts to the lowest responsible bidder, a local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following: (1) meets district goals and requirements relating to participation in the contract by minority business enterprises and women business enterprises, or (2) makes a good faith effort to meet the criteria established pursuant to subdivision (b).

Subdivision (b) of section 2000 sets forth the criteria by which to measure a "good faith effort":

(1) The bidder attended presolicitation or prebid meetings scheduled to inform all bidders of the minority and women business enterprise program

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(f) "Minority person," for purposes of this section, means Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), or any other group of natural persons identified as minorities in the project specifications by the local agency.

(g) This section does not apply to any of the following:

(1) Any contract, funded in whole or in part by the federal government, to the extent of any conflict between the requirements imposed by this section and any requirements imposed by the federal government relating to participation in a contract by a minority or women business enterprise as a condition of receipt of the federal funds.

(2) The San Francisco Bay Area Rapid Transit District, the Los Angeles County Transportation Commission, or any other local agency that has authority to facilitate the participation of minority or women business enterprises substantially similar to the authority granted to the San Francisco Bay Area Rapid Transit District pursuant to Section 20229 of this code or the Los Angeles County Transportation Commission pursuant to Section 130239 of the Public Utilities Code."

requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority and women business enterprises.

(3) The bidder advertised in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the local agency for minority or women business enterprises that are interested in participating in the project.

(4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications. To the extent possible, the local agency shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the local agency as minority or women business enterprises.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the

selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the local agency.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the local agency or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the local agency to produce a level of participation sufficient to meet the goals and requirements of the local agency.

Subdivision (e) defines "minority and women business enterprise. Subdivision (f) defines "minority person". Subdivision (g) sets forth certain exclusions.

Chapter 102, Statutes of 1987, Section 1, amended Public Contract Code

Section 20111.5[63] to delete the references to Chapter 22 of the Education Code Section.

Chapter 538, Statutes of 1988, Section 1, amended Public Contract Code Section 2000, at subdivision (d)[64], to add "school districts" to the definition of "local

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[63]Public Contract Code Section 20111.5, added by Chapter 886, Statutes of 1986, Section 33, as amended by Chapter 102, Statutes of 1987, Section 1:

~~"The following procedures shall apply to any contracts entered into by any school district pursuant to the funding approval of any district project under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code:~~

"(a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 ~~for a project funded under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code~~ shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded. A proposal form shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision ~~(a)~~(b), for at least one day prior to that date."

[64] Public Contract Code Section 2000, added by Chapter 1060, Statutes of 1986, Section 2, as amended by Chapter 538, Statutes of 1988, Section 1:

"...(d) "Local agency," as used in this section, means a county or city, whether general

agency". Therefore, for the first time, school districts became subject to its provisions relating to contract participation by minority business enterprises and women business enterprises.

Chapter 538, Statutes of 1988, Section 2, amended Public Contract Code Section 20111[65] to require school districts, for the first time, to let contracts in accordance with any requirement established by the board pursuant to subdivision (a) of Public Contract Code Section 2000.

Chapter 1163, Statutes of 1989, Section 2, amended Public Contract Code Section 20111[66] to require, for the first time, that all bids presented be accompanied

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law or chartered, city and county, school district, or other district. "District," as used in this section, means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries...."

[65] Public Contract Code Section 20111, added by Chapter 465, Statutes of 1982, Section 11, as amended by Chapter 538, Statutes of 1988, Section 2:

"The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

[66] Public Contract Code Section 20111, added by Chapter 465, Statutes of 1982, Section 11, as amended by Chapter 1163, Statutes of 1989, Section 2:

"(a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifteen thousand

with bidder's security in the form of (1) cash, (2) cashier's check, (3) certified check, or (4) a bidder's bond; and that the district shall return security to unsuccessful bidders in a reasonable time, not to exceed 60 days.

Chapter 808, Statutes of 1990, Section 4, amended Public Contract Code Section 20111[67] to clarify that the bids requiring bidder's security are bids "for

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dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) a bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of the unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all materials and supplies whether patented or otherwise.

[67] Public Contract Code Section 20111, added by Chapter 465, Statutes of 1982, Section 11, as amended by Chapter 808, Statutes of 1990, Section 4:

"(a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids.

(b) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash

construction work".

Chapter 1032, Statutes of 1993, Section 4, added Public Contract Code Section 2001.[68] Subdivision (a) requires districts, when requiring that contracts be awarded to

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(2) A cashier's check made payable to the school district.
(3) A certified check made payable to the school district.
(4) a bidder's bond executed by an admitted surety insurer, made payable to the school district.
Upon an award to the lowest bidder, the security of the unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.
(c) This section applies to all materials and supplies whether patented or otherwise.

[68] Public Contract Code Section 2001, added by Chapter 1032, Statutes of 1993, Section 4:

"(a) Any local agency, as defined in subdivision (d) of Section 2000, that requires that contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises shall provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises to provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

Chapter 897, Statutes of 1995, Section 1, amended Public Contract Code Section 20111[69], subdivision (a), to require, for the first time, that bids for (1) the

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(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code."

[69] Public Contract Code Section 20111, added by Chapter 465, Statutes of 1982, Section 11, as amended by Chapter 897, Statutes of 1995, Section 1:

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"(a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than ~~fifteen thousand dollars $15,000 for work to be done or more than twenty one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district,~~ fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.

(2) Services, except construction services.

(3) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all equipment, materials, or supplies, whether patented or otherwise, and to contracts awarded pursuant to subdivision (a) of Section 2000. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any work done by day labor or by force account pursuant to Section 20114.

(d) Commencing January 1, 1997, the Superintendent of Public Instruction shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100)."

purchase of equipment, materials or supplies, (2) services (except construction services), and (3) repairs involving more than $50,000 be subject to competitive bidding. Subdivision (b) was amended to continue the limit of $15,000 for a public project as defined in subdivision (c) of Section 22002[70] (construction, reconstruction, erection, alteration, renovation, improvement, demolition and repair work and painting or repainting) and continued the requirement that the bids for construction work be submitted with bidder's security. Subdivision (c) was amended to provide that the section applied to contracts awarded pursuant to Section 2000 and excluded professional services or advice and insurance services. Subdivision (d) was added to allow for percentage changes in the annual average Implicit Price Deflator.

Chapter 897, Statutes of 1995, Section 4, amended Public Contract Code

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[70] Public Contract Code Section 22002, renumbered and amended by Chapter 1019, Statutes of 1986, Section 39, as amended by Chapter 733, Statutes of 1989, Section 1:

> "(c) "Public project" means any of the following:
> (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
> (2) Painting or repainting of any publicly owned, leased, or operated facility.
> (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher."

Section 20116[71] to expand the prohibition against splitting to now also include "work", "service" and "purchase" to "projects" and to include those new definitions within the informal bidding requirements.

Chapter 390, Statutes of 1997, Section 5, amended Public Contract Code Section 20111.5[72] to separate subdivision (c) into subdivisions (c) and (d), and to add a

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[71] Public Contract Code Section 20116, added by Chapter 465, Statutes of 1982, Section 11, as amended by Chapter 897, Statutes of 1995, Section 4:

"It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring ~~work to be done by contract~~ contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

~~Notwithstanding the provisions of Section 20111~~ Informal bidding may be used on work, projects, ~~estimated by the district to~~ services, or purchases that cost up to ~~and including~~ the limits set forth in ~~Section 20114~~ this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner as the district deems appropriate."

[72] Public Contract Code Section 20111.5, added by Chapter 886, Statutes of 1986, Section 33, as amended by Chapter 390, Statutes of 1997, Section 5:

"(a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and

new subdivision (e) to allow the district to establish a process for prequalifying prospective bidders on a quarterly basis that may be valid for up to one calendar year.

C. Laws Pertaining to Community College Districts

Chapter 921, Statutes of 1976, Section 1, added Education Code Section 15957.1[73] to make it unlawful to split or separate any project into smaller work orders or projects for the purpose of evading the provisions of this article requiring competitive bidding.

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shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded.

(d) A proposal form required pursuant to subdivision (c) shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (b), for at least one day prior to that date.

(e) Notwithstanding subdivision (d), any school district may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of initial prequalification."

[73] Education Code Section 15957.1, added by Chapter 921, Statutes of 1976, Section 1:

See: Footnote 34

Chapter 1010, Statutes of 1976, Section 2, recodified and renumbered the above referenced Education Code Sections:

| 1959 Code Section | 1010/76 Section |
|---|---|
| 15951 | 81640 |
| 15952 | 81641 |
| 15954 | 81642 |
| 15954.5 | 81643 |
| 15955 | 81644 |
| 15955.1 | Deleted |
| 15955.2 | 81645 |
| 15955.5 | 81646 |
| 15956 | 81648 |
| 15957 | 81649 |
| 15957.1 | 81649.5 |
| 15957.5 | 81650 |
| 15958 | 81651 |
| 15960 | 81652 |
| 15961 | 81655 |
| 15962 | 81656 |
| 15962.5 | 81657 |
| 15963 | 81658 |

17005 82363

Chapter 631, Statutes of 1977, Section 3, amended Education Code Section 81640[74] to increase the value of the work to be done without awarding it to the lowest responsible bidder from $5,000 to $8,000 and to increase the value of materials or supplies furnished without awarding it to the lowest responsible bidder from $8,000 to $12,000.

Chapter 1255, Statutes of 1980, Section 6, amended Education Code Section 81649.5[75] to require districts, for the first time, to maintain job orders or similar records

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[74] Education Code Section 81640 (formerly 15951), as amended by Chapter 631, Statutes of 1977, Section 3:

"The governing board of any community college district shall let any contracts involving an expenditure of more than ~~five thousand dollars ($5,000)~~ eight thousand dollars ($8,000) for work to be done or more than ~~eight thousand dollars ($8,000)~~ twelve thousand dollars ($12,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

[75] Education Code Section 81649.5 (formerly Section 15957.1), as amended by Chapter 1255, Statutes of 1980, Section 6:

"It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California Community College Budget and Accounting Manual for a period of not less than three years after completion of the project.

Notwithstanding the provisions of Section 81640, informal bidding may be used on projects estimated by the district to cost up to and including the limits set forth in

indicating the total cost expended on each project in accordance with the California Community College Budget and Accounting Manual for at least three years. It also provided that informal bidding may be used on projects described in Section 81649 and, for the purpose of securing informal bids, the district is required to publish annually a notice inviting contractors to register to be notified of future informal bidding projects. The section requires districts to give notice of all informal bid projects to all contractors on the list.

Chapter 194, Statutes of 1981, Section 2, amended Education Code Section 81640[76] to increase the amounts requiring bids be awarded to the lowest responsible bidder for work to be done from $8,000 to $12,000, and for materials and supplies from $12,000 to $16,000.

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Section 81649. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects, in any manner as the district deems appropriate."

[76] Education Code Section 81640, as amended by Chapter 194, Statutes of 1981, Section 2:

"The governing board of any community college district shall let any contracts involving an expenditure of more than ~~eight thousand dollars ($8,000)~~ twelve thousand dollars ($12,000)for work to be done or more than ~~twelve thousand dollars ($12,000)~~ sixteen thousand dollars ($16,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

Chapter 470, Statutes of 1981, Section 249, and Chapter 251, Statutes of 1982, Section 16, amended Education Code Section 81640[77] to increase the amount of materials or supplies that could purchased without competitive bidding from $16,000 to $18,000.

Chapter 256, Statutes of 1983, Sections 1, 7 and 9 repealed Education Code Sections 81640, 81649.5, and 81658, respectively. Chapter 256, Statutes of 1983, Section 84, replaced those Education Code Sections by adding Article 41 to Part 3 of the Public Contract Code, including Sections 20651, 20657 and 20659. Section 84 also added Public Contract Code Section 20650[78] which declares that the provisions of the article shall apply to contracts by community college districts as provided in Part 49[79]

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[77] Education Code Section 81640, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 251, Statutes of 1982, Section 16:

"The governing board of any community college district shall let any contracts involving an expenditure of more than twelve thousand dollars ($12,000) for work to be done or more than ~~sixteen thousand dollars ($16,000)~~ eighteen thousand dollars ($18,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

[78] Public Contract Code Section 20650, added by Chapter 256, Statutes of 1983, Section 84"

"The provisions of this article shall apply to contracts by community college districts as provided for in Part 49 (commencing with Section 81000) of the Education Code."

[79] Part 49 of the Education Code is entitled "Community Colleges, Education Facilities" and includes school sites (Chapter 1, commencing with Section 81003), sale, lease, use and exchange of property (Chapter 2, commencing with Section 81250), management and control of property (Chapter 3, commencing with Section 81600),

(commencing with Section 81000) of the Education Code.

Public Contract Code Section 20651 restated former Education Code Section 81640, without change.

Public Contract Code Section 20657 restated former Education Code Section 81649.5 and was amended only to change the references from Sections 81640 and 81649 of the Education Code Section to Sections 20651 and 20655 of the Public Contract Code.

Public Contract Code Section 20659 restated former Education Code Section 81658 and was amended only to change the references from Section 81640 and 81649 of the Education Code to Sections 20651 and 20655 of the Public Contract Code.

Chapter 1060, Statutes of 1986, Section 2, added Public Contract Code Section 2000[80]. Subdivision (a), notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, allows a local agency to require that a contract be awarded to the lowest responsible bidder who also does either of the following: (1) meets district goals and requirements relating to participation in the contract by minority business enterprises and women business enterprises, or (2) makes

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design-build contracts, (Chapter 3.5, commencing with Section 81700), Community College Construction Act of 1980 (commencing with Section 81800), Community College Revenue Bond Act of 1961 (commencing with Section 81901), supplementary services, including transportation, schoolbuses and cafeterias (commencing with Section 82305.6) and miscellaneous activities (commencing with Section 82530).

[80] See: Footnote 42

a good faith effort to meet the criteria established pursuant to subdivision (b).

Subdivision (b) of section 2000 sets forth the criteria by which to measure a "good faith effort":

(1) The bidder attended presolicitation or prebid meetings scheduled to inform all bidders of the minority and women business enterprise program requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority and women business enterprises.

(3) The bidder advertised in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the local agency for minority or women business enterprises that are interested in participating in the project.

(4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications. To the extent possible, the local agency shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the local agency as minority or women business enterprises.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the local agency.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the local agency or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the local agency to produce a level of participation sufficient to meet the goals and requirements of the

local agency.

Subdivision (e) defines "minority and women business enterprise" . Subdivision (f) defines "minority person". Subdivision (g) sets forth certain exclusions.

Chapter 538, Statutes of 1988, Section 1, amended Public Contract Code Section 2000, at subdivision (d)[81], to add "school districts"[82] to the definition of "local agency". Therefore, for the first time, community college districts became subject to its provisions relating to contract participation by minority business enterprises and women business enterprises.

Chapter 538, Statutes of 1988, Section 2, amended Public Contract Code Section 20111[83] to require school districts, for the first time, to let contracts in

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[81] Public Contract Code Section 2000, added by Chapter 1060, Statutes of 1986, Section 2, as amended by Chapter 538, Statutes of 1988, Section 1:

"...(d) "Local agency," as used in this section, means a county or city, whether general law or chartered, city and county, school district, or other district. "District," as used in this section, means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries...."

[82] "School district" means any school district, community college district, or county superintendent of schools. Government Code Section 17519 (see footnote 1, supra)

[83] Public Contract Code Section 20111, added by Chapter 465, Statutes of 1982, Section 11, as amended by Chapter 538, Statutes of 1988, Section 2:

"The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder

accordance with any requirement established by the board pursuant to subdivision (a) of Public Contract Code Section 2000.

Chapter 1163, Statutes of 1989, Section 45, added Public Contract Code Section 20651.5[84] to require, for the first time, bids presented be accompanied by bidder's security in the form of (a) cash, (b) cashier's check, (c) certified check, or (4) bidder's bond; and requires school districts to return the security of unsuccessful bidders within 60 days from the time of the award.

Chapter 808, Statutes of 1990, Section 42, amended Public Contract Code Section 20651.5[85] to clarify that bidder's security is only required for "construction work".

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who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise."

[84] Public Contract Code Section 20651.5, added by Chapter 1163, Statutes of 1989, Section 45:

"All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
(a) Cash.
(b) A cashier's check made payable to the district.
(c) A certified check made payable to the district.
(d) a bidder's bond executed by an admitted surety insurer, made payable to the district.
Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made."

[85] Public Contract Code Section 20651.5, added by Chapter 1163, Statutes of 1989, Section 45, as amended by Chapter 808, Statutes of 1990, Section 42:

"All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

Chapter 1032, Statutes of 1993, Section 4, added Public Contract Code Section 2001[86]. Subdivision (a) requires districts, when requiring that contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises to provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

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(a) Cash.
(b) A cashier's check made payable to the district.
(c) A certified check made payable to the district.
(d) a bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made."

[86] Public Contract Code Section 2001, added by Chapter 1032, Statutes of 1993, Section 4:

See: Footnote 48

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

Chapter 897, Statutes of 1995, Section 5, amended Public Contract Code Section 20651[87], subdivision (a), to raise the limit for which competitive bidding was

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[87] Public Contract Code Section 20651, added by Chapter 256, Statutes of 1983, Section 84, as amended by Chapter 897, Statutes of 1995, Section 5:

"(a) The governing board of any community college district shall let any contracts involving an expenditure of more than ~~twelve~~ fifty thousand dollars ~~($12,000) for work to be done or more than eighteen thousand dollars ($18,000) for~~ ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district~~;~~.

(2) Services, except construction services.

(3) Repairs, including maintenance as defined in Section 20656, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give ~~such~~ security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the community college district.

(3) A certified check made payable to the community college district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the community college district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

required from $12,000 to $50,000, but expanded the activities subject to the section to include, for the first time, (1) equipment, (2) services (except construction services), and (3) repairs, including maintenance. Subdivision (b) was added to require the governing board to let contracts for public projects (as defined in Section 2002(c)) of more than $15,000 to the lowest possible bidder and to require submission of bids to be accompanied by bidder's security in the form of (a) cash, (b) cashier's check, (c) certified check, or (4) bidder's bond; and requires districts to return the security of unsuccessful bidders within 60 days from the time of the award. Subdivision (c) excludes professional services or advice, insurance services or exempt purchases or services.

Chapter 897, Statutes of 1995, Section 6, repealed Public Contract Code Section 20651.5, as the requirement of security in designated forms was incorporated in the amendment to Section 20651.

Chapter 897, Statutes of 1995, Section 9, amended Public Contract Code

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(c) This section applies to all equipment, materials ~~and~~, or supplies, whether patented or otherwise. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any works done by day labor or by force account pursuant to Section 20655.

(d) Commencing January 1, 1997, the Board of Governors of the California Community Colleges shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100)."

Section 20657[88] to add, for the first time, "work", "service" or "purchase" to those activities subject to the prohibition against splitting work orders or projects for the purchase of evading the provisions of this article and subject to the requirements for records maintenance and retention.

Chapter 657, Statutes of 1998, Section 5, added a new Public Contract Code Section 20651.5[89]. Subdivision (a), allows community college districts, for the first time,

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[88] Public Contract Code Section 20657, added by Chapter 256, Statutes of 1983, Section 84, as amended by Chapter 897, Statutes of 1995, Section 9:

"It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring ~~work~~ contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California Community College Budget and Accounting Manual for a period of not less than three years after completion of the project.

~~Notwithstanding the provisions of Section 20651,~~ Informal bidding may be used on work, projects, ~~estimated by the district to~~ services, or purchases that cost up to ~~and including~~ the limits set forth in ~~Section 20655~~ this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects, in ~~such~~ any manner as the district deems appropriate."

[89] Public Contract Code Section 20651.5, added by Chapter 657, Statutes of 1998, Section 5:

"(a) The governing board of any community college district may require each prospective bidder for a contract, as described under Section 20651, to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and

to require that each prospective bidder for a contract, as described in Section 20651, complete and submit a standardized and financial statement form, including a complete statement of the prospective bidders's financial ability and experience in performing public works. Subdivision (b) requires those districts which include a requirement that bidders include prices for items that may be added to, or deducted from, the scope of the work, to adopt and apply a uniform system of rating bidders on the basis of those questionnaires and financial statements. Subdivision (c) requires that each prospective bidder be furnished, by those districts, with a standardized proposal form that, when completed and executed shall be submitted as his or her bid. Bids not presented on the

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financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaire responses of prospective bidders and their financial statements shall not be deemed public records and shall not be open to public inspection.

(b) Any community college district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed financially qualified to bid. The prequalification of a prospective bidder shall neither limit nor preclude a district's subsequent consideration of a prequalified bidder's responsibility on factors other than the prospective bidder's financial qualifications.

(c) Each prospective bidder on any contract described under Section 20651 that is subject to this section shall be furnished, by the community college district letting the contract, with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be deemed nonresponsive and shall be rejected. A proposal form shall not be accepted from any person who, or other entity which, is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but who or which has not done so at least five days prior to the date fixed for the public opening of sealed bids and has not been prequalified, pursuant to subdivision (b), at least one day prior to that date."

forms furnished shall be deemed nonresponsive and shall be rejected.

D. Minority, Women, and Disabled Veteran Business Enterprise Participation

Subchapter 9 entitled "Minority, Women, and Disabled Veteran Business Enterprise Participation Goals for the California Community Colleges" was filed on December 29, 1993 as part of Chapter 10, Division 6, of Title 5, California Code of Regulations, commencing at Section 59500.

Section 59500[90], subdivision (a), requires each California community college to provide opportunities for minority, women, and disabled veteran business enterprise participation in the award of district contracts consistent with the subchapter. The statewide goal for such participation is not less than 15 percent minority business enterprise participation, not less than 5 percent women business enterprise participation, and not less than 3 percent disabled veteran business enterprise

[90] Title 5, California Code of Regulations, Section 59500:

"(a) The California Community Colleges shall provide opportunities for minority, women, and disabled veteran business enterprise participation in the award of district contracts consistent with this Subchapter. The statewide goal for such participation is not less than 15 percent minority business enterprise participation, not less than 5 percent women business enterprise participation, and not less than 3 percent disabled veteran business enterprise participation of the dollar amount expended by all districts each year for construction, professional services, materials, supplies, equipment, alternation, repair, or improvement. However, each district shall have flexibility to determine whether or not to seek participation by minority, women, and disabled veteran business enterprises for any given contract.

(b) Nothing in this Subchapter authorizes any district to discriminate in awarding contracts on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disability."

participation of the dollar amount expended by all districts each year for construction, professional services, materials, supplies, equipment, alternation, repair, or improvement. However, each district shall have flexibility to determine whether or not to seek participation by minority, women, and disabled veteran business enterprises for any given contract.

Section 59502[91] supplies definitions for the subchapter. Subdivisions (d), (e), and

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[91] Title 5, California Code of Regulations, Section 59502:

"The definitions set forth in Subsections (d), (e), and (f) of Section 10115.1 of the Public Contract Code, as they may be amended from time to time, apply to this Subchapter and are incorporated herein as though fully set forth in addition, for purposes of this Subchapter:

(a) "Certification" means a process to identify minority, women and disabled veteran business enterprises.

(b) "Contract" includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the district. The term "contract" does not include payment to utility companies or purchases, leases or services secured through other public agencies and corporations, the Department of General Services, or the federal government pursuant to Public Contract Code sections 20652 and 20653 and Education Code Section 81653;

(c) "Contractor" means any person or persons, regardless of ethnic group identification, ancestry, religion, sex, race, or color, or any firm, partnership, corporation, or combination thereof, whether or not a minority, women, and disabled veteran business enterprise, who enters into a contract with a district.

(d) "District" means any community college district, board of trustees or officer, employee, or agent of such a district or board empowered to enter into contracts on behalf of the district.

(e) "MBE/WBE/DVBE/WBE/DVBE/WBE/DVBE" means a minority business enterprise, a women business enterprise, and/or disabled veteran business enterprise. Although a business enterprise may qualify under multiple categories, the entry shall be designated in one specific category for the purposes of these regulations.

(f) "Goal" means a numerically expressed objective for systemwide MBE/WBE/DVBE/WBE/DVBE/WBE/DVBE participation that districts are expected to

(f) of Section 10115.1 of the Public Contract Code are incorporated by reference.

Subsection (d)[92] defines "minority". Subsection (e)[93] defines "minority business

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contribute to achieving. Goals are not quotas, set-asides, or rigid proportions.

(g) "Disabled veteran business enterprise" means a business enterprise certified as a disabled veteran business enterprise by the Office of Small and Minority Business, pursuant to Military and Veterans Code Section 999, or a business enterprise that certifies that it has met such standards."

[92] Public Contract Code Section 10115.1, added by Chapter 61, Statutes of 1988, Section 3, as amended by Chapter 846, Statutes of 1994, Section 2:

"...

(d) "Minority," for purposes of this section, means a citizen or lawful permanent resident of the United States who is an ethnic person of color and who is: Black (a person having origins in any of the Black racial groups of Africa); Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian); Pacific-Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including the Northern Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh); or any other group of natural persons identified as minorities in the respective project specifications of an awarding department or participating local agency...

..."

[93] Public Contract Code Section 10115.1 added by Chapter 61, Statutes of 1988, Section 3, as amended by Chapter 846, Statutes of 1994, Section 2:

"...

(e) "Minority business enterprise" means a business concern that meets all of the following criteria:

(1) The business is an individual proprietorship, partnership, corporation, or joint venture at least 51 percent owned by one or more minorities or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minorities.

(2) A business whose management and daily operations are controlled by

enterprise". Subsection (f)[94] defines "women business enterprise".

Section 59504[95] requires each community college district to undertake

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one or more minorities who own the business.

(3) A business concern with its home office located in the United States which is not a branch or subsidiary of a foreign corporation, firm, or other business.

..."

[94] Public Contract Code Section 10115.1, added by Chapter 61, Statutes of 19 1988, Section 3, as amended by Chapter 846, Statutes of 1994, Section 2:

"...

(f) "Women business enterprise" means a business concern that meets all of the following criteria:

(1) The business is an individual proprietorship, partnership, corporation, or joint venture at least 51 percent owned by one or more women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more women.

(2) A business whose management and daily operations are controlled by one or more women who own the business.

(3) A business concern with its home office located in the United States which is not a branch or subsidiary of a foreign corporation, firm, or other business.

..."

[95] Title 5, California Code of Regulations, Section 59504:

"Each district shall undertake appropriate efforts to provide participation opportunities for minority, women, and disabled veteran business enterprises in district contracts. Appropriate efforts may include vendor and service contractor orientation programs related to participating in district contracts or in understanding and complying with the provisions of this Subchapter, developing a listing of minority, women, and disabled veteran business enterprises potentially available as contractors or suppliers, or such other activities they may assist interested parties in being considered for participation in district contracts. Districts shall also undertake efforts to contribute to achievement of the systemwide goals established in Section 59500 by seeking minority, women, and disabled veteran business enterprises as contractors for such contracts as the district may deem appropriate pursuant to Section 59505."

appropriate efforts to provide participation opportunities for minority, women, and disabled veteran business enterprises in district contracts. Appropriate efforts may include vendor and service contractor orientation programs related to participating in district contracts or in understanding and complying with the provisions of the subchapter, developing a listing of minority, women, and disabled veteran business enterprises potentially available as contractors or suppliers, or such other activities that may assist interested parties in being considered for participation in district contracts. Districts shall also undertake efforts to contribute to achievement of the systemwide goals established in Section 59500 by seeking minority, women, and disabled veteran business enterprises as contractors for such contracts as the district may deem appropriate pursuant to Section 59505.

Section 59505[96], subdivision (a), requires a district, when electing to apply

[96] Title 5, California Code of Regulations, Section 59505:

"(a) If a district elects to apply MBE/WBE/DVBE goals to any contract which is to be awarded to the lowest responsible bidder, bidding notices shall include a statement that at the time of bid opening, bidders shall be considered responsive only if they document to the satisfaction of the district that they meet or have made a good faith effort to meet minority, women, and disabled veteran business enterprise participation goals.

(b) A responsive bidder documents a good faith effort to meet the participation goals if, in connection with the submission of a bid, the bidder provides evidence satisfactory to the district that efforts were made to seek out and consider minority, women, and disabled veteran business enterprises as potential subcontractors, materials and/or equipment suppliers, or both subcontractors and/or suppliers.

(c) The district may also elect to seek minority, women and disabled veteran business enterprises to serve as contractors for any other contracts not covered by subsection (a).

MBE/WBE/DVBE goals to any particular contract which is to be awarded to the lowest responsible bidder, to include in bidding notices a statement that, at the time of bid opening, bidders shall be considered responsive only if they document to the satisfaction of the district that they meet or have made a good faith effort to meet minority, women, and disabled veteran business enterprise participation goals. Subdivision (b) requires districts to obtain and verify, as satisfactory, proffered evidence from bidders showing that efforts were made to seek out and consider minority, women, and disabled veteran business enterprises as potential subcontractors, materials and/or equipment suppliers, or both subcontractors and/or suppliers. Subdivision (c) allows districts to also elect to seek minority, women and disabled veteran business enterprises to serve as contractors for any other contracts not covered by subsection (a). Subdivision (d) requires each district to assess the status of each of its contractors to determine if the contractor is a certified or self-certified minority, women, and disabled veteran business enterprise subcontractor and/or supplier to the satisfaction of the district in order to include the actual dollar amount attributable to minority, women, and disabled veteran business enterprise participation in reporting its participation activity pursuant to Section 59509.

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(d) The district shall assess the status of each of its contractors and, if the contractor is a certified or self-certified minority, women, and disabled veteran business enterprise subcontractors and/or suppliers to the satisfaction of the district, the district may include the actual dollar amount attributable to minority, women, and disabled veteran business enterprise participation in reporting its participation activity pursuant to Section 59509."

Section 59506[97], subdivision (a) requires each district to establish a process to collect and retain certification information provided by a business enterprise claiming minority, women, and disabled veteran business enterprise status. Subdivision (b) requires the process described in subdivision (a) to include notification to responsive bidders subject to Section 59505(a) of the requirements for qualification as a responsive bidder.

Section 59509[98] requires each district to monitor its participation as specified in the subchapter and each district is required to report to the Chancellor, on forms prescribed by the Chancellor, the level of participation by minority, women, and disabled

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[97] Title 5, California Code of Regulations, Section 59506:

"(a) Each district shall establish a process to collect and retain certification information provided by a business enterprise claiming minority, women, and disabled veteran business enterprise status.
(b) The process described in subsection (a) shall include notification to responsive bidders subject to Section 59505(a) of the requirements for qualification as a responsive bidder."

[98] Title 5, California Code of Regulations, Section 59509:

"Each district shall monitor its participation as specified in this Subchapter. Beginning October 15, 1994, and by each October 15 thereafter, each district shall report to the Chancellor the level of participation by minority, women, and disabled veteran business enterprises pursuant to this Subchapter for the previously completed fiscal year. Even if a district elects not to apply minority, women, and disabled veteran business enterprise goals to one or more particular contract(s), all such contracts shall be reported to the Chancellor and shall be taken into account in determining whether the community college system as a whole has achieved the goals set forth in Section 59500. The Chancellor shall prescribe forms to be used by the districts in making their yearly reports."

veteran business enterprises pursuant to the subchapter for the previously completed fiscal year. Even if a district elects not to apply minority, women, and disabled veteran business enterprise goals to one or more particular contract(s), all such contracts shall be reported to the Chancellor and shall be taken into account in determining whether the community college system as a whole has achieved the goals set forth in Section 59500.

## PART III. STATEMENT OF THE CLAIM

### SECTION 1. COSTS MANDATED BY THE STATE

The Statutes, Code Sections, and California Code of Regulations sections referenced in this test claim result in school districts, county offices of education and community college districts incurring costs mandated by the state, as defined in Government Code section 17514[99], by creating new state-mandated duties related to the uniquely governmental function of providing public education and services to students and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[100]

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[99] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

[100] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275

where project documents are available, including final plans and specifications, when a notice inviting formal bids includes a requirement for any type of mandatory prebid conference, site visit, or meeting.

1D) Pursuant to Public Contract Code Section 7104, subdivision (a), when any public works contract involves digging trenches or other excavations that extend deeper than four feet below the surface, including a clause which requires the contractor to promptly notify the district, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, and that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

1E) Pursuant to Public Contract Code Section 7104, subdivision (b), when a notice is received from the contractor pursuant to subdivision (a), promptly investigating the conditions, and upon finding that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's

cost of, or the time required for, performance of any part of the work, issuing a change order under the procedures described in the contract.

1F) Pursuant to Public Contract Code Section 7104, subdivision (c), in the event that a dispute arises between the district and the contractor as to whether conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, to respond to actions taken by the contractor to resolve disputes and protests between the contracting parties.

1G) Pursuant to Public Contract Code Section 7107, subdivision (c), releasing retentions withheld within 60 days after the completion of the work, and in the event of a dispute, withholding an amount not to exceed 150 percent of the disputed amount from the final payment. Pursuant to subdivision (f), paying a charge of 2 percent per month on any improperly withheld amounts and, in the event of litigation paying the contractor's attorney's fees and costs should he or she prevail.

1H) Pursuant to Public Contract Code Section 7109, subdivision (b), upon a determination that a project may be vulnerable to graffiti, the district shall do one or more of the following:

(1) Include a provision in the public works contract that specifies requirements for antigraffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti.

1I) Pursuant to Public Contract Code Section 9203, retaining no less 5 percent of the value of the actual work completed and of the value of material delivered on the ground or stored until final completion and acceptance of the project.

1J) Pursuant to Public Contract Code Section 10299, subdivision (b), acquiring information technology, goods, and services without further competitive bidding, by utilizing contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department of general services.

1K) Pursuant to Public Contract Code Section 12109, complying with the terms and conditions of the Director of General Services for assisting the district in the acquisition of information technology goods or services.

1L) Pursuant to Business and Professions Code Section 7028.15, subdivision (e), unless one of certain exceptions applies, verifying that a contractor was properly licensed when the contractor submitted a bid with the district before awarding a contract or issuing a purchase order to that contractor.

1M) Pursuant to Public Contract Code Section 20101, subdivision (a), requiring each prospective bidder for a contract to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's experience in

performing public works.

1N) Pursuant to Public Contract Code Section 20101, subdivision (a), maintaining the questionnaires and financial statements as confidential records not open to public inspection; however, records of the names of contractors applying for prequalification status shall be public records subject to disclosure.

1O) Pursuant to Public Contract Code Section 20101, subdivision (b), adopting and applying a uniform system of rating bidders on the basis of the completed questionnaires and financial statements in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. The uniform system of rating prospective bidders shall be based on objective criteria.

1P) Pursuant to Public Contract Code Section 20101, subdivision (c), establishing a process for prequalifying prospective bidders on a quarterly basis.

1Q) Pursuant to Public Contract Code Section 20101, subdivision (d), establishing a process that will allow prospective bidders to dispute their proposed prequalification rating prior to the closing time for receipt of bids. The appeal process shall include the following:

(1) Upon request of the prospective bidder, providing notification to the prospective bidder, in writing, of the basis for disqualification and any supporting evidence that has been received from others or adduced as a result of an investigation by the district.

(2) Giving the prospective bidder an opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the district as to why the prospective bidder should be found qualified.

(3) If the prospective bidder chooses not to avail itself of this process, adopting the proposed prequalification rating without further proceedings.

1R) Pursuant to Public Contract Code Section 20102, where plans and specifications have been prepared by a district, justifying with detailed specific reasons any change or changes and filing those change(s) and reasons in the project file before electing to perform the work by day's labor.

1S) Pursuant to Public Contract Code Section 20103.5, before making the first payment for work or material under any contract where federal funds are involved, verifying through the Registrar of Contractors that the contractor was properly licensed at the time the contract was awarded. Including a statement to that effect in the standard form of prequalification questionnaire and financial statement.

1T) Pursuant to Public Contract Code Section 20103.6, subdivision (a), in the procurement of architectural design services requiring an expenditure in excess of ten thousand dollars ($10,000), disclosing any contract provision that would require the contracting architect to indemnify and hold the local agency harmless

against any and all liability, whether or not caused by the activity of the contracting architect in any request for proposals for those services or invitations to bid.

1U) Pursuant to Public Contract Code Section 20103.6 subdivision (b), in the event a district fails to comply with subdivision (a), that district shall (1) be precluded from requiring the selected architect to agree to any contract provision requiring the selected architect to indemnify or hold harmless, (2) cease discussions with the selected architect and reopen the request for proposals or invitations to bid from a qualification list, or (3) mutually agree to an indemnity clause acceptable to both parties.

1V) Pursuant to Public Contract Code Section 20103.8, when a district requires a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted, specifying in the bid solicitation which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically

identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items that, when added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

1W) Pursuant to Public Contract Code Section 20104, subdivision (c), setting forth the provisions of Article 1.5 (Resolution of Construction Claims), or a summary thereof, in the plans and specifications for any work that may give rise to a claim under the Article.

1X) Pursuant to Public Contract Code Section 20104.2, subdivision (b), responding in writing within 45 days, subject to conditions for extension, upon receipt of any written claim of $50,000, or less, for (1) a time extension, (2) payment of money or damages arising from work done, (3) or an amount, the payment of which is

disputed by the district.

1Y) Pursuant to Public Contract Code Section 20104.2, subdivision (c), to respond in in writing within 60 days, subject to conditions for extension, upon receipt of any written claim of more than $50,000 and less than $375,000, for (1) a time extension, (2) payment of money or damages arising from work done, or (3) an amount, the payment of which is disputed by the district

1Z) Pursuant to Public Contract Code Section 20104.2, subdivision (d), to meet and confer, for settlement of issues in dispute, with a claimant who demands such a conference and who disputes the district's written response, or when a district fails to respond timely,

1AA) Pursuant to Public Contract Code Section 20104.2, subdivision (e), filing responsive pleadings and appearing and defending any civil action brought by a claimant if the claim or any portion thereof remains in dispute after the meet and confer conference.

1BB) Pursuant to Public Contract Code Section 20104.4, subdivision (a), appearing and defending in nonbinding mediation which may be ordered by the court, unless waived by all parties.

1CC) Pursuant to Public Contract Code Section 20104.4, subdivision (b), if the matter remains in dispute after mediation, appearing and defending in judicial arbitration as follows:

(1) Participate in discovery proceedings pursuant to the Civil Discovery Act of

1986 (commencing with Section 2016 of the Code of Civil Procedure);

(2) Paying one-half of the necessary and reasonable fees of the arbitrator; and

(3) Paying costs, fees and attorney's fees of the claimant when a more favorable result is not obtained after requesting a trial de novo.

1DD) Pursuant to Public Contract Code Section 20104.6, subdivision (b), paying interest at the legal rate on any arbitration award or judgment arising out of any suit filed pursuant to Section 20104.4.

1EE) Pursuant to Public Contract Code Section 20104.50, subdivision (b), paying interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure when the district fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract.

1FF) Pursuant to Public Contract Code Section 20104.50, subdivision (c), upon receipt of a payment request, acting in accordance with both of the following:

(1) Reviewing each payment request as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Returning any payment request determined not to be a proper payment request suitable for payment to the contractor as soon as practicable, but not later than seven days, after receipt. A request

returned pursuant to this provision shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

Pursuant to subdivision (f), setting forth the terms of the article (or a summary thereof) in any contract subject to this article.

1GG) Pursuant to Public Contract Code Section 20107, requiring all bidders for construction work to present their bids under sealed cover and accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the school district.

(c) A certified check made payable to the school district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

1HH) Pursuant to Public Contract Code Section 20107, upon an award to the lowest bidder, returning the security of all unsuccessful bidders in a reasonable period of time, but in no event beyond 60 days from the time the award is made.

1II) Pursuant to Public Contract Code Section 22300, including a provision in any invitation for bid and in any contract documents permitting the substitution of securities for any moneys withheld by the district to ensure performance under a contract, except for certain federal contracts and, upon satisfactory completion of the contract, returning the securities to the contractor.

**2. Laws Pertaining to School Districts**

2A) Pursuant to the Local Agency Public Construction Act, Article 3 - School Districts (commencing with Public Contract Code Section 20110), to establish, periodically update and maintain policies and procedures to implement Article 3 of the Act.

2B) Pursuant to Public Contract Code Sections 2000, subdivision (a) and 20111, requiring that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the district relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the district for that participation, to then evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the district relating to participation in the contract by minority or women business enterprises.

2C) Pursuant to Public Contract Code Section 2000, subdivision (b), determining if a bidder made a good faith effort to comply with the district's goals and requirements relative to participation in the contract by minority business enterprises and women business enterprises by obtaining information relative to,

and analyzing, the following factors:

(1) Whether or not the bidder attended any presolicitation or prebid meetings that were scheduled by the district to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A district may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) Whether or not the bidder identified and selected specific items of the project which would be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) Whether or not the bidder advertised, not less than 10 calendar days before the date the bids were opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the district for minority or women business enterprises that are interested in participating in the project.

(4) Whether or not the bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, for the district to make available to the bidder, not less than 15 calendar days prior to the date the bids are opened, a list or a source of lists of

enterprises which are certified by the district as minority or women business enterprises. If the district does not provide that list or source of lists to the bidder, whether or not the bidder utilized the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) Whether or not the bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) Whether or not the bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) Whether or not the bidder requested assistance from minority and women community organizations, minority and women contractor groups, local, state, or federal minority and women business assistance offices, or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) Whether or not the bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the district.

(9) Whether or not, where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the district or contractor.

(10) Whether or not the bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the district to produce a level of participation sufficient to meet the goals and requirements of the district.

2D) Pursuant to Public Contract Code Section 2001, when requiring that contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises, providing in the general conditions under which bids will be received that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1).

2E) Pursuant to Public Contract Code Section 20111, subdivision (a), letting all contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district,

(2) Services, except construction services, or

(3) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002,

to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

2F) Pursuant to Public Contract Code Section 20111, subdivision (b), letting all contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition or repair work involving any publicly owned, leased or operated facility, or

(2) Painting or repainting of any publicly owned, leased, or operated facility,

to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

2G) Pursuant to Public Contract Code Section 20111, subdivision (b), having all bidders for construction work present their bids under sealed cover and accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

2H) Pursuant to Public Contract Code Section 20111, subdivision (b), upon an award to the lowest bidder, returning the security of all unsuccessful bidders in a reasonable period of time, but in no event beyond 60 days from the time the award is made.

2I) Pursuant to Public Contract Code Section 20111.5, subdivision (a), requiring each prospective bidder for a contract, as described in Section 20111, to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works.

2J) Pursuant to Public Contract Code Section 20111.5, subdivision (a), maintaining the questionnaires and financial statements confidential as public records not open to public inspection.

2K) Pursuant to Public Contract Code Section 20111.5, subdivision (b), adopting and

applying a uniform system of rating bidders on the basis of the completed questionnaires and financial statements in order to determine the size of contracts upon which each bidder shall be deemed qualified to bid.

2L) Pursuant to Public Contract Code Section 20111.5, subdivision (c), furnishing each prospective bidder with a standardized proposal form that, when completed and executed, shall be submitted to the district as his or her bid, and disregarding bids not presented on the forms furnished.

2M) Pursuant to Public Contract Code Section 20111.5, subdivision (e), establishing a process for prequalifying prospective bidders on a quarterly basis.

2N) Pursuant to Public Contract Code Section 20116, maintaining job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

2O) Pursuant to Public Contract Code Section 20116, for the purpose of securing informal bids, publishing annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. Giving notice of all informal bid projects to all contractors included on the informal bidding list.

**3. Laws Pertaining to Community College Districts**

3A) Pursuant to the Local Agency Public Construction Act, Article 41 - Community College Districts (commencing with Public Contract Code Section 20650), to establish, periodically update and maintain policies and procedures to implement Article 41 of the Act.

3B) Pursuant to Public Contract Code Sections 2000, subdivision (a) and 20111, requiring that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the community college district relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the community college district for that participation, to then evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the community college district relating to participation in the contract by minority or women business enterprises.

3C) Pursuant to Public Contract Code Section 2000, subdivision (b), determining if a bidder made a good faith effort to comply with the community college district's goals and requirements relative to participation in the contract by minority

business enterprises and women business enterprises by obtaining information relative to and analysis of the following factors:

(1) Whether or not the bidder attended any presolicitation or prebid meetings that were scheduled by the community college district to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A community college district may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) Whether or not the bidder identified and selected specific items of the project which would be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) Whether or not the bidder advertised, not less than 10 calendar days before the date the bids were opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the community college district for minority or women business enterprises that are interested in participating in the project.

(4) Whether or not the bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible,

for the community college district to make available to the bidder, not less than 15 calendar days prior to the date the bids are opened, a list or a source of lists of enterprises which are certified by the community college district as minority or women business enterprises. If the community college district does not provide that list or source of lists to the bidder, whether or not the bidder utilized the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) Whether or not the bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) Whether or not the bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) Whether or not the bidder requested assistance from minority and women community organizations, minority and women contractor groups, local, state, or federal minority and women business assistance offices, or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) Whether or not the bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as

unsatisfactory bids prepared by any minority or women business enterprises, as determined by the community college district.

(9) Whether or not, where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the community college district or contractor.

(10) Whether or not the bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the community college district to produce a level of participation sufficient to meet the goals and requirements of the community college district.

3D) Pursuant to Public Contract Code Section 2001, when requiring that contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises, providing in the general conditions under which bids will be received that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran

business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1).

3E) Pursuant to Public Contract Code Section 20651, subdivision (a), letting all contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district,

(2) Services, except construction services, or

(3) Repairs, including maintenance as defined in Section 20656, that are not a public project as defined in subdivision (c) of Section 22002,

to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

3F) Pursuant to Public Contract Code Section 20651, subdivision (b), having all bidders for construction work present their bids under sealed cover and accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made

payable to the school district.

3G) Pursuant to Public Contract Code Section 20651, subdivision (b), upon an award to the lowest bidder, returning the security of all unsuccessful bidders in a reasonable period of time, but in no event beyond 60 days from the time the award is made.

3H) Pursuant to Public Contract Code Section 20651.5, subdivision (a), maintaining the questionnaires and financial statements confidential as public records not open to public inspection.

3I) Pursuant to Public Contract Code Section 20651.5, subdivision (b), adopting and applying a uniform system of rating bidders on the basis of the completed questionnaires and financial statements in order to determine the size of contracts upon which each bidder shall be deemed qualified to bid.

3J) Pursuant to Public Contract Code Section 20651.5, subdivision (c), furnishing each prospective bidder with a standardized proposal form that, when completed and executed, shall be submitted to the community college district as his or her bid, and to reject bids not presented on the forms furnished.

3K) Pursuant to Public Contract Code Section 20657, maintaining job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

3L) Pursuant to Public Contract Code Section 20657, for the purpose of securing informal bids, publishing annually in a newspaper of general circulation published in the community college district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. Giving notice of all informal bid projects to all contractors included on the informal bidding list.

3M) Pursuant to Public Contract Code Section 20659, specifying in writing all changes or alterations of a contract, and the costs thereof, which are ordered by the governing board of the community college district.

**4. Minority, Women, and Disabled Veteran Business Enterprise Participation**

4A) Pursuant to Subchapter 9 entitled "Minority, Women, and Disabled Veteran Business Enterprise Participation Goals for the California Community Colleges" (commencing with Title 5, California Code of Regulations, Section 59500), to establish, periodically update and maintain policies and procedures to implement the requirements of Subchapter 9 of the Regulations.

4B) Pursuant to Title 5, California Code of Regulations, Section 59500, subdivision (a), providing opportunities for minority, women, and disabled veteran business enterprise participation in the award of district contracts consistent with this subchapter. The statewide goal for such participation is not less than 15 percent minority business enterprise participation, not less than 5 percent women business enterprise participation, and not less than 3 percent disabled veteran

business enterprise participation of the dollar amount expended by all districts each year for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement.

4C) Pursuant to Title 5, California Code of Regulations, Section 59504, undertaking appropriate efforts to provide participation opportunities for minority, women, and disabled veteran business enterprises in district contracts, including providing vendor and service contractor orientation programs related to participating in district contracts or in understanding and complying with the provisions of the subchapter, and/or developing a listing of minority, women, and disabled veteran business enterprises potentially available as contractors or suppliers, and/or such other activities that may assist interested parties in being considered for participation in district contracts.

4D) Pursuant to Title 5, California Code of Regulations, Section 59504, undertaking efforts to contribute to achievement of the systemwide goals established in Section 59500 by seeking minority, women, and disabled veteran business enterprises as contractors for such contracts as the district may deem appropriate pursuant to Section 59505.

4E) Pursuant to Title 5, California Code of Regulations, Section 59505, subdivision (a), when electing to apply MBE/WBE/DVBE goals to any particular contract which is to be awarded to the lowest responsible bidder, including in bidding notices a statement that at the time of bid opening, bidders shall be considered

responsive only if they document to the satisfaction of the district that they meet or have made a good faith effort to meet minority, women, and disabled veteran business enterprise participation goals.

4F) Pursuant to Title 5, California Code of Regulations, Section 59505, subdivision (b), obtaining and verifying, as satisfactory, proffered evidence from bidders showing that efforts were made to seek out and consider minority, women, and disabled veteran business enterprises as potential subcontractors, materials and/or equipment suppliers, or both subcontractors and/or suppliers.

4G) Pursuant to Title 5, California Code of Regulations, Section 59505, subdivision (c), seeking minority, women and disabled veteran business enterprises to serve as contractors for any other contracts not covered by subsection (a).

4H) Pursuant to Title 5, California Code of Regulations, Section 59505, subdivision (d), assessing the status of each of its contractors to determine if the contractor is a certified or self-certified minority, women, and disabled veteran business enterprise subcontractor and/or supplier to the satisfaction of the district in order to include the actual dollar amount attributable to minority, women, and disabled veteran business enterprise participation in reporting its participation activity pursuant to Section 59509.

4I) Pursuant to Title 5, California Code of Regulations, Section 59506, subdivision (a), collecting and retaining certification information provided by a business enterprise claiming minority, women, and disabled veteran business enterprise

status.

4J) Pursuant to Title 5, California Code of Regulations, Section 59506, subdivision (b), including notification to responsive bidders subject to Section 59505(a) of the requirements for qualification as a responsive bidder.

4K) Pursuant to Title 5, California Code of Regulations, Section 59509, monitoring its participation as specified in the subchapter and reporting to the Chancellor, on forms prescribed by the Chancellor, the level of participation by minority, women, and disabled veteran business enterprises pursuant to the subchapter for the previously completed fiscal year. Even if a district elects not to apply minority, women, and disabled veteran business enterprise goals to one or more particular contract(s), all such contracts shall be reported to the Chancellor and shall be taken into account in determining whether the community college system as a whole has achieved the goals set forth in Section 59500.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[101] statutory exceptions to a finding

[101] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a

of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code sections, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[102]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

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letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

[102] Government Code section 17565, added by Chapter 879, Statutes of 1986:

"If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

## PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of William McGuire
Associate Superintendent Business Services
Clovis Unified School District

Declaration of Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District

Exhibit 2: Copies of Statutes Cited

Chapter 455, Statutes of 2002
Chapter 776, Statutes of 2000
Chapter 292, Statutes of 2000
Chapter 159, Statutes of 2000
Chapter 127, Statutes of 2000
Chapter 126, Statutes of 2000
Chapter 972, Statutes of 1999
Chapter 857, Statutes of 1998
Chapter 657, Statutes of 1998
Chapter 722, Statutes of 1997
Chapter 390, Statutes of 1997
Chapter 897, Statutes of 1995
Chapter 504, Statutes of 1995
Chapter 726, Statutes of 1994
Chapter 1195, Statutes of 1993
Chapter 1032, Statutes of 1993
Chapter 1042, Statutes of 1992
Chapter 799, Statutes of 1992
Chapter 294, Statutes of 1992

Chapter 933, Statutes of 1991
Chapter 785, Statutes of 1991
Chapter 1414, Statutes of 1990
Chapter 808, Statutes of 1990
Chapter 694, Statutes of 1990
Chapter 321, Statutes of 1990
Chapter 1163, Statutes of 1989
Chapter 863, Statutes of 1989
Chapter 330, Statutes of 1989
Chapter 1408, Statutes of 1988
Chapter 538, Statutes of 1988
Chapter 102, Statutes of 1987
Chapter 1060, Statutes of 1986
Chapter 886, Statutes of 1986
Chapter 1073, Statutes of 1985
Chapter 758, Statutes of 1984
Chapter 728, Statutes of 1984
Chapter 173, Statutes of 1984
Chapter 256, Statutes of 1983
Chapter 513, Statutes of 1982
Chapter 465, Statutes of 1982
Chapter 251, Statutes of 1982
Chapter 470, Statutes of 1981
Chapter 194, Statutes of 1981
Chapter 1255, Statutes of 1980
Chapter 631, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 921, Statutes of 1976

Exhibit 3: Copies of Code Sections Cited:

Public Contract Code Section 2000
Public Contract Code Section 2001
Public Contract Code Section 3300
Public Contract Code Section 6610
Public Contract Code Section 7104
Public Contract Code Section 7107
Public Contract Code Section 7109
Public Contract Code Section 9203
Public Contract Code Section 10299
Public Contract Code Section 12109

Public Contract Code Section 20100
Public Contract Code Section 20101
Public Contract Code Section 20102
Public Contract Code Section 20103.5
Public Contract Code Section 20103.6
Public Contract Code Section 20103.8
Public Contract Code Section 20104
Public Contract Code Section 20104.2
Public Contract Code Section 20104.4
Public Contract Code Section 20104.6
Public Contract Code Section 20104.50
Public Contract Code Section 20107
Public Contract Code Section 20110
Public Contract Code Section 20111
Public Contract Code Section 20111.5
Public Contract Code Section 20116
Public Contract Code Section 20650
Public Contract Code Section 20651
Public Contract Code Section 20651.5
Public Contract Code Section 20657
Public Contract Code Section 20659
Public Contract Code Section 22300

Business and Professions Code Section 7028.15

Exhibit 4: Title 5, California Code of Regulations Cited:

Title 5, California Code of Regulations, Section 59500
Title 5, California Code of Regulations, Section 59504
Title 5, California Code of Regulations, Section 59505
Title 5, California Code of Regulations, Section 59506
Title 5, California Code of Regulations, Section 59509

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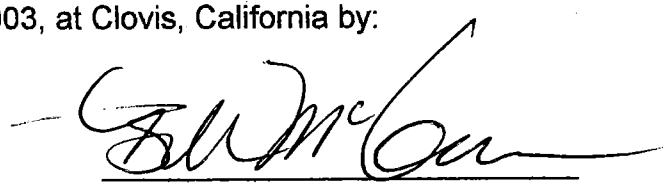
## PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 16, 2003, at Clovis, California by:

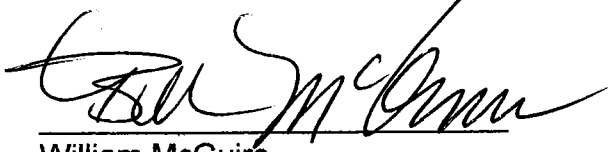


William McGuire
Associate Superintendent Business Services

Voice: (559) 327-9110
Fax: (559) 327-9129

## PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



William McGuire
Associate Superintendent Business Services

6/16/2003
Date

## PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 18, 2003, at Santa Monica, California by:

Cheryl Miller
Associate Vice President Business Services

Voice: (310) 434-4224
Fax: (310) 434-3607

## PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Cheryl Miller
Cheryl Miller
Associate Vice President Business Services

June 18, 2003
Date

# EXHIBIT 1
# DECLARATIONS

# DECLARATION OF WILLIAM McGUIRE

## Clovis Unified School District

Test Claim of Clovis Unified School District
and Santa Monica Community College District

COSM No. _____

Chapter 455, Statutes of 2002
Chapter 776, Statutes of 2000
Chapter 292, Statutes of 2000
Chapter 159, Statutes of 2000
Chapter 127, Statutes of 2000
Chapter 126, Statutes of 2000
Chapter 972, Statutes of 1999
Chapter 857, Statutes of 1998
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Chapter 933, Statutes of 1991
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Chapter 513, Statutes of 1982
Chapter 465, Statutes of 1982
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Chapter 194, Statutes of 1981
Chapter 1255, Statutes of 1980
Chapter 631, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 921, Statutes of 1976

Public Contract Code Section 2000
Public Contract Code Section 2001
Public Contract Code Section 3300
Public Contract Code Section 6610
Public Contract Code Section 7104
Public Contract Code Section 7107
Public Contract Code Section 7109
Public Contract Code Section 9203
Public Contract Code Section 10299
Public Contract Code Section 12109
Public Contract Code Section 20100
Public Contract Code Section 20101
Public Contract Code Section 20104.2
Public Contract Code Section 20104.4
Public Contract Code Section 20104.6
Public Contract Code Section 20104.50
Public Contract Code Section 20107
Public Contract Code Section 20110
Public Contract Code Section 20111
Public Contract Code Section 20111.5
Public Contract Code Section 20116
Public Contract Code Section 20650
Public Contract Code Section 20651

Public Contract Code Section 20102
Public Contract Code Section 20103.5
Public Contract Code Section 20103.6
Public Contract Code Section 20103.8
Public Contract Code Section 20104
Public Contract Code Section 20651.5
Public Contract Code Section 20657
Public Contract Code Section 20659
Public Contract Code Section 22300

Business and Professions Code Section 7028.15

Title 5, California Code of Regulations
Section 59500
Section 59504
Section 59505
Section 59506
Section 59509

Public Contracts (K-14)

I, William McGuire, Associate Superintendent Business Services, Clovis Unified School District, make the following declaration and statement.

In my capacity as Associate Superintendent Business Services, I am responsible for supervising the making of pubic contracts for the district. I am familiar with the provisions and requirements of the Statutes, Public Contract Code Sections, Business and Professions Code Section and Title 5 Regulations enumerated above.

These Statutes, Code sections and Regulations require the Clovis School District to:

**Local Agency Public Construction Act**

1A) Pursuant to the Local Agency Public Construction Act, Articles 1 and 2, (commencing with Public Contract Code Section 20100) and other sections cited above, to establish, periodically update and maintain policies and procedures to

implement the requirements of the laws pertaining to public contracts.

1B) Pursuant to Public Contract Code Section 3300, subdivision (a), specifying the classification of the license which a contractor shall possess at the time a contract is awarded, including that specification in any plans prepared for a public project and in any notice inviting bids.

1C) Pursuant to Public Contract Code Section 6610, when a notice inviting formal bids includes a requirement for any type of mandatory prebid conference, site visit, or meeting, including the time, date, and location of the mandatory prebid site visit, conference or meeting, and when and where project documents are available, including final plans and specifications.

1D) Pursuant to Public Contract Code Section 7104, subdivision (a), when any public works contract involves digging trenches or other excavations that extend deeper than four feet below the surface, including a clause which requires the contractor to promptly notify the district, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, and that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different

materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

1E) Pursuant to Public Contract Code Section 7104, subdivision (b), when a notice is received from the contractor pursuant to subdivision (a), promptly investigating the conditions, and upon finding that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, issuing a change order under the procedures described in the contract.

1F) Pursuant to Public Contract Code Section 7104, subdivision (c), in the event that a dispute arises between the district and the contractor as to whether conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, to respond to actions taken by the contractor to resolve disputes and protests between the contracting parties.

1G) Pursuant to Public Contract Code Section 7107, subdivision (c), releasing retentions withheld within 60 days after the completion of the work, and in the event of a dispute, withholding an amount not to exceed 150 percent of the disputed amount from the final payment. Pursuant to subdivision (f), paying a charge of 2 percent per month on any improperly withheld amounts and, in the event of litigation paying the contractor's attorney's fees and costs should he or she prevail.

1H) Pursuant to Public Contract Code Section 7109, subdivision (b), upon a determination that a project may be vulnerable to graffiti, the district shall do one or more of the following:

(1) Include a provision in the public works contract that specifies requirements for antigraffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti.

1I) Pursuant to Public Contract Code Section 9203, retaining no less 5 percent of the actual work completed and of the value of material delivered on the ground or stored until final completion and acceptance of the project.

1J) Pursuant to Public Contract Code Section 10299, subdivision (b), acquiring information technology, goods, and services without further competitive bidding, by utilizing contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department of general services.

1K) Pursuant to Public Contract Code Section 12109, complying with the terms and conditions of the Director of General Services for assisting the district in the acquisition of information technology goods or services."

1L) Pursuant to Business and Professions Code Section 7028.15, subdivision (e), unless one of certain exceptions applies, verifying that a contractor was properly licensed when the contractor submitted a bid with the district before awarding a

contract or issuing a purchase order to that contractor.

1M) Pursuant to Public Contract Code Section 20101, subdivision (a), requiring each prospective bidder for a contract to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's experience in performing public works.

1N) Pursuant to Public Contract Code Section 20101, subdivision (a), maintaining the questionnaires and financial statements confidential as public records not open to public inspection; however, records of the names of contractors applying for prequalification status shall be public records subject to disclosure.

1O) Pursuant to Public Contract Code Section 20101, subdivision (b), adopting and applying a uniform system of rating bidders on the basis of the completed questionnaires and financial statements in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. The uniform system of rating prospective bidders shall be based on objective criteria.

1P) Pursuant to Public Contract Code Section 20101, subdivision (c), establishing a process for prequalifying prospective bidders on a quarterly basis.

1Q) Pursuant to Public Contract Code Section 20101, subdivision (d), establishing a process that will allow prospective bidders to dispute their proposed prequalification rating prior to the closing time for receipt of bids. The appeal

process shall include the following:

(1) Upon request of the prospective bidder, providing notification to the prospective bidder, in writing, of the basis for disqualification and any supporting evidence that has been received from others or adduced as a result of an investigation by the district.

(2) Giving the prospective bidder an opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the district as to why the prospective bidder should be found qualified.

(3) If the prospective bidder chooses not to avail itself of this process, adopting the proposed prequalification rating without further proceedings.

1R) Pursuant to Public Contract Code Section 20102, where plans and specifications have been prepared by a district, justifying with detailed specific reasons any change or changes and filing those change(s) and reasons in the project file before electing to perform the work by day's labor.

1S) Pursuant to Public Contract Code Section 20103.5, before making the first payment for work or material under any contract where federal funds are involved, verifying through the Registrar of Contractors that the contractor was properly licensed at the time the contract was awarded. Including a statement to that effect in the standard form of prequalification questionnaire and financial

statement.

1T) Pursuant to Public Contract Code Section 20103.6, subdivision (a), in the procurement of architectural design services requiring an expenditure in excess of ten thousand dollars ($10,000), disclosing any contract provision that would require the contracting architect to indemnify and hold the local agency harmless against any and all liability, whether or not caused by the activity of the contracting architect in any request for proposals for those services or invitations to bid.

1U) Pursuant to Public Contract Code Section 20103.6 subdivision (b), in the event a district fails to comply with subdivision (a), that district shall (1) be precluded from requiring the selected architect to agree to any contract provision requiring the selected architect to indemnify or hold harmless, (2) cease discussions with the selected architect and reopen the request for proposals or invitations to bid from a qualification list, or (3) mutually agree to an indemnity clause acceptable to both parties.

1V) Pursuant to Public Contract Code Section 20103.8, when a district requires a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted, specifying in the bid solicitation which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items that, when added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

1W) Pursuant to Public Contract Code Section 20104, subdivision (c), setting forth the provisions of Article 1.5 (Resolution of Construction Claims), or a summary thereof, in the plans and specifications for any work that may give rise to a claim

under the Article.

1X) Pursuant to Public Contract Code Section 20104.2, subdivision (b), responding in writing within 45 days, subject to conditions for extension, upon receipt of any written claim of $50,000, or less, for (1) a time extension, (2) payment of money or damages arising from work done, (3) or an amount, the payment of which is disputed by the district.

1Y) Pursuant to Public Contract Code Section 20104.2, subdivision (c), to respond in in writing within 60 days, subject to conditions for extension, upon receipt of any written claim of more than $50,000 and less than $375,000, for (1) a time extension, (2) payment of money or damages arising from work done, or (3) an amount, the payment of which is disputed by the district

1Z) Pursuant to Public Contract Code Section 20104.2, subdivision (d), to meet and confer, for settlement of issues in dispute, with a claimant who demands such a conference and who disputes the district's written response, or when a district fails to respond timely,

1AA) Pursuant to Public Contract Code Section 20104.2, subdivision (e), filing responsive pleadings and appearing and defending any civil action brought by a claimant if the claim or any portion thereof remains in dispute after the meet and confer conference.

1BB) Pursuant to Public Contract Code Section 20104.4, subdivision (a), appearing and defending in nonbinding mediation which may be ordered by the court, unless

waived by all parties.

1CC) Pursuant to Public Contract Code Section 20104.4, subdivision (b), if the matter remains in dispute after mediation, appearing and defending in judicial arbitration as follows:

(1) Participate in discovery proceedings pursuant to the Civil Discovery Act of 1986 (commencing with Section 2016 of the Code of Civil Procedure);

(2) Paying one-half of the necessary and reasonable fees of the arbitrator; and

(3) Paying costs, fees and attorney's fees of the claimant when a more favorable result is not obtained after requesting a trial de novo.

1DD) Pursuant to Public Contract Code Section 20104.6, subdivision (b), paying interest at the legal rate on any arbitration award or judgment arising out of any suit filed pursuant to Section 20104.4.

1EE) Pursuant to Public Contract Code Section 20104.50, subdivision (b), paying interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure when the district fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract.

1FF) Pursuant to Public Contract Code Section 20104.50, subdivision (c), upon receipt of a payment request, acting in accordance with both of the following:

(1) Reviewing each payment request as soon as practicable after

receipt for the purpose of determining that the payment request is a proper payment request.

(2) Returning any payment request determined not to be a proper payment request suitable for payment to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this provision shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

Pursuant to subdivision (f), setting forth the terms of the article (or a summary thereof) in any contract subject to this article.

1GG) Pursuant to Public Contract Code Section 20107, requiring all bidders for construction work to present their bids under sealed cover and accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the school district.

(c) A certified check made payable to the school district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

1HH) Pursuant to Public Contract Code Section 20107, upon an award to the lowest bidder, returning the security of all unsuccessful bidders in a reasonable period of time, but in no event beyond 60 days from the time the award is made.

1Il) Pursuant to Public Contract Code Section 22300, including a provision in any invitation for bid and in any contract documents permitting the substitution of securities for any moneys withheld by the district to ensure performance under a contract, except for certain federal contracts and, upon satisfactory completion of the contract, returning the securities to the contractor.

**2. Laws Pertaining to School Districts**

2A) Pursuant to the Local Agency Public Construction Act, Article 3 - School Districts (commencing with Public Contract Code Section 20110), to establish, periodically update and maintain policies and procedures to implement Article 3 of the Act.

2B) Pursuant to Public Contract Code Sections 2000, subdivision (a) and 20111, requiring that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the district relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the district for that participation, to then evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the district relating to

participation in the contract by minority or women business enterprises.

2C) Pursuant to Public Contract Code Section 2000, subdivision (b), determining if a bidder made a good faith effort to comply with the district's goals and requirements relative to participation in the contract by minority business enterprises and women business enterprises by obtaining information relative to, and analyzing, the following factors:

(1) Whether or not the bidder attended any presolicitation or prebid meetings that were scheduled by the district to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A district may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) Whether or not the bidder identified and selected specific items of the project which would be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) Whether or not the bidder advertised, not less than 10 calendar days before the date the bids were opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the district for minority or women business enterprises that are interested in participating in the project.

(4) Whether or not the bidder provided written notice of his or her interest in

bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, for the district to make available to the bidder, not less than 15 calendar days prior to the date the bids are opened, a list or a source of lists of enterprises which are certified by the district as minority or women business enterprises. If the district does not provide that list or source of lists to the bidder, whether or not the bidder utilized the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) Whether or not the bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) Whether or not the bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) Whether or not the bidder requested assistance from minority and women community organizations, minority and women contractor groups, local, state, or federal minority and women business assistance offices, or other organizations that provide assistance in the recruitment and placement of

minority or women business enterprises, if any are available.

(8) Whether or not the bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the district.

(9) Whether or not, where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the district or contractor.

(10) Whether or not the bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the district to produce a level of participation sufficient to meet the goals and requirements of the district.

2D) Pursuant to Public Contract Code Section 2001, when requiring that contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises, providing in the general conditions under which bids will be received that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in

connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1).

2E) Pursuant to Public Contract Code Section 20111, subdivision (a), letting all contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district,

(2) Services, except construction services, or

(3) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002,

to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

2F) Pursuant to Public Contract Code Section 20111, subdivision (b), letting all contracts involving an expenditure of more than fifty thousand dollars ($15,000) for any of the following:

(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition or repair work involving any publicly

owned, leased or operated facility, or

(2) Painting or repainting of any publicly owned, leased, or operated facility,

to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

2G) Pursuant to Public Contract Code Section 20111, subdivision (b), having all bidders for construction work present their bids under sealed cover and accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

2H) Pursuant to Public Contract Code Section 20111, subdivision (b), upon an award to the lowest bidder, returning the security of all unsuccessful bidders in a reasonable period of time, but in no event beyond 60 days from the time the award is made.

2I) Pursuant to Public Contract Code Section 20111.5, subdivision (a), requiring each prospective bidder for a contract, as described in Section 20111, to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the

prospective bidder's financial ability and experience in performing public works.

2J) Pursuant to Public Contract Code Section 20111.5, subdivision (a), maintaining the questionnaires and financial statements confidential as public records not open to public inspection.

2K) Pursuant to Public Contract Code Section 20111.5, subdivision (b), adopting and applying a uniform system of rating bidders on the basis of the completed questionnaires and financial statements in order to determine the size of contracts upon which each bidder shall be deemed qualified to bid.

2L) Pursuant to Public Contract Code Section 20111.5, subdivision (c), furnishing each prospective bidder with a standardized proposal form that, when completed and executed, shall be submitted to the district as his or her bid, and disregarding bids not presented on the forms furnished.

2M) Pursuant to Public Contract Code Section 20111.5, subdivision (e), establishing a process for prequalifying prospective bidders on a quarterly basis.

2N) Pursuant to Public Contract Code Section 20116, maintaining job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

2O) Pursuant to Public Contract Code Section 20116, for the purpose of securing informal bids, publishing annually in a newspaper of general circulation published

in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. Giving notice of all informal bid projects to all contractors included on the informal bidding list.

It is estimated that the Clovis Unified School District incurred more than $1,000 in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 16 day of June, 2003, at Clovis, California

William McGuire
Associate Superintendent Business Services
Clovis Unified School District

## DECLARATION OF CHERYL MILLER

## Santa Monica Community College District

Test Claim of Clovis Unified School District
and Santa Monica Community College District

COSM No. _____

Chapter 455, Statutes of 2002
Chapter 776, Statutes of 2000
Chapter 292, Statutes of 2000
Chapter 159, Statutes of 2000
Chapter 127, Statutes of 2000
Chapter 126, Statutes of 2000
Chapter 972, Statutes of 1999
Chapter 857, Statutes of 1998
Chapter 657, Statutes of 1998
Chapter 722, Statutes of 1997
Chapter 390, Statutes of 1997
Chapter 897, Statutes of 1995
Chapter 504, Statutes of 1995
Chapter 726, Statutes of 1994
Chapter 1195, Statutes of 1993
Chapter 1032, Statutes of 1993
Chapter 1042, Statutes of 1992
Chapter 799, Statutes of 1992
Chapter 294, Statutes of 1992
Chapter 933, Statutes of 1991
Chapter 785, Statutes of 1991
Chapter 1414, Statutes of 1990
Chapter 808, Statutes of 1990
Chapter 694, Statutes of 1990
Chapter 321, Statutes of 1990
Chapter 1163, Statutes of 1989
Chapter 863, Statutes of 1989
Chapter 330, Statutes of 1989
Chapter 1408, Statutes of 1988
Chapter 538, Statutes of 1988
Chapter 102, Statutes of 1987
Chapter 1060, Statutes of 1986
Chapter 886, Statutes of 1986
Chapter 1073, Statutes of 1985
Chapter 758, Statutes of 1984
Chapter 728, Statutes of 1984
Chapter 173, Statutes of 1984
Chapter 256, Statutes of 1983
Chapter 513, Statutes of 1982
Chapter 465, Statutes of 1982
Chapter 251, Statutes of 1982
Chapter 470, Statutes of 1981
Chapter 194, Statutes of 1981
Chapter 1255, Statutes of 1980
Chapter 631, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 921, Statutes of 1976

Public Contract Code Section 2000
Public Contract Code Section 2001
Public Contract Code Section 3300
Public Contract Code Section 6610
Public Contract Code Section 7104
Public Contract Code Section 7107
Public Contract Code Section 7109
Public Contract Code Section 9203
Public Contract Code Section 10299
Public Contract Code Section 12109
Public Contract Code Section 20100
Public Contract Code Section 20101
Public Contract Code Section 20104.2
Public Contract Code Section 20104.4
Public Contract Code Section 20104.6
Public Contract Code Section 20104.50
Public Contract Code Section 20107
Public Contract Code Section 20110
Public Contract Code Section 20111
Public Contract Code Section 20111.5
Public Contract Code Section 20116
Public Contract Code Section 20650
Public Contract Code Section 20651

Public Contract Code Section 20102
Public Contract Code Section 20103.5
Public Contract Code Section 20103.6
Public Contract Code Section 20103.8
Public Contract Code Section 20104
Public Contract Code Section 20651.5
Public Contract Code Section 20657
Public Contract Code Section 20659
Public Contract Code Section 22300

Business and Professions Code Section 7028.15

Title 5, California Code of Regulations
Section 59500
Section 59504
Section 59505
Section 59506
Section 59509

Public Contracts

I, Cheryl Miller, Associate Vice President Business Services, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Associate Vice President Business Services, I am responsible for supervising the making of pubic contracts for the district. I am familiar with the provisions and requirements of the Statutes, Public Contract Code Sections, Business and Professions Code Section and Title 5 Regulations enumerated above.

These Statutes, Code sections and Regulations require the Santa Monica Community College District to:

**Local Agency Public Construction Act**

1A) Pursuant to the Local Agency Public Construction Act, Articles 1 and 2, (commencing with Public Contract Code Section 20100) and other sections cited above, to establish, periodically update and maintain policies and procedures to

implement the requirements of the laws pertaining to public contracts.

1B) Pursuant to Public Contract Code Section 3300, subdivision (a), specifying the classification of the license which a contractor shall possess at the time a contract is awarded, including that specification in any plans prepared for a public project and in any notice inviting bids.

1C) Pursuant to Public Contract Code Section 6610, when a notice inviting formal bids includes a requirement for any type of mandatory prebid conference, site visit, or meeting, including the time, date, and location of the mandatory prebid site visit, conference or meeting, and when and where project documents are available, including final plans and specifications.

1D) Pursuant to Public Contract Code Section 7104, subdivision (a), when any public works contract involves digging trenches or other excavations that extend deeper than four feet below the surface, including a clause which requires the contractor to promptly notify the district, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, and that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different

materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

1E) Pursuant to Public Contract Code Section 7104, subdivision (b), when a notice is received from the contractor pursuant to subdivision (a), promptly investigating the conditions, and upon finding that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, issuing a change order under the procedures described in the contract.

1F) Pursuant to Public Contract Code Section 7104, subdivision (c), in the event that a dispute arises between the district and the contractor as to whether conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, to respond to actions taken by the contractor to resolve disputes and protests between the contracting parties.

1G) Pursuant to Public Contract Code Section 7107, subdivision (c), releasing retentions withheld within 60 days after the completion of the work, and in the event of a dispute, withholding an amount not to exceed 150 percent of the disputed amount from the final payment. Pursuant to subdivision (f), paying a charge of 2 percent per month on any improperly withheld amounts and, in the event of litigation paying the contractor's attorney's fees and costs should he or she prevail.

1H) Pursuant to Public Contract Code Section 7109, subdivision (b), upon a determination that a project may be vulnerable to graffiti, the district shall do one or more of the following:

(1) Include a provision in the public works contract that specifies requirements for antigraffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti.

1I) Pursuant to Public Contract Code Section 9203, retaining no less 5 percent of the actual work completed and of the value of material delivered on the ground or stored until final completion and acceptance of the project.

1J) Pursuant to Public Contract Code Section 10299, subdivision (b), acquiring information technology, goods, and services without further competitive bidding, by utilizing contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department of general services.

1K) Pursuant to Public Contract Code Section 12109, complying with the terms and conditions of the Director of General Services for assisting the district in the acquisition of information technology goods or services."

1L) Pursuant to Business and Professions Code Section 7028.15, subdivision (e), unless one of certain exceptions applies, verifying that a contractor was properly licensed when the contractor submitted a bid with the district before awarding a

contract or issuing a purchase order to that contractor.

1M) Pursuant to Public Contract Code Section 20101, subdivision (a), requiring each prospective bidder for a contract to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's experience in performing public works.

1N) Pursuant to Public Contract Code Section 20101, subdivision (a), maintaining the questionnaires and financial statements confidential as public records not open to public inspection; however, records of the names of contractors applying for prequalification status shall be public records subject to disclosure.

1O) Pursuant to Public Contract Code Section 20101, subdivision (b), adopting and applying a uniform system of rating bidders on the basis of the completed questionnaires and financial statements in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. The uniform system of rating prospective bidders shall be based on objective criteria.

1P) Pursuant to Public Contract Code Section 20101, subdivision (c), establishing a process for prequalifying prospective bidders on a quarterly basis.

1Q) Pursuant to Public Contract Code Section 20101, subdivision (d), establishing a process that will allow prospective bidders to dispute their proposed prequalification rating prior to the closing time for receipt of bids. The appeal

process shall include the following:

(1) Upon request of the prospective bidder, providing notification to the prospective bidder, in writing, of the basis for disqualification and any supporting evidence that has been received from others or adduced as a result of an investigation by the district.

(2) Giving the prospective bidder an opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the district as to why the prospective bidder should be found qualified.

(3) If the prospective bidder chooses not to avail itself of this process, adopting the proposed prequalification rating without further proceedings.

1R) Pursuant to Public Contract Code Section 20102, where plans and specifications have been prepared by a district, justifying with detailed specific reasons any change or changes and filing those change(s) and reasons in the project file before electing to perform the work by day's labor.

1S) Pursuant to Public Contract Code Section 20103.5, before making the first payment for work or material under any contract where federal funds are involved, verifying through the Registrar of Contractors that the contractor was properly licensed at the time the contract was awarded. Including a statement to that effect in the standard form of prequalification questionnaire and financial

statement.

1T) Pursuant to Public Contract Code Section 20103.6, subdivision (a), in the procurement of architectural design services requiring an expenditure in excess of ten thousand dollars ($10,000), disclosing any contract provision that would require the contracting architect to indemnify and hold the local agency harmless against any and all liability, whether or not caused by the activity of the contracting architect in any request for proposals for those services or invitations to bid.

1U) Pursuant to Public Contract Code Section 20103.6 subdivision (b), in the event a district fails to comply with subdivision (a), that district shall (1) be precluded from requiring the selected architect to agree to any contract provision requiring the selected architect to indemnify or hold harmless, (2) cease discussions with the selected architect and reopen the request for proposals or invitations to bid from a qualification list, or (3) mutually agree to an indemnity clause acceptable to both parties.

1V) Pursuant to Public Contract Code Section 20103.8, when a district requires a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted, specifying in the bid solicitation which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items that, when added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

1W) Pursuant to Public Contract Code Section 20104, subdivision (c), setting forth the provisions of Article 1.5 (Resolution of Construction Claims), or a summary thereof, in the plans and specifications for any work that may give rise to a claim

under the Article.

1X) Pursuant to Public Contract Code Section 20104.2, subdivision (b), responding in writing within 45 days, subject to conditions for extension, upon receipt of any written claim of $50,000, or less, for (1) a time extension, (2) payment of money or damages arising from work done, (3) or an amount, the payment of which is disputed by the district.

1Y) Pursuant to Public Contract Code Section 20104.2, subdivision (c), to respond in in writing within 60 days, subject to conditions for extension, upon receipt of any written claim of more than $50,000 and less than $375,000, for (1) a time extension, (2) payment of money or damages arising from work done, or (3) an amount, the payment of which is disputed by the district

1Z) Pursuant to Public Contract Code Section 20104.2, subdivision (d), to meet and confer, for settlement of issues in dispute, with a claimant who demands such a conference and who disputes the district's written response, or when a district fails to respond timely,

1AA) Pursuant to Public Contract Code Section 20104.2, subdivision (e), filing responsive pleadings and appearing and defending any civil action brought by a claimant if the claim or any portion thereof remains in dispute after the meet and confer conference.

1BB) Pursuant to Public Contract Code Section 20104.4, subdivision (a), appearing and defending in nonbinding mediation which may be ordered by the court, unless

waived by all parties.

1CC) Pursuant to Public Contract Code Section 20104.4, subdivision (b), if the matter remains in dispute after mediation, appearing and defending in judicial arbitration as follows:

(1) Participate in discovery proceedings pursuant to the Civil Discovery Act of 1986 (commencing with Section 2016 of the Code of Civil Procedure);

(2) Paying one-half of the necessary and reasonable fees of the arbitrator; and

(3) Paying costs, fees and attorney's fees of the claimant when a more favorable result is not obtained after requesting a trial de novo.

1DD) Pursuant to Public Contract Code Section 20104.6, subdivision (b), paying interest at the legal rate on any arbitration award or judgment arising out of any suit filed pursuant to Section 20104.4.

1EE) Pursuant to Public Contract Code Section 20104.50, subdivision (b), paying interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure when the district fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract.

1FF) Pursuant to Public Contract Code Section 20104.50, subdivision (c), upon receipt of a payment request, acting in accordance with both of the following:

(1) Reviewing each payment request as soon as practicable after

receipt for the purpose of determining that the payment request is a proper payment request.

(2) Returning any payment request determined not to be a proper payment request suitable for payment to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this provision shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

Pursuant to subdivision (f), setting forth the terms of the article (or a summary thereof) in any contract subject to this article.

1GG) Pursuant to Public Contract Code Section 20107, requiring all bidders for construction work to present their bids under sealed cover and accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the school district.

(c) A certified check made payable to the school district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

1HH) Pursuant to Public Contract Code Section 20107, upon an award to the lowest bidder, returning the security of all unsuccessful bidders in a reasonable period of time, but in no event beyond 60 days from the time the award is made.

1Il) Pursuant to Public Contract Code Section 22300, including a provision in any invitation for bid and in any contract documents permitting the substitution of securities for any moneys withheld by the district to ensure performance under a contract, except for certain federal contracts and, upon satisfactory completion of the contract, returning the securities to the contractor.

Note: Section 2, Laws Pertaining to School Districts, omitted intentionally

**Laws Pertaining to Community College Districts**

3A) Pursuant to the Local Agency Public Construction Act, Article 41 - Community College Districts (commencing with Public Contract Code Section 20650), to establish, periodically update and maintain policies and procedures to implement Article 41 of the Act.

3B) Pursuant to Public Contract Code Sections 2000, subdivision (a) and 20111, requiring that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the community college district relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the community college district for that participation, to then evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established

pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the community college district relating to participation in the contract by minority or women business enterprises.

3C) Pursuant to Public Contract Code Section 2000, subdivision (b), determining if a bidder made a good faith effort to comply with the community college district's goals and requirements relative to participation in the contract by minority business enterprises and women business enterprises by obtaining information relative to and analysis of the following factors:

(1) Whether or not the bidder attended any presolicitation or prebid meetings that were scheduled by the community college district to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A community college district may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) Whether or not the bidder identified and selected specific items of the project which would be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) Whether or not the bidder advertised, not less than 10 calendar days before the date the bids were opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented

publications, trade journals, or other media, specified by the community college district for minority or women business enterprises that are interested in participating in the project.

(4) Whether or not the bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, for the community college district to make available to the bidder, not less than 15 calendar days prior to the date the bids are opened, a list or a source of lists of enterprises which are certified by the community college district as minority or women business enterprises. If the community college district does not provide that list or source of lists to the bidder, whether or not the bidder utilized the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) Whether or not the bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) Whether or not the bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) Whether or not the bidder requested assistance from minority and women community organizations, minority and women contractor groups, local, state, or federal minority and women business assistance offices, or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) Whether or not the bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the community college district.

(9) Whether or not, where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the community college district or contractor.

(10) Whether or not the bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the community college district to produce a level of participation sufficient to meet the goals and requirements of the community college district.

3D) Pursuant to Public Contract Code Section 2001, when requiring that contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises, providing in the general conditions under which bids will be received

that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1).

3E) Pursuant to Public Contract Code Section 20651, subdivision (a), letting all contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district,

(2) Services, except construction services, or

(3) Repairs, including maintenance as defined in Section 20656, that are not a public project as defined in subdivision (c) of Section 22002,

to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

3F) Pursuant to Public Contract Code Section 20651, subdivision (b), having all bidders for construction work present their bids under sealed cover and accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

3G) Pursuant to Public Contract Code Section 20651, subdivision (b), upon an award to the lowest bidder, returning the security of all unsuccessful bidders in a reasonable period of time, but in no event beyond 60 days from the time the award is made.

3H) Pursuant to Public Contract Code Section 20651.5, subdivision (a), maintaining the questionnaires and financial statements confidential as public records not open to public inspection.

3I) Pursuant to Public Contract Code Section 20651.5, subdivision (b), adopting and applying a uniform system of rating bidders on the basis of the completed questionnaires and financial statements in order to determine the size of contracts upon which each bidder shall be deemed qualified to bid.

3J) Pursuant to Public Contract Code Section 20651.5, subdivision (c), furnishing each prospective bidder with a standardized proposal form that, when completed

and executed, shall be submitted to the community college district as his or her bid, and to reject bids not presented on the forms furnished.

3K) Pursuant to Public Contract Code Section 20657, maintaining job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

3L) Pursuant to Public Contract Code Section 20657, for the purpose of securing informal bids, publishing annually in a newspaper of general circulation published in the community college district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. Giving notice of all informal bid projects to all contractors included on the informal bidding list.

3M) Pursuant to Public Contract Code Section 20659, specifying in writing all changes or alterations of a contract, and the costs thereof, which are ordered by the governing board of the community college district.

**Minority, Women, and Disabled Veteran Business Enterprise Participation**

4A) Pursuant to Subchapter 9 entitled "Minority, Women, and Disabled Veteran Business Enterprise Participation Goals for the California Community Colleges" (commencing with Title 5, California Code of Regulations, Section 59500), to establish, periodically update and maintain policies and procedures to implement

the requirements of Subchapter 9 of the Regulations.

4B) Pursuant to Title 5, California Code of Regulations, Section 59500, subdivision (a), providing opportunities for minority, women, and disabled veteran business enterprise participation in the award of district contracts consistent with this subchapter. The statewide goal for such participation is not less than 15 percent minority business enterprise participation, not less than 5 percent women business enterprise participation, and not less than 3 percent disabled veteran business enterprise participation of the dollar amount expended by all districts each year for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement.

4C) Pursuant to Title 5, California Code of Regulations, Section 59504, undertaking appropriate efforts to provide participation opportunities for minority, women, and disabled veteran business enterprises in district contracts, including providing vendor and service contractor orientation programs related to participating in district contracts or in understanding and complying with the provisions of the subchapter, and/or developing a listing of minority, women, and disabled veteran business enterprises potentially available as contractors or suppliers, and/or such other activities that may assist interested parties in being considered for participation in district contracts.

4D) Pursuant to Title 5, California Code of Regulations, Section 59504, undertaking efforts to contribute to achievement of the systemwide goals established in

Section 59500 by seeking minority, women, and disabled veteran business enterprises as contractors for such contracts as the district may deem appropriate pursuant to Section 59505.

4E) Pursuant to Title 5, California Code of Regulations, Section 59505, subdivision (a), when electing to apply MBE/WBE/DVBE/WBE/DVBE goals to any particular contract which is to be awarded to the lowest responsible bidder, including in bidding notices a statement that at the time of bid opening, bidders shall be considered responsive only if they document to the satisfaction of the district that they meet or have made a good faith effort to meet minority, women, and disabled veteran business enterprise participation goals.

4F) Pursuant to Title 5, California Code of Regulations, Section 59505, subdivision (b), obtaining and verifying, as satisfactory, proffered evidence from bidders showing that efforts were made to seek out and consider minority, women, and disabled veteran business enterprises as potential subcontractors, materials and/or equipment suppliers, or both subcontractors and/or suppliers.

4G) Pursuant to Title 5, California Code of Regulations, Section 59505, subdivision (c), seeking minority, women and disabled veteran business enterprises to serve as contractors for any other contracts not covered by subsection (a).

4H) Pursuant to Title 5, California Code of Regulations, Section 59505, subdivision (d), assessing the status of each of its contractors to determine if the contractor is a certified or self-certified minority, women, and disabled veteran business

enterprise subcontractor and/or supplier to the satisfaction of the district in order to include the actual dollar amount attributable to minority, women, and disabled veteran business enterprise participation in reporting its participation activity pursuant to Section 59509.

4I) Pursuant to Title 5, California Code of Regulations, Section 59506, subdivision (a), collecting and retaining certification information provided by a business enterprise claiming minority, women, and disabled veteran business enterprise status.

4J) Pursuant to Title 5, California Code of Regulations, Section 59506, subdivision (b), including notification to responsive bidders subject to Section 59505(a) of the requirements for qualification as a responsive bidder.

4K) Pursuant to Title 5, California Code of Regulations, Section 59509, monitoring its participation as specified in the subchapter and reporting to the Chancellor, on forms prescribed by the Chancellor, the level of participation by minority, women, and disabled veteran business enterprises pursuant to the subchapter for the previously completed fiscal year. Even if a district elects not to apply minority, women, and disabled veteran business enterprise goals to one or more particular contract(s), all such contracts shall be reported to the Chancellor and shall be taken into account in determining whether the community college system as a whole has achieved the goals set forth in Section 59500.

It is estimated that the Santa Monica Community College District incurred more

than $1,000 in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 18 day of June, 2003, at Sanat Monica, California.

Cheryl Miller

Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District

# EXHIBIT 2
# COPIES OF STATUTES CITED

# CHAPTER 921

An act to add Section 15957.1 to the Education Code, relating to school contracts.

[Approved by Governor September 13, 1976. Filed with Secretary of State September 14, 1976.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 15957.1 is added to the Education Code, to read:

15957.1. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

## CHAPTER 36

An act to amend Sections 40, 1042, 1330, 1891, 1904, 1908, 2104, 2502, 4200, 4210, 4321, 4364, 5012, 5016, 5018, 5204, 5454, 8203, 8210, 8211, 8212, 8240, 8242, 8245, 8246, 8248, 8250, 8250.1, 8251, 8252, 8254, 8321, 8326, 8327, 8329, 8330, 8360, 8361, 8362, 8363, 8364, 8365, 8366, 8367, 8368, 8369, 8383, 8395, 8500, 10101, 10103, 10104, 10106, 10601, 10602, 10603, 10604, 10606, 12516, 14002, 14003, 14020, 15104, 16035, 16040, 16044, 16057, 16058, 16063, 16192, 16250, 16310, 16343, 18383, 18535, 19422, 19423, 19424, 19510, 19511, 19512, 19515, 19521, 19522, 21107, 21108, 21110, 21111, 21112, 21180, 21183, 21189, 21192, 22112, 22114, 22122, 22127, 22142, 22401, 22716, 22802, 22809, 23006, 23100, 23108, 23401, 23506, 23702, 23703, 23704, 23800, 23803, 23804, 23811, 23900, 23903, 23909, 23910, 23918, 23919, 23920, 23921, 24100, 24200, 24203, 24600, 33332, 35041.5, 35101, 35174, 35214, 35300, 35330, 35511, 35512, 35515, 35518, 35704, 35705, 37220, 37228, 39002, 39140, 39143, 39149, 39210, 39214, 39227, 39230, 39321, 39363.5, 39440, 39602, 39651, 39674, 39830, 40000, 40013, 41015, 41020, 41201, 41301, 41372, 41601, 41700, 41718, 41761, 41762, 41840, 41856, 41857, 41859, 41863, 41886, 41888, 41915, 42238, 42244, 42245, 42603, 42631, 42633, 42635, 42636, 42639, 42643, 42831, 44008, 44009, 44228, 44263, 44274, 44335, 44346, 44853, 44909, 45023.5, 45057, 45203, 45205, 45207, 45250, 46010, 46111, 46300, 48011, 48200, 48265, 48412, 48414, 48938, 48980, 49061, 49063, 49065, 49068, 49069, 49070, 49075, 49076, 49077, 51226, 51767, 51872, 52002, 52012, 52015, 52113, 52309, 52315, 52317, 52321, 52324, 52372, 52500, 52506, 52517, 52570, 52612, 54002, 54006, 54123, 54125, 54665, 54666, 54669, 56336, 56601, 56717, 56811, 56829, 60014, 60101, 60201, 60202, 60204, 60222, 60223, 60261, 60640, 60643, 60664, 66602, 68014, 69273, 69274, 69511, 69532, 69536, 69538, 69565, 69566, 69582, 69583, 69584,

district advisory committee for the purposes of this section.

SEC. 449. Section 39617 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39617. (a) The Legislature finds and declares that the quality of protective equipment worn by participants in high school interscholastic football is a significant factor in the occurrence of injuries to such participants and that it is therefore necessary to insure minimum standards of quality for the equipment in order to prevent unnecessary injuries to such participants.

(b) No football helmets shall be worn by participants in high school interscholastic football after the commencement of the 1980–81 school year, unless such equipment has been certified for use by the Department of Education. In determining the suitability of equipment for certification the department may accept the certification of the National Operating Committee on Standards for Athletic Equipment or any other recognized certifying agency in the field.

This section shall not be construed as relieving school districts from the duty of maintaining football protective equipment in a safe and serviceable condition.

SEC. 450. Section 39645.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39645.5. In addition to utilizing the procedures specified in Article 14 (commencing with Section 39520) of Chapter 3 of this part, any school district or any county board of education may, by direct sale or otherwise, sell to a purchaser any electronic data-processing equipment owned by, or to be owned by, the school district or county board, if the purchaser agrees to lease the equipment back to the school district or county for use by the school district or county following the sale.

The approval by the governing board of the school district or of the county superintendent of schools of the sale and leaseback shall be given only if the governing board of the school district or the county superintendent of schools finds, by resolution, that the sale and leaseback is the most economical means for providing electronic data-processing equipment to the school district or county.

SEC. 451. Section 39646 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39646. The governing board of a school district may contract for electromechanical or electronic data-processing work.

SEC. 452. Section 39649.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39649.5. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

SEC. 453. Section 41716.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

41716.5. For the fiscal year 1976–77, and each fiscal year thereafter

incorporate the changes made in the Education Code, in 1976, into the Education Code as enacted by Chapter 1010 of the Statutes of 1976. It is not the intent of the Legislature to make any substantive change in the law.

SEC. 1136. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The new reorganized Education Code, enacted by Chapter 1010 of the Statutes of 1976, will become operative on April 30, 1977, which is long before the effective date of ordinary statutes enacted in 1977 in the 1977–78 Regular Session of the Legislature. Other 1976 education legislation was directed to the Education Code as enacted by Chapter 2 of the Statutes of 1959. This bill would adapt such other education legislation enacted in 1976 to the reorganized Education Code as enacted by Chapter 1010 of the Statutes of 1976. In order that statutory continuity may be maintained and that administrative confusion may be avoided, such adaptation must become operative on the operative date of the new Education Code. It is, therefore, necessary that this act take effect immediately as an urgency statute.

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# CHAPTER 631

An act to amend Sections 39610.5, 39640 and 81640 of the Education Code, relating to school and community college contracts.

[Approved by Governor September 7, 1977. Filed with Secretary of State September 8, 1977.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 39610.5 of the Education Code is amended to read:

39610.5. The governing board of a school district may construct a mobilehome site on the grounds of any district facility or facilities maintained by the district, including all necessary appurtenances and fixtures, and may pay the cost of utilities, insurance, and necessary services, for the purpose of enabling a responsible person or persons to install and occupy a mobilehome on such site. Such person or persons, who need not be classified as employees of the district, shall, in return for being permitted to install and occupy a mobilehome on the district facility site on terms and conditions acceptable to the governing board, agree to maintain any surveillance over the facility grounds as the school district governing board requires, and to report to district authorities illegal or suspicious activities that are observed.

SEC. 2. Section 39640 of the Education Code is amended to read:

39640. The governing board of any school district shall let any contracts involving an expenditure of more than eight thousand dollars ($8,000) for work to be done or more than twelve thousand dollars ($12,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

SEC. 3. Section 81640 of the Education Code is amended to read:

81640. The governing board of any community college district shall let any contracts involving an expenditure of more than eight thousand dollars ($8,000) for work to be done or more than twelve thousand dollars ($12,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

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# CHAPTER 1255

An act to amend Sections 39649, 39649.5, 81649, and 81649.5 of, and to add Sections 39649.1 and 81649.1 to, the Education Code, relating to school and community college districts.

[Approved by Governor September 28, 1980. Filed with Secretary of State September 29, 1980.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 39649 of the Education Code is amended to read:

39649. In each school district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 39649.1 by day labor, or by force account, whenever the total cost of labor on the job does not exceed seven thousand five hundred dollars ($7,500), or the total number of hours on the job does not exceed 350 hours, whichever is greater, provided that in any school district having an average daily attendance of 35,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus or equipment, including painting or repainting, and perform maintenance as defined in Section 39649.1, by day labor or by force account whenever the total cost of labor on the job does not exceed fifteen thousand dollars ($15,000), or the total number of hours on the job does not exceed 750 hours, whichever is greater.

For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

SEC. 2. Section 39649.1 is added to the Education Code, to read:

39649.1. For purposes of Section 39649, "maintenance" means routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually useable condition for which it was designed, improved, constructed, altered, or repaired. "Facility" means any plant, building, structure, ground facility, utility system, or real property.

This definition of "maintenance" expressly includes, but is not limited to: carpentry, electrical, plumbing, glazing, and other craft work designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually useable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

This definition does not include, among other types of work, janitorial or custodial services and protection of the sort provided by

guards or other security forces.

It is the intent of the Legislature that this definition does not include painting, repainting, or decorating other than touchup, but instead it is the intent of the Legislature that such activities be controlled directly by the provisions of Section 39649.

SEC. 3. Section 39649.5 of the Education Code is amended to read:

39649.5. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

Notwithstanding the provisions of Section 39640, informal bidding may be used on projects estimated by the district to cost up to and including the limits set forth in Section 39649. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in such manner as the district deems appropriate.

SEC. 4. Section 81649 of the Education Code is amended to read:

81649. In each community college district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 81649.1 by day labor, or by force account, whenever the total cost of labor on the job does not exceed seven thousand five hundred dollars ($7,500), or the total number of hours on the job does not exceed 350 hours, whichever is greater, provided that in any district having an average daily attendance of 15,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance as defined in Section 81649.1, by day labor or by force account whenever the total cost of labor on the job does not exceed fifteen thousand dollars ($15,000), or the total number of hours on the job does not exceed 750 hours, whichever is greater.

For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

SEC. 5. Section 81649.1 is added to the Education Code, to read:

81649.1. For purposes of Section 81649, "maintenance" means routine, recurring, and usual work for the preservation, protection

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and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually useable condition for which it was designed, improved, constructed, altered or repaired. "Facility" means any plant, building, structure, ground facility, utility system, or real property.

This definition of "maintenance" expressly includes but is not limited to: carpentry, electrical, plumbing, glazing, and other craft work designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually useable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

This definition does not include, among other types of work, janitorial or custodial services and protection of the sort provided by guards or other security forces.

It is the intent of the Legislature that this definition does not include painting, repainting, or decorating other than touchup, but instead it is the intent of the Legislature that such activities be controlled directly by the provisions of Section 81649.

SEC. 6. Section 81649.5 of the Education Code is amended to read:

81649.5. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California Community College Budget and Accounting Manual for a period of not less than three years after completion of the project.

Notwithstanding the provisions of Section 81640, informal bidding may be used on projects estimated by the district to cost up to and including the limits set forth in Section 81649. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects, in such manner as the district deems appropriate.

SEC. 7. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

## CHAPTER 194

An act to amend Sections 39640 and 81640 of the Education Code, relating to education.

[Approved by Governor July 14, 1981. Filed with Secretary of State July 14, 1981.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 39640 of the Education Code is amended to read:

39640. The governing board of any school district shall let any contracts involving an expenditure of more than twelve thousand dollars ($12,000) for work to be done or more than sixteen thousand dollars ($16,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

SEC. 2. Section 81640 of the Education Code is amended to read:

81640. The governing board of any community college district shall let any contracts involving an expenditure of more than twelve thousand dollars ($12,000) for work to be done or more than sixteen thousand dollars ($16,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

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## CHAPTER 470

An act to amend Sections 1256, 1257, 1264, 1265, 1330, 2400, 2509, 10401, 10407, 32020, 32030, 32040, 32044, 32211, 66803, 71060, 72002, 72020, 72030, 72122, 72126, 72129, 72237, 72280, 72300, 72330, 72331, 72332, 72400, 72401, 72408, 72533, 72601, 72602, 72670, 72673, 72682, 76000, 76001, 76002, 76130, 76160, 78005, 78008, 78030, 78031, 78032, 78033, 78204, 78409, 78907, 79000, 79020, 79021, 79022, 79023, 79024, 79025, 79026, 79027.5, 79028, 79030, 79031, 81000, 81006, 81031, 81033, 81033.5, 81035, 81036, 81038, 81144, 81179, 81452, 81457, 81640, 81648, 81657, 81658, 81821, 82530, 82531, 82535, 82536, 82537, 82538, 82541, 82542, 82543, 82544, 84300, 84362, 84370, 84373, 84500, 84520, 84528, 85000, 85003, 85022, 85200, 85201, 85266, 85442, 87032, 87036, 87039, 87212, 87274, 87408.5, 87409, 87422, 87423, 87424, 87428, 87454, 87455, 87456, 87457, 87458, 87484, 87708, 87732, 87733, 87735, 87744, 87745, 87801, 87808, 87828, 88000, 88240, and 88242 of, to amend the heading of Chapter 8 (commencing with Section 79000) of Part 48 of, to add Sections 8085, 71029, 78002, 78200.5, 78270, 78460, 81130.5, 87406.5, 87408.6, 88008, and 88010.5 to, to add Article 2 (commencing with

the one thousand dollars ($1,000), the property may be sold at private sale without advertising, by any member or employee of the board empowered for that purpose by the majority vote of the board.

(b) If the board, by a unanimous vote of those members present, finds that the property is of insufficient value to defray the costs of arranging a sale, the property may be disposed of in the local public dump on order of any member or employee of the board empowered for that purpose by the majority vote of the board.

SEC. 242. Section 81457 of the Education Code is amended to read:

81457. The governing board of a community college district may authorize any officer or employee of the district to sell to any student personal property of the district which has been fabricated by such student, at the cost to the district of the materials furnished by the district and used therein.

SEC. 243. Section 81610 of the Education Code is repealed.

SEC. 244. Section 81612 of the Education Code is repealed.

SEC. 245. Section 81614 of the Education Code is repealed.

SEC. 246. Section 81615 of the Education Code is repealed.

SEC. 247. Section 81616 of the Education Code is repealed.

SEC. 248. Article 2 (commencing with Section 81630) of Chapter 3 of Part 49 of the Education Code is repealed.

SEC. 249. Section 81640 of the Education Code is amended to read:

81640. The governing board of any community college district shall let any contracts involving an expenditure of more than twelve thousand dollars ($12,000) for work to be done or more than eighteen thousand dollars ($18,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

SEC. 250. Section 81648 of the Education Code is amended to read:

81648. In an emergency when any repairs, alterations, work or improvement is necessary to permit the continuance of existing college classes, or to avoid danger to life or property, the board may by unanimous vote, make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

SEC. 251. Section 81650 of the Education Code is repealed.

SEC. 252. Section 81652 of the Education Code is repealed.

SEC. 253. Section 81654 of the Education Code is repealed.

SEC. 254. Section 81657 of the Education Code is amended to read:

81657. The governing board of any community college district may by majority vote authorize its district superintendent, or such person as he or she may designate, to expend up to two hundred fifty



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dollars ($250) per transaction for work done, compensation for employees or consultants, and purchases of equipment, supplies, or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to this section. In the event of malfeasance in office, the district official invested by the governing board with authority to act under this section shall be personally liable for any and all moneys of the district paid out as a result of such malfeasance.

SEC. 255. Section 81658 of the Education Code is amended to read:

81658. If any change or alteration of a contract governed by the provisions of this article is ordered by the governing board of the community college district, such change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

(a) The amount specified in Section 81640 or 81649, whichever is applicable to the original contract; or

(b) Ten percent of the original contract price.

SEC. 256. Section 81821 of the Education Code is amended to read:

81821. The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

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are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

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## CHAPTER 251

An act to amend Sections 1260, 1510, 8366, 16010, 16191, 32341, 72401, 76001, 76160, 78030, 81033.5, 81137, 81332, 81640, 81648, 81676, 82305, 82305.6, 84850, 85260, 87009, 87010, 87011, 87446, 87732, 87821, 88006, 88020, and 88122 of, to add Sections 76470, 81670, and 87809 to, to add Chapter 5 (commencing with Section 81900) to Part 49 of, and to repeal Sections 79000.5, 81929, 81936, 81961, 81962, 81963, 81965, 81966, 87739, and 87739.5 of, the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 11, 1982. Filed with Secretary of State June 11, 1982.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 1260 of the Education Code is amended to read:

1260. The county superintendent of schools, with the approval of the county board of education, may:

(a) Conduct studies through research and investigation as are determined by the county board to be required in connection with the future management, conditions, needs, and financial support of the schools within the county; or join with one or more school district

studies zone, for the construction of any building as defined in Section 81131 or, if the estimated cost exceeds twenty thousand dollars ($20,000), for the reconstruction or alteration of or addition to any such building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any building on a site located outside of the boundaries of any special studies zone. No such studies need be made if the site under consideration has been the subject of adequate prior studies.

No building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 7 (commencing with Section 81130) and to the chancellor's office of the California Community Colleges. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

SEC. 14. Section 81137 of the Education Code is amended to read:

81137. All fees shall be paid into the State Treasury and credited to the Division of Architecture Public Building Fund, which fund is continued in existence and is retitled the Architecture Public Building Fund, and are available without regard to fiscal years for the use of the Department of General Services, subject to approval of the Department of Finance, in carrying out the provisions of this article.

Adjustments in the amounts of the fees, as determined by the Department of General Services and approved by the Department of Finance, will be made within the limits set in Section 81136 in order to maintain a reasonable working balance in the fund.

SEC. 15. Section 81332 of the Education Code is amended to read:

81332. Before the governing board of a community college district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for such building which have been approved pursuant to Article 7 (commencing with Section 81130) of Chapter 1 of Part 49. A district has a site available for the purposes of this section if it owns a site or if it has an option on a site which allows the community college district or the designee of the district to purchase the site. Any community college district may acquire and pay for an option containing such a provision.

SEC. 16. Section 81640 of the Education Code is amended to read:

81640. The governing board of any community college district shall let any contracts involving an expenditure of more than twelve thousand dollars ($12,000) for work to be done or more than eighteen thousand dollars ($18,000) for materials or supplies to be furnished,



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sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

SEC. 16.5. Section 81648 of the Education Code is amended to read:

81648. In an emergency when any repairs, alterations, work or improvement is necessary to permit the continuance of existing college classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

SEC. 17. Section 81670 is added to the Education Code, to read:

81670. The governing board of any community college district may construct and maintain dormitories in connection with any community college within the district for use and occupancy by students in attendance at the community college, and shall fix the rates to be charged the students for quarters in the dormitories.

SEC. 18. Section 81676 of the Education Code is amended to read:

81676. The governing board of any community college district may establish a bookstore on district property for the purpose of offering for sale textbooks, supplementary textbooks, school supplies, stationery supplies, confectionary items, and related auxiliary school supplies and services.

Any person who is employed in a bookstore maintained by a community college pursuant to this section is a member of the classified service of the district in accordance with Section 88020. In the case of a person who, immediately preceding becoming a member of the classified service of a school district pursuant to this section, was employed, other than as a student or substitute employee, in a community college bookstore maintained by a student body organization, such prior service shall, for all purposes, be deemed service in the classified service of the employing community college district.

The disposition and accounting of revenue and expenditures of the bookstore operation shall be as prescribed by the California Community Colleges Budget and Accounting Manual. Net proceeds from the operation of a community college bookstore shall be used for the general benefit of the student body as determined by the governing board. Money may be expended for services and property, including, but not limited to, parking facilities, stadia, student centers, student unions, health centers, bookstores or auxiliary facilities for use of students or faculty members of the community college or employees of the district. Funds derived from the operation of a community college bookstore shall be subject to audit pursuant to Section 84040.

SEC. 19. Section 81929 of the Education Code, as amended by Section 1 of Chapter 333 of the Statutes of 1981, is repealed.



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immediately.

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## CHAPTER 465

An act to repeal Sections 15711, 39640, 39641, 39648, 39649, 39649.1, and 39649.5 of the Education Code, to repeal Article 5 (commencing with Section 25450) of Chapter 5 of Division 2 of Title 3 of, Chapter 6 (commencing with Section 37900) of Division 3 of Title 4 of, and Sections 54113 and 54114 of, the Government Code, to add Part 3

(commencing with Section 20100) to Division 2 of the Public Contract Code, to amend Section 130258 of, and to repeal Sections 12845, 12846, and 16501 of, Article 3 (commencing with Section 25751) of Chapter 6 of Part 1 of Division 10 of, Sections 28990, 28991, and 28992 of, Article 3 (commencing with Section 30570) of Chapter 5 of Part 3 of Division 10 of, Article 3 (commencing with Section 40170) of Chapter 6 of Part 4 of, Article 3 (commencing with Section 50170) of Chapter 6 of Part 5 of, Article 3 (commencing with Section 70170) of Chapter 6 of Part 7 of, Article 3 (commencing with Section 90440) of Chapter 6 of Part 8 of, Article 3 (commencing with Section 96060) of Chapter 6 of Part 9 of, Article 3 (commencing with Section 98230) of Chapter 6 of Part 10 of, Section 100123 of, Article 3 (commencing with Section 101185) of Chapter 5 of Part 13 of, Sections 102223, 103224, 120224, and 125225 of, the Public Utilities Code, to repeal Sections 1071, 1072, 1073, 1074, 1075, 1076, 1076.1, 1188, 1320, 1325, 1325.5, 1326, 1327, 1328, 1329, 1331, and 1332 of, Chapter 8.5 (commencing with Section 5230), Chapter 9 (commencing with Section 5240), Chapter 10 (commencing with Section 5265), Chapter 11 (commencing with Section 5280), and Chapter 12 (commencing with Section 5290) of Part 3 of Division 7 of, Chapter 4 (commencing with Section 8175) of Part 2 of Division 9 of, Chapter 6 (commencing with Section 10500) of Division 12 of, Sections 18171, 18171.1, 18172, 18173, 18174, 18175, and 18176 of, Chapter 6 (commencing with Section 18420) of Part 2 of Division 14 of, Chapter 7 (commencing with Section 18760) of Part 3 of Division 14 of, Chapter 11 (commencing with Section 25250) of Part 1 of Division 16 of, Chapter 8 (commencing with Section 26140) of Part 2 of Division 16 of, the Streets and Highways Code, and to repeal Article 4 (commencing with Section 22300) of Chapter 2 of Part 5 of Division 11 of, Chapter 3 (commencing with Section 43300) of Part 6 of Division 14 of, Chapter 3 (commencing with Section 55350) of Part 3 of Division 16 of, and Sections 56056, 56057, and 56058 of, Article 2 (commencing with Section 70170) of Part 1 of Division 19 of, and Article 2 (commencing with Section 71740) of Chapter 5 of Part 5 of Division 20 of, the Water Code, and to repeal Article 3 (commencing with Section 6.10) of Chapter 1932 of the Statutes of 1961, and Section 8.1 of Chapter 104 of the Statutes of 1964, First Extraordinary Session, relating to public contracts.

[Approved by Governor July 9, 1982. Filed with Secretary of State July 9, 1982.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 15711 of the Education Code is repealed.

SEC. 2. Section 39640 of the Education Code is repealed.

SEC. 3. Section 39641 of the Education Code is repealed.

SEC. 4. Section 39648 of the Education Code is repealed.

SEC. 5. Section 39649 of the Education Code is repealed.

SEC. 5.5. Section 39649.1 of the Education Code is repealed.

SEC. 6. Section 39649.5 of the Education Code is repealed.

SEC. 7. Article 5 (commencing with Section 25450) of Chapter 5 of Division 2 of Title 3 of the Government Code is repealed.

SEC. 8. Chapter 6 (commencing with Section 37900) of Division 3 of Title 4 of the Government Code is repealed.

SEC. 9. Section 54113 of the Government Code is repealed.

SEC. 10. Section 54114 of the Government Code is repealed.

SEC. 11. Part 3 (commencing with Section 20100) is added to Division 2 of the Public Contract Code, to read:

## PART 3. CONTRACTING BY LOCAL AGENCIES

### CHAPTER 1. LOCAL AGENCY PUBLIC CONSTRUCTION ACT

#### Article 1.

20100. This chapter may be cited as the Local Agency Public Construction Act.

#### Article 2.

20105. The provisions of this article shall apply to contracts subject to the State School Building Aid Law of 1949 provided for in Chapter 6 (commencing with Section 15700) of Part 10 of Division 1 of Title 1 of the Education Code.

20106. A school district shall not expend money apportioned under the State School Building Aid Law unless the contracts under which the funds are expended have been let after competitive bids pursuant to the Education Code.

#### Article 3.

20110. The provisions of this part shall apply to contracts awarded by school districts subject to Part 21 (commencing with Section 35000) of Division 3 of Title 2 of the Education Code.

20111. The governing board of any school district shall let any contracts involving an expenditure of more than twelve thousand dollars ($12,000) for work to be done or more than sixteen thousand dollars ($16,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

20112. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place where bids

will be opened. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time.

20113. In an emergency when any repairs, alterations, work or improvement is necessary to permit the continuance of existing school classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

20114. In each school district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20115 by day labor, or by force account, whenever the total cost of labor on the job does not exceed seven thousand five hundred dollars ($7,500), or the total number of hours on the job does not exceed 350 hours, whichever is greater, provided that in any school district having an average daily attendance of 35,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus or equipment, including painting or repainting, and perform maintenance as defined in Section 20115, by day labor or by force account whenever the total cost of labor on the job does not exceed fifteen thousand dollars ($15,000), or the total number of hours on the job does not exceed 750 hours, whichever is greater.

For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

20115. For purposes of Section 20114, "maintenance" means routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered, or repaired. "Facility" means any plant, building, structure, ground facility, utility system, or real property.

This definition of "maintenance" expressly includes, but is not limited to: carpentry, electrical, plumbing, glazing, and other craftwork designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually usable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

This definition does not include, among other types of work, janitorial or custodial services and protection of the sort provided by guards or other security forces.

It is the intent of the Legislature that this definition does not include painting, repainting, or decorating other than touchup, but instead it is the intent of the Legislature that such activities be



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controlled directly by the provisions of Section 20114.

20116. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

Notwithstanding the provisions of Section 20111, informal bidding may be used on projects estimated by the district to cost up to and including the limits set forth in Section 20114. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in such manner as the district deems appropriate.

Article 3.5.

20120. The provisions of this article shall apply to contracts awarded by counties subject to Title 3 (commencing with Section 23000) of the Government Code.

20121. Whenever the estimated cost of construction of any wharf, chute, or other shipping facility, or of any hospital, almshouse, courthouse, jail, historical museum, aquarium, county free library building, branch library building, art gallery, art institute, exposition building, stadium, coliseum, sports arena or sports pavilion or other building for holding sports events, athletic contests, contests of skill, exhibitions, spectacles and other public meetings, or other public building or the cost of any painting, or repairs thereto exceeds the sum of four thousand dollars ($4,000), inclusive of the estimated costs of materials or supplies to be furnished pursuant to Section 20131, the work shall be done by contract. Any such contract not let pursuant to this article is void.

20122. In counties containing a population of 500,000 or over, the work referred to in Section 20121 need not be done by contract if the estimated cost thereof is less than six thousand five hundred dollars ($6,500), exclusive of the estimated cost of materials or supplies to be furnished pursuant to Section 20133.

20123. In counties containing a population of 2,000,000 or over, the provisions of Sections 20121 and 20122 do not apply to alteration or repair work upon county-owned buildings, if the cost of such work is under fifty thousand dollars ($50,000), and if before the work is authorized the board of supervisors determines that detailed plans for the existing building are obsolete or do not exist and that because

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construction or repairs may be seen at the district office.

(b) A particular description of the construction or repair advertised if less than the whole construction or repair is advertised.

(c) A statement that the board will receive sealed bids for the construction or repairs advertised or any portion of them designated by the board.

(d) A statement that the contract or contracts for the construction or repair advertised will be awarded to the lowest responsible bidder or bidders, but that any and all bids may be rejected.

(e) A statement of the time and place for opening the bids.

20634. After opening the bids, and as convenient, the board shall award the contract or contracts for the construction or repair in portions, or as a whole, to the lowest responsible bidder or bidders, but the board may reject any and all bids and readvertise for proposals or may proceed to construct the works or any part thereof under its own superintendence.

20635. In case of emergency the board by unanimous vote of those present at any meeting may award a contract for construction or repair without advertising for bids.

Article 40.

20640. The provisions of this article shall apply to contracts by municipal water districts, as provided for in the Municipal Water District Law of 1911, Division 20 (commencing with Section 71000) of the Water Code.

20641. A district may prescribe methods for the construction of works and for the letting of contracts for any of the following purposes:

(a) The construction of works, structures or equipment.

(b) The performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this division.

(c) The acquisition or disposal of any real or personal property.

20642. When work is not to be done by the district itself by force account, and the amount involved is ten thousand dollars ($10,000), or more, any contract for the doing of such work shall be let to the lowest responsible bidder, after publication, in the manner prescribed by the board, of notices inviting bids therefor. However, the board may reject any and all proposals.

20643. Notwithstanding Section 20642, contracts, in writing or otherwise, for the acquisition or disposal of any real or personal property may be let without calling for competitive bids.

20644. The board may, from time to time, establish the manner of calling for bids and letting contracts, but except as such procedure so established by the board otherwise requires, all contracts may be entered into upon such terms and in such manner as the board may authorize.

SEC. 12. Section 12845 of the Public Utilities Code is repealed.

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thousand dollars ($20,000) shall be awarded to the lowest responsible bidder submitting a responsible bid after competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board.

SEC. 80. If this bill and Senate Bill 1476 are both chaptered and become effective on or after January 1, 1983, and this bill is chaptered after Senate Bill 1476, Section 78 of this bill shall become effective and the portion of Section 11 of this bill which adds Section 20221 to the Public Contract Code is repealed.

If this bill and Senate Bill 1834 are both chaptered and become effective on or after January 1, 1983, and this bill is chaptered after Senate Bill 1834, Section 79 of this bill shall become effective and the portion of Section 11 of this bill which adds Section 20341 to the Public Contract Code is repealed.

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## CHAPTER 513

An act to amend Section 14790 of, to repeal Article 2.5 (commencing with Section 14816) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of, the Government Code, and to add Chapter 3 (commencing with Section 12100) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

[Approved by Governor August 13, 1982. Filed with Secretary of State August 15, 1982.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 14790 of the Government Code, as amended by Section 7 of Chapter 867 of the Statutes of 1981, is amended to read:

14790. Purchases by the Regents of the University of California or the Trustees of the California State University are not subject to this article or to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code. The Trustees of the California State University, however, shall comply with the competitive bidding requirements prescribed by law and shall follow the purchasing criteria published by the Department of General Services.

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This section shall remain in effect only until January 1, 1987, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1987, deletes or extends that date.

SEC. 2. Section 14790 of the Government Code, as added by Section 7.5 of Chapter 867 of the Statutes of 1981, is amended to read:

14790. Purchases by the Regents of the University of California are not subject to this article or to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code. Notwithstanding any other provision of law, purchases by the Trustees of the California State University not exceeding one thousand dollars ($1,000) are exempt from this article and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code.

This section shall become operative January 1, 1987.

SEC. 3. Article 2.5 (commencing with Section 14816) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 4. Chapter 3 (commencing with Section 12100) is added to Part 2 of Division 2 of the Public Contract Code, to read:

## CHAPTER 3. ACQUISITION OF ELECTRONIC DATA-PROCESSING GOODS AND SERVICES

12100. The Legislature finds that the unique aspects of electronic data-processing systems and the importance of such systems to state programs warrant a separate acquisition authority for electronic data-processing goods and services. The Legislature further finds that such separate authority should enable the timely acquisition of goods and services in order to meet the state's needs in the most cost-effective manner.

All contracts for the acquisition of electronic data-processing services and all contracts for the acquisition of electronic data-processing goods, whether by lease or purchase, shall be made by or under the supervision of the Department of General Services.

12101. It is the intent of the Legislature that policies developed by the Department of Finance and procedures developed by the Department of General Services in accordance with Section 12102 provide for:

(a) The expeditious and cost-effective acquisition of electronic data-processing systems to satisfy state requirements.

(b) The acquisition of electronic data-processing goods and services within a competitive framework.

(c) The delegation of authority by the Department of General Services to each state agency which has demonstrated to the department's satisfaction the ability to conduct cost-effective electronic data-processing goods and services acquisitions.

(d) The exclusion from state bid processes, at the state's option, of any vendor having failed to meet prior contractual requirements related to electronic data-processing goods and services.

(e) The review and resolution of protests submitted by a vendor or vendors with respect to any electronic data-processing goods and services acquisition.

Further, it is the intent of the Legislature that, if a state electronic data-processing advisory committee is established by the Governor or the Director of Finance, the policies and procedures developed by the Director of Finance and the Director of General Services in accordance with this chapter shall be submitted to such committee for review and comment, and that such comment be considered by both departments prior to the adoption of any such policy or procedure.

12102. The Department of Finance and the Department of General Services shall maintain in the State Administrative Manual, policies and procedures governing the acquisition and disposal of electronic data-processing goods and services. Such policies and procedures shall, in accordance with the intent of the Legislature as expressed in Section 12101, provide for the following:

(a) Acquisition of electronic data-processing goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain in the State Administrative Manual appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of electronic data-processing goods and services. Such guidelines may be in the form of standard formats or model formats.

(b) Contract awards shall be based on the proposal which provides the most cost-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Such evaluation procedures may provide for the selection of a vendor on a basis other than cost alone.

(c) Evaluation of bidders' proposals for the purpose of determining contract award shall provide for consideration of a bidder's best financing alternative unless the acquiring agency can demonstrate to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(d) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of such authority. Such authority may be limited by the Department of General Services. Acquisitions conducted under delegated

authority shall be reviewed by the Department of General Services on a selective basis.

(e) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

(f) Protest procedures shall be developed to provide bidders an opportunity to protest formally with respect to any acquisition conducted in accordance with this chapter. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, is authorized to consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to making the award, any vendor who has submitted an offer files a protest with the department against the awarding of the contract or purchase order on the ground that his bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, such contract or purchase order shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting vendor shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(g) Electronic data-processing goods which have been determined to be surplus to state needs shall be disposed of in a manner which will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(h) A vendor may be excluded from bid processes if the vendor's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. Such exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any vendor excluded in accordance with this section shall be reinstated as a qualified vendor at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the vendor's exclusion have been corrected.

12103. In addition to the mandatory requirements enumerated in Section 12102 the acquisition policies developed and maintained by the Department of Finance and procedures developed and maintained by the Department of General Services in accordance with this chapter may provide for:

(a) Price negotiation with respect to contracts entered into in accordance with this chapter.

(b) System or equipment component performance, or availability standards, including an assessment of the added cost to the state to receive contractual guarantee of a level of performance.

(c) Requirement of a bond or assessment of a cost penalty with

respect to a contract or consideration of a contract offered by a vendor whose performance has been determined unsatisfactory in accordance with established procedures maintained in the State Administrative Manual as required by Section 12102.

12104. In any acquisition subject to this chapter involving the replacement of a computer central processing unit, if only one bid is received, and that bid is from the vendor whose equipment is being replaced, a notification of intent to award a contract to such sole bidder shall be submitted to the chairman of the committee in each house which considers appropriations and the Chairman of the Joint Legislative Budget Committee not less than 30 days prior to an award of contract. Such notification shall describe the rationale for the award and the measures taken by the state to elicit more than one bid.

12105. The Department of General Services and the Department of Finance shall coordinate in the development of policies and procedures which implement the intent of this chapter. The Department of Finance shall have the final authority in the determination of any such general policy and the Department of General Services shall have the final authority in the determination of any such procedure.

12106. The Department of General Services may, in addition to fulfilling the mandatory requirements enumerated in Section 12102, adopt such rules and regulations as are necessary for the purposes of this chapter.

12107. The Department of General Services shall report by January 15th of each year to the chairman of the committee in each house which considers appropriations and the Chairman of the Joint Legislative Budget Committee as to acquisitions accomplished in accordance with this chapter. Such reports shall address any significant problems encountered in the implementation and use of the authority provided in this chapter, measures taken to resolve such problems, and to the extent deemed necessary, recommended changes to this chapter or other statutes. The information to be provided regarding acquisitions may be summarized, but shall include such information as: (1) the number of noncompetitive awards and the reasons for each such award; (2) the extent to which acquisitions have been delegated, and to which departments; (3) information as to formal protests by bidders; and (4) such other information as will provide a meaningful accounting of acquisitions made in accordance with this chapter.

This section shall be operative until January 1, 1983, at which time it is repealed.

12108. Until such time as the Department of General Services has published in the State Administrative Manual the procedures required in accordance with Section 12102, acquisitions of electronic data-processing goods and services shall be accomplished in accordance with either existing State Administrative Manual procedures for the acquisition of electronic data-processing goods

and services, or Article 2 (commencing with Section 14790) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code, as determined by the Department of General Services.

12109. The Director of General Services may make the services of the department under this chapter available, upon such terms and conditions as may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the purchase or lease of electronic data-processing goods or services.

12110. The Department of General Services is authorized to make purchases or leases of electronic data-processing goods and services, other than printed material, on behalf of any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of goods or services, upon written request of such local agency; provided that such purchase or lease can be made by the Department of General Services upon the same terms, conditions and specifications at a price lower than the local agency can obtain through its normal acquisition procedures. The state shall incur no financial responsibility in connection with purchases for local agencies under this section. No purchase or lease shall be for less than five hundred dollars ($500) and the local agency shall accept sole responsibility for payment to the vendor. All purchases and leases shall be subject to audit and inspection by the local agency for which made.

Purchases and leases under this section shall be subject to the provisions of this chapter.

A charge shall be made to each local agency availing itself of this service, such charge to be not less than the estimated cost to the department of rendering the service, including costs incurred by the department in preparation for a purchase or lease requested by a local agency in instances where such request is canceled or withdrawn by the local agency prior to award of the contract or purchase order by the department.

12111. The definitions pertaining to electronic data-processing as contained in Section 11700 of the Government Code and the State Administrative Manual shall apply to this chapter.

12112. Any contract for electronic data-processing goods or services, to be manufactured or performed by the contractor especially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on such terms and conditions as the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract

securing the faithful performance of the contract by the contractor.

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## CHAPTER 256

An act to repeal Sections 81640, 81642, 81643, 81648, 81649, 81649.1, 81649.5, 81657, and 81658 of the Education Code, to repeal Sections 4380, 4381, 61600, 61620, 61625, 61626, 61626.5, and 61715 of, to repeal Chapter 3.5 (commencing with Section 4220) of Division 5 of Title 1 of, to repeal Article 9 (commencing with Section 25540) of Chapter 5 of Division 2 of Title 3 of, the Government Code, to repeal Sections 4080, 4081, 4082, 4083, 4084, 4085, 4131, 4137, 5820, 5900.5, 5900.6, 5900.7, 5910, 5950, 6075, 6077.5, 6080, 6272, 6273, 6274, 6295, 6301, 6302, 6303, 6304, 6862, 6863, 6864, 6865, 6895, 6901, 6902, 6903, 6904, 7149, 7153, 7154, 7155, 7156, and 7157 of the Harbors and Navigation Code, to repeal Sections 4602.4, 4602.5, 4627, 4634, 4636, 4636.8, 4741, 4742.2, 4755, 4865, 4885, 4888, 6407, 6512, 6515.1, 6515.2, 6515.3, 6515.5, 13852, 13867, and 13868 of the Health and Safety Code, to add Chapter 3 (commencing with Section 3400) to Part 1 of Division 2 of, Article 3.6 (commencing with Section 20150), Article 6 (commencing with Section 20202.1), Article 41 (commencing with Section 20650), Article 42 (commencing with Section 20670), Article 43 (commencing with Section 20680), Article 44 (commencing with Section 20690), Article 45 (commencing with Section 20710), Article 46 (commencing with Section 20720), Article 47 (commencing with

Section 20730), Article 48 (commencing with Section 20750), Article 49 (commencing with Section 20760), Article 50 (commencing with Section 20780), Article 51 (commencing with Section 20790), Article 52 (commencing with Section 20800), Article 53 (commencing with Section 20810), Article 54 (commencing with Section 20820), Article 55 (commencing with Section 20830), Article 56 (commencing with Section 20840), Article 57 (commencing with Section 20850), Article 58 (commencing with Section 20880), Article 59 (commencing with Section 20890), and Article 60 (commencing with Section 20910), to Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, to repeal Sections 16406, 16461, 16463, 16464, 16465, 16466, 16502, 16503, 16504, 16505, 16506, 16507, 16508, 16532, 16533, 16534, 16535, 16536, 16537, 16538, 16539, 16540, 16541, 16542, 16543, and 16544 of the Public Utilities Code, and to repeal Sections 5820, 5834, 5834.1, 5835, 5835.1, 5835.2, 5835.3, 5896.1, 5896.2, 5896.9, 5896.10, 5896.11, 5896.12, 6760, 6764, 6765, 6766, 6767, 6768, 6769, 6770, 6771, 6772, 6780, 6781, 6782, 6783, 6784, 6785, 6786, 6787, 6788, 6789, 6790, 6791, 6792, 6793, 6794, 19002, 19150, 19165, 19165.1, 19166, 22006, 22110, 22111, 22112, 22675, 22676, 22677, 22678, 22679, 27164, 27170, 27173, 27173.5, 27173.6, 27173.7, 27173.9, and 27173.10 of the Streets and Highways Code, relating to public contracts.

[Approved by Governor July 14, 1983. Filed with Secretary of State July 14, 1983.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 81640 of the Education Code is repealed.

SEC. 2. Section 81642 of the Education Code is repealed.

SEC. 3. Section 81643 of the Education Code is repealed.

SEC. 4. Section 81648 of the Education Code is repealed.

SEC. 5. Section 81649 of the Education Code is repealed.

SEC. 6. Section 81649.1 of the Education Code is repealed.

SEC. 7. Section 81649.5 of the Education Code is repealed.

SEC. 8. Section 81657 of the Education Code is repealed.

SEC. 9. Section 81658 of the Education Code is repealed.

SEC. 10. Chapter 3.5 (commencing with Section 4220) of Division 5 of Title 1 of the Government Code is repealed.

SEC. 11. Section 4380 of the Government Code is repealed.

SEC. 12. Section 4381 of the Government Code is repealed.

SEC. 13. Article 9 (commencing with Section 25540) of Chapter 5 of Division 2 of Title 3 of the Government Code is repealed.

SEC. 14. Section 61600 of the Government Code is repealed.

SEC. 15. Section 61620 of the Government Code is repealed.

SEC. 16. Section 61625 of the Government Code is repealed.

SEC. 17. Section 61626 of the Government Code is repealed.

SEC. 18. Section 61626.5 of the Government Code is repealed.

SEC. 19. Section 61715 of the Government Code is repealed.

SEC. 20. Section 4080 of the Harbors and Navigation Code is

this division or by the board.

20207.7. Unless the amount involved in the purchase at any one time of any articles for which no contract has been entered into exceeds four thousand dollars ($4,000), the board may purchase the articles without the necessity of advertising or letting contracts. Where the cost of any articles for which no contract has been entered into exceeds four thousand dollars ($4,000), the board shall advertise for sealed bids for furnishing the district such articles. In the matter of advertising, opening and accepting bids, and the letting of contracts, the board shall proceed in all respects in the manner and form provided in the case of contracts for annual supplies.

SEC. 84. Article 41 (commencing with Section 20650) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 41.

20650. The provisions of this article shall apply to contracts by community college districts as provided for in Part 49 (commencing with Section 81000) of the Education Code.

20651. The governing board of any community college district shall let any contracts involving an expenditure of more than twelve thousand dollars ($12,000) for work to be done or more than eighteen thousand dollars ($18,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

20652. Notwithstanding any other provisions of Sections 81640 to 81654, inclusive, of the Education Code, or of Sections 20651 to 20659, inclusive, of this code, the governing board of any community college district without advertising for bids may authorize by contract, lease, requisition or purchase order, any public corporation or agency within the county whose superintendent of schools has jurisdiction over such district, to lease data processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors and other personal property for the district in the manner in which such other public corporation or agency is authorized by law to make such leases or purchases. Upon receipt of any such personal property, provided the same complies with the specifications set forth in the contract, lease, requisition or purchase order, the community college district shall draw a warrant in favor of such other public corporation or agency for the amount of the approved invoice, including the reasonable costs to such other public corporation or agency for furnishing the services incidental to the lease or purchase of such personal property.

20653. Nothing in this code shall preclude the governing board of any community college district from purchasing materials, equipment or supplies through the Department of General Services pursuant to Section 14814 of the Government Code.

20654. In an emergency when any repairs, alterations, work or improvement is necessary to permit the continuance of existing college classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

20655. In each community college district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20656 by day labor, or by force account, whenever the total cost of labor on the job does not exceed seven thousand five hundred dollars ($7,500), or the total number of hours on the job does not exceed 350 hours, whichever is greater, provided that in any district having an average daily attendance of 15,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance as defined in Section 20656, by day labor or by force account whenever the total cost of labor on the job does not exceed fifteen thousand dollars ($15,000), or the total number of hours on the job does not exceed 750 hours, whichever is greater.

For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

20656. For purposes of Section 20655, "maintenance" means routine, recurring, and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered or repaired. "Facility" means any plant, building, structure, ground facility, utility system, or real property.

This definition of "maintenance" expressly includes, but is not limited to: carpentry, electrical, plumbing, glazing, and other craft work designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually usable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

This definition does not include, among other types of work, janitorial or custodial services and protection of the sort provided by guards or other security forces.

It is the intent of the Legislature that this definition does not include painting, repainting, or decorating other than touchup, but instead it is the intent of the Legislature that such activities be controlled directly by the provisions of Section 20655.

20657. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the

provisions of this article requiring work to be done by contract after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California Community College Budget and Accounting Manual for a period of not less than three years after completion of the project.

Notwithstanding the provisions of Section 20651, informal bidding may be used on projects estimated by the district to cost up to and including the limits set forth in Section 20655. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects, in such manner as the district deems appropriate.

20658. The governing board of any community college district may by majority vote authorize its district superintendent, or such person as he or she may designate, to expend up to two hundred fifty dollars ($250) per transaction for work done, compensation for employees or consultants, and purchases of equipment, supplies, or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to this section. In the event of malfeasance in office, the district official invested by the governing board with authority to act under this section shall be personally liable for any and all moneys of the district paid out as a result of such malfeasance.

20659. If any change or alteration of a contract governed by the provisions of this article is ordered by the governing board of the community college district, such change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

(a) The amount specified in Section 20651 or 20655, whichever is applicable to the original contract; or

(b) Ten percent of the original contract price.

SEC. 85. Article 42 (commencing with Section 20670) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 42.

20670. The provisions of this article shall apply to contracts by public entities as provided for in Division 5 (commencing with Section 4000) of the Government Code.

20671. As used in this chapter:

(a) "Public leaseback" means any lease by a public entity, as

## CHAPTER 173

An act to amend Sections 81645 and 81645.5 of the Education Code, and to amend Sections 20111 and 20651 of the Public Contract Code, relating to schools.

[Approved by Governor June 8, 1984. Filed with Secretary of State June 8, 1984.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 81645 of the Education Code is amended to read:

81645. The governing board of any community college district may contract with an acceptable party who is one of the three lowest responsible bidders for the procurement or maintenance, or both, of electronic data-processing systems and supporting software in any manner the board deems appropriate.

SEC. 2. Section 81645.5 of the Education Code is amended to read:

81645.5. In addition to utilizing the procedures specified in Article 9 (commencing with Section 81450) of Chapter 2, any community college district may, by direct sale or otherwise, sell to a purchaser any electronic data-processing equipment or other major items of equipment owned by, or to be owned by, the district, if the purchaser agrees to lease the equipment back to the district for use by the district following the sale.

The approval by the governing board of the district of the sale and leaseback shall be given only if the governing board finds, by resolution, that the equipment is data-processing equipment or

another major item of equipment within the meaning of this section and that the sale and leaseback is the most economical means for providing electronic data-processing equipment or other major items of equipment to the district.

SEC. 3. Section 20111 of the Public Contract Code is amended to read:

20111. The governing board of any school district shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

SEC. 4. Section 20651 of the Public Contract Code is amended to read:

20651. The governing board of any community college district shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

# CHAPTER 728

An act to amend the heading of Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of, and to amend Sections 12100, 12101, 12102, 12108, 12109, 12110, and 12112 of, the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 1984. Filed with Secretary of State August 24, 1984.]

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code is amended to read:

CHAPTER 3. ACQUISITION OF ELECTRONIC DATA-PROCESSING AND TELECOMMUNICATIONS GOODS AND SERVICES

SEC. 2. Section 12100 of the Public Contract Code is amended to read:

12100. The Legislature finds that the unique aspects of electronic data-processing systems and telecommunications systems and the importance of such systems to state programs warrant a separate acquisition authority for electronic data-processing and telecommunications goods and services. The Legislature further finds that such separate authority should enable the timely acquisition of goods and services in order to meet the state's needs in the most cost-effective manner.

All contracts for the acquisition of electronic data-processing or telecommunications services and all contracts for the acquisition of electronic data-processing or telecommunications goods, whether by lease or purchase, shall be made by or under the supervision of the Department of General Services.

SEC. 3. Section 12101 of the Public Contract Code is amended to read:

12101. It is the intent of the Legislature that policies developed by the Department of Finance and procedures developed by the Department of General Services in accordance with Section 12102 provide for:

(a) The expeditious and cost-effective acquisition of electronic data-processing and telecommunications systems to satisfy state requirements.

(b) The acquisition of electronic data-processing and telecommunications goods and services within a competitive framework.

(c) The delegation of authority by the Department of General Services to each state agency which has demonstrated to the

unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. Such exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any vendor excluded in accordance with this section shall be reinstated as a qualified vendor at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the vendor's exclusion have been corrected.

SEC. 5. Section 12108 of the Public Contract Code is amended to read:

12108. Until such time as the Department of General Services has published in the State Administrative Manual the procedures required in accordance with Section 12102, acquisitions of electronic data-processing and telecommunications goods and services shall be accomplished in accordance with either existing State Administrative Manual procedures for the acquisition of electronic data-processing goods and services, or Article 2 (commencing with Section 14790) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code, as determined by the Department of General Services.

SEC. 6. Section 12109 of the Public Contract Code is amended to read:

12109. The Director of General Services may make the services of the department under this chapter available, upon such terms and conditions as may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the purchase or lease of electronic data-processing or telecommunications goods or services.

SEC. 7. Section 12110 of the Public Contract Code is amended to read:

12110. (a) The Department of General Services is authorized to make purchases or leases of electronic data-processing or telecommunications goods and services, other than printed material, on behalf of any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of goods or services, upon written request of such local agency; provided that such purchase or lease can be made by the Department of General Services upon the same terms, conditions and specifications at a price lower than the local agency can obtain through its normal acquisition procedures. The state shall incur no financial responsibility in connection with purchases for local agencies under this section. No purchase or lease shall be for less than five hundred dollars ($500) and the local agency shall accept sole responsibility for payment to the vendor. All purchases and leases shall be subject to audit and inspection by the local agency for which made.

(b) Purchases and leases under this section shall be subject to the provisions of this chapter.

(c) A charge shall be made to each local agency availing itself of

this service, the charge to be not less than the estimated cost to the department of rendering the service, including costs incurred by the department in preparation for a purchase or lease requested by a local agency in instances where the request is canceled or withdrawn by the local agency prior to award of the contract or purchase order by the department.

SEC. 8. Section 12112 of the Public Contract Code is amended to read:

12112. Any contract for electronic data-processing or telecommunications goods or services, to be manufactured or performed by the contractor especially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on such terms and conditions as the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

SEC. 9. Notwithstanding any other provision of law, the Newport-Mesa Unified School District may make payment, without compliance with any provisions of the law related to competitive bidding, for personal computers which it has heretofore received, at a price less than 50 percent of the retail price of said personal computers; provided, however, the total expenditures permitted by this act shall not exceed the sum of eighty thousand dollars ($80,000).

Due to the unique circumstances concerning the Newport-Mesa Unified School Distict, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Newport-Mesa Unified School District has received possession of personal computers at a price greatly under the market value and selling price of the computers. In order that the district may retain possession of such computers and make timely payment for them, it is necessary that this act take effect immediately.

## CHAPTER 758

An act to amend Sections 21202, 21204, 21207, 21209, and 21213 of, to amend and repeal Section 10122 of, to add and repeal Section 20102 to, and to repeal and add Section 21206 of, the Public Contract Code, relating to public contracts.

[Approved by Governor August 24, 1984. Filed with Secretary of State August 27, 1984.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 10122 of the Public Contract Code is amended to read:

10122. (a) Work on all projects shall be done under contract awarded to the lowest responsible bidder pursuant to this part, except that it may be done by day's labor under the direction of the department, by contract upon informal bids, or by a combination

thereof:

(1) In case of emergency due to the failure or threat of failure of any bridge or other highway structure.

(2) In case of emergency due to the failure or threat of failure of any dam, reservoir, aqueduct, or other water facility or facility appurtenant thereto.

(3) In case of emergency due to damage to a state-owned building or any other state-owned real property or improvements located thereon, by an act of God, including, but not limited to, damage by storm, flood, fire or earthquake, for work and remedial measures which are required immediately.

(4) At any time after the approval of plans, specifications and estimates of cost, if the director deems the advertising or award of a contract, the acceptance of any bid, or the acceptance of any further bids after the rejection of all submitted bids, is not in the best interests of the state.

(b) Where plans and specifications have been prepared for a public project to be put out for formal or informal bid, and subsequently the department elects to perform the work by day's labor, the department shall perform the work in strict accordance with these same plans and specifications. Revisions of the plans and specifications may be made once a justification detailing the specific reasons for the change or changes has been approved by the director of the awarding department.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1991, pursuant to Section 9611 of the Government Code, Section 10122 as added by Chapter 306 of the Statutes of 1981, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2. Section 20102 is added to the Public Contract Code, to read:

20102. Notwithstanding any other provision of this part to the contrary, where plans and specifications have been prepared by a public agency, whose activities are subject to this part, in order for a public project to be put out for formal or informal bid, and, subsequently, the public agency elects to perform the work by day's labor, the public agency shall perform the work in strict accordance with these same plans and specifications.

Revisions of the plans and specifications may be made once a justification detailing the specific reasons for the change or changes has been approved by the public agency or its project director and a copy of the change and its justification is placed in the project file.

This section shall remain in effect only until January 1, 1991, and as of such date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1991, deletes or extends such date.

SEC. 3. Section 21202 of the Public Contract Code is amended to read:

21202. (a) Public projects of fifteen thousand dollars ($15,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

(b) Public projects of fifty thousand dollars ($50,000) or less may be let to contract by informal procedures as set forth in this article.

(c) Public projects of more than fifty thousand dollars ($50,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

SEC. 4. Section 21204 of the Public Contract Code is amended to read:

21204. Each public agency which elects to become subject to the uniform construction accounting procedures set forth in Article 2 (commencing with Section 21100), shall enact an informal bidding ordinance to govern the selection of contractors to perform public projects pursuant to subdivision (b) of Section 21202. The ordinance shall include all of the following:

(a) The public agency shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the commission.

(b) All contractors on the list for the category of work being bid and/or all construction trade journals specified in Section 21206 shall be mailed a notice inviting informal bids unless the product or service is proprietary.

(c) All mailing of notices to contractors and construction trade journals pursuant to subdivision (b) shall be completed not less than 10 calendar days before bids are due.

(d) The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.

(e) The governing body of the public agency may delegate the authority to award informal contracts to the public works director, general manager, purchasing agent, or other appropriate person.

SEC. 5. Section 21206 of the Public Contract Code is repealed.

SEC. 6. Section 21206 is added to the Public Contract Code, to read:

21206. The commission shall determine, on a county-by-county basis, the appropriate construction trade journals which shall receive mailed notice of all informal and formal construction contracts being bid for work within the specified county.

SEC. 7. Section 21207 of the Public Contract Code is amended to read:

21207. Notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the jurisdiction of the public agency; or, if there is no newspaper printed and published within the jurisdiction of the public agency, in a newspaper of general

circulation which is circulated within the jurisdiction of the public agency, or, if there is no newspaper which is circulated within the jurisdiction of the public agency, publication shall be by posting the notice in at least three places within the jurisdiction of the public agency as have been designated by ordinance or regulation of the public agency as places for the posting of its notices. The notice inviting formal bids shall also be mailed to all construction trade journals specified in Section 21206. The notice shall be mailed at least 30 calendar days before the date of opening the bids. In addition to notice required by this section, the public agency may give such other notice as it deems proper.

SEC. 8. Section 21209 of the Public Contract Code is amended to read:

21209. The governing body of the public agency shall adopt plans, specifications, and working details for all public projects of more than fifty thousand dollars ($50,000).

SEC. 9. Section 21213 of the Public Contract Code is amended to read:

21213. In those circumstances as set forth in subdivision (a) of Section 21212, a request for commission review shall be in writing, sent by certified or registered mail received by the commission postmarked not later than five business days from the date the public agency has rejected all bids. In those circumstances set forth in subdivision (b) or (c) of Section 21212, a request for commission review shall be by letter received by the commission not later than five days from the date an interested party formally complains to the public agency. The commission review shall commence immediately and conclude within 30 days from the receipt of the request for commission review. During the review of a project that falls within subdivision (a) of Section 21212, the agency shall not proceed on the project until a final decision is received by the commission.

SEC. 10. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

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# CHAPTER 1073

An act to add Article 3 (commencing with Section 3300) to Chapter 3 of Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 27, 1985. Filed with Secretary of State September 27, 1985.]

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature that this act shall apply only to contractors who contract directly with public entities pursuant to the Public Contract Code.

SEC. 2. Article 3 (commencing with Section 3300) is added to Chapter 3 of Part 1 of Division 2 of the Public Contract Code, to read:

## Article 3. Bidders

3300. (a) Any public entity, as defined in Section 1100, the University of California, and the California State University shall specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded. The specification shall be included in any plans prepared for a public project and in any notice inviting bids required pursuant to this code.

This requirement shall apply only with respect to contractors who contract directly with the public entity.

(b) A contractor who is not awarded a public contract because of

the failure of an entity, as defined in subdivision (a), to comply with that subdivision shall not receive damages for the loss of the contract.

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# CHAPTER 886

An act to amend Sections 17708, 17714, 17736, 17740, 17742, 17742.5, 17747, 39015, 39140, 39246, 39305, and 39381, of, to amend and renumber Sections 17717.6 and 17717.7 of, to add Sections 17708.3, 17719.5, 17721.3, 17722.7, 17740.1, 17740.3, 17742.2, 17742.3, 17742.7, 17746.7, 17788.5, 39619.2, and 42250.3 to, to repeal Chapter 23 (commencing with Section 17760) of Part 10 of, and to repeal and add Section 17749 of, the Education Code, to add Section 33445.5 to the Health and Safety Code, and to add Section 20111.5 to the Public Contract Code, relating to school facilities, and making an appropriation therefor.

[Approved by Governor September 18, 1986. Filed with Secretary of State September 18, 1986.]

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known and may be cited as the Greene-Hughes School Facilities Act of 1986.

SEC. 2. Section 17708 of the Education Code is amended to read:

17708. A fund is hereby created in the State Treasury to be known as the State School Building Lease-Purchase Fund. All money in the State School Building Lease-Purchase Fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated for expenditure pursuant to this chapter.

The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the State School Building Lease-Purchase Fund from any source.

SEC. 3. Section 17708.3 is added to the Education Code, to read:

17708.3. (a) The board may establish a revolving loan account within the State School Building Lease-Purchase Fund, and may allocate from the fund to that account those amounts it determines to be necessary for the purposes of this section.

(b) The board may apportion to any school district that submits to the board a statement of its intent to subsequently file a project application under this chapter, a loan for the purpose of advance planning and related administrative costs pursuant to the preparation of that application. The loan amount shall not exceed 3 percent of the estimated project cost, as determined pursuant to the building cost standards established under this chapter.

(c) If, within a period of 24 months following the receipt of any loan amounts under this section, the project for which those advance planning funds were provided has not been found by the board to

board may transmit a written copy of those findings, together with supporting information, materials, and documents, to the redevelopment agency. The redevelopment agency shall conduct a public hearing within 45 days after receiving the findings to receive public testimony identifying the effects of the redevelopment plan on the impacted attendance area or areas and suggesting revisions to the plan as adopted or amended by the legislative body that would alleviate or eliminate the overcrowding in the attendance area or areas caused by the implementation of the redevelopment plan. The redevelopment agency shall send written notice of the public hearing to, and at the hearing receive public testimony from, any affected taxing entity. After receiving that testimony at the hearing, the agency shall consider amendments of the plan necessary to alleviate or eliminate that overcrowding and may recommend those amendments for adoption by the legislative body.

(b) Section 33353 does not apply to an amendment of the plan proposed pursuant to subdivision (a) when both of the following occur:

(1) The amendment proposes only to add significant additional capital improvement projects to alleviate or eliminate the overcrowding in the attendance area or areas caused by the implementation of the plan.

(2) The amendment will delete capital improvement projects that are equivalent in financial impact on any affected taxing entity or otherwise modify the plan in a way that the agency finds there will be no additional financial impact or any affected taxing entity as a result of the amendment.

(c) Any funds received by a school district from a redevelopment agency to alleviate or eliminate the overcrowding in the attendance area or areas caused by implementation of a redevelopment plan as the result of a public hearing conducted pursuant to subdivision (a) shall be used only for capital expenditures.

(d) The governing body of a school district shall not make the findings permitted by subdivision (a) with respect to any project area more than once.

(e) This section applies only to redevelopment plans adopted prior to January 1, 1984.

SEC. 33. Section 20111.5 is added to the Public Contract Code, to read:

20111.5. The following procedures shall apply to any contracts entered into by any school district pursuant to the funding approval of any district project under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code:

(a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and

financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 for a project funded under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded. A proposal form shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (b), for at least one day prior to that date.

SEC. 34. The Legislative Analyst shall report to the Legislature on or before January 1, 1990, regarding the value of year-round education incentive funding pursuant to this act in reducing the need for school facility construction.

SEC. 35. The amendments to Section 39305 of the Education Code set forth in Section 28 do not constitute a change in, but are declaratory of the existing law.

SEC. 36. The State Allocation Board shall review the funding priorities it has established pursuant to Chapter 22 (commencing with Section 17700) to reflect the changes to that chapter by this act.

Applications for state funding filed with the State Allocation Board on or before January 1, 1987, shall take priority over applications submitted after that date under revised standards.

SEC. 37. (a) The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the State School Building Lease-Purchase Fund to the Department of General Services, Office of Local Assistance, for the purpose of contracting with the Office of the Legislative Analyst. The Office of the Legislative Analyst, in consultation with the Office of Local Assistance and the State Department of Education, shall contract with an individual, group of individuals, firm or organization deemed qualified and competent to study and develop recommendations to simplify and shorten the time to complete the administrative processes related to state funding for school facilities. The study shall include, but need not be limited to, an assessment of the feasibility and desirability of all of the following:

(1) Allocating funding with less state involvement and eligibility has been determined.

(2) Allocating funding on the basis of availability of teaching spaces as opposed to total square footage.

(3) Exploring the possibility of the use of self-certification on documents submitted by applicant districts with the intent of limiting steps in the current process.

(4) Improving enrollment project methods, including more efficient and timely use of California Basic Education Data System (CBEDS) information.

(5) Establishing regional school facility planning units through the county offices of education.

(6) Such other recommendations as the contractor may suggest to improve the efficiency of the administrative processes related to state funding for school facilities.

(7) Making greater use of automation in the application process.

For any improvements to the current process determined to be both feasible and desirable, the contractor shall propose specific implementation methods, time tables, and costs or savings. The contractor shall submit a preliminary report on or before August 1, 1987, and a final report on or before January 10, 1988.

The Department of General Services, Office of Local Assistance, shall report to the Office of the Legislative Analyst on or before November 1, 1988, on the status of implementation of the recommendations made by the study contractor.

SEC. 38. Sections 1 to 37, inclusive, of this act shall become operative only if Assembly Bill 2926 is enacted and becomes effective on January 1, 1987.

SEC. 39. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

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CHAPTER 1060

An act to add Section 14030.5 to the Government Code, and to add Chapter 2 (commencing with Section 2000) to Part 1 of Division 2 of the Public Contract Code, relating to contracts.

[Approved by Governor September 23, 1986. Filed with Secretary of State September 24, 1986.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 14030.5 is added to the Government Code, to read:

14030.5. (a) As used in this section, the following terms have the following meanings:

(1) "Socially and economically disadvantaged business concern"

means a business that meets both of the following criteria:

(A) A business that is at least 51 percent owned by one or more socially and economically disadvantaged persons or one or more socially or economically disadvantaged persons or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more of those persons.

(B) A business whose management and daily business operations are controlled by one or more socially and economically disadvantaged persons or one or more socially or economically disadvantaged persons.

(2) "Socially and economically disadvantaged persons" and "socially or economically disadvantaged persons" include women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other group of natural persons determined by the director to be so disadvantaged.

(b) The department shall certify socially and economically disadvantaged business concerns, as defined by subdivision (a). All state agencies shall, and any local agency may, accept the certification of a socially and economically disadvantaged business concern by the department as valid status of that business when awarding contracts to socially and economically disadvantaged business concerns. No state agency shall require the business to comply with any other certification process for certifying socially and economically disadvantaged business concerns.

SEC. 2. Chapter 2 (commencing with Section 2000) is added to Part 1 of Division 2 of the Public Contract Code, to read:

## CHAPTER 2. RESPONSIVE BIDDERS

2000. (a) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the local agency relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the local agency for that participation, the local agency shall evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the local agency relating to participation in the contract by minority

or women business enterprises.

(b) (1) The bidder attended any presolicitation or prebid meetings that were scheduled by the local agency to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A local agency may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the local agency for minority or women business enterprises that are interested in participating in the project. This paragraph applies only if the local agency gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.

(4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, the local agency shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the local agency as minority or women business enterprises. If the local agency does not provide that list or source of lists to the bidder, the bidder may utilize the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business

enterprises, as determined by the local agency.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the local agency or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the local agency to produce a level of participation sufficient to meet the goals and requirements of the local agency.

(c) The performance by a bidder of all of the criteria specified in subdivision (b) shall create a rebuttable presumption, affecting the burden of producing evidence, that a bidder has made a good faith effort to comply with the goals and requirements relating to participation by minority and women business enterprises established pursuant to subdivision (a).

(d) "Local agency," as used in this section, means a county or city, whether general law or chartered, city and county, or district. "District," as used in this section, means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(e) "Minority or women business enterprise," as used in this section, means a business enterprise that meets both of the following criteria:

(1) A business that is at least 51 percent owned by one or more minority persons or women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority persons or women.

(2) A business whose management and daily business operations are controlled by one or more minority persons or women.

(f) "Minority person," for purposes of this section, means Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), or any other group of natural persons identified as minorities in the project specifications by the local agency.

(g) This section does not apply to any of the following:

(1) Any contract, funded in whole or in part by the federal government, to the extent of any conflict between the requirements imposed by this section and any requirements imposed by the federal government relating to participation in a contract by a minority or women business enterprise as a condition of receipt of the federal funds.

(2) The San Francisco Bay Area Rapid Transit District, the Los Angeles County Transportation Commission, or any other local agency that has authority to facilitate the participation of minority

or women business enterprises substantially similar to the authority granted to the San Francisco Bay Area Rapid Transit District pursuant to Section 20229 of this code or the Los Angeles County Transportation Commission pursuant to Section 130239 of the Public Utilities Code.

SEC. 3. The Legislature finds and declares that existing statutes requiring that contracts be let to the "lowest responsible bidder" have prevented many local agencies from considering the responsiveness of a bidder to affirmative action or minority or women business enterprise requirements. The Legislature further finds and declares that it is necessary to establish uniformity in determining whether or not bidders on public works contracts have made a good faith effort to meet the goals and requirements established by a local agency regarding the participation in the contract by minority business enterprises and women business enterprises. The Legislature further finds and declares that the encouragement of, and participation by, minority and women business enterprises in public works contracts is a matter of statewide concern.

SEC. 4. It is the intention of the Legislature through the enactment of Sections 2 and 3 of this act to occupy the whole field of the regulation of procedures for determining good faith efforts by bidders on public works contracts. Thus, if a local agency determines to exercise the authority granted by subdivision (a) of Section 2000 of the Public Contract Code, the requirements imposed by that section shall, except as otherwise provided in subdivision (g) of that section, be the exclusive procedure for determining whether bidders have made a good faith effort to meet the goals and requirements established by the local agency regarding participation in contracts by minority business enterprises and women business enterprises. Section 2 of this act prevails, to the extent of any conflict, over any provision of any charter of a chartered city establishing requirements and procedures for determining whether bidders have made a good faith effort to comply with the goals and requirements established by the local agency relating to participation in the contract by minority or women business enterprises.

SEC. 5. Sections 2 and 3 of this act apply to projects for which a public notice of invitation to bid on a project is published or disseminated in the manner otherwise prescribed by law on or after January 1, 1987.

## CHAPTER 102

An act to amend Section 20111.5 of the Public Contract Code, relating to public contracts.

[Approved by Governor July 2, 1987. Filed with Secretary of State July 2, 1987.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 20111.5 of the Public Contract Code is amended to read:

20111.5. (a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded. A proposal form shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (b), for at least one day prior to that date.

# CHAPTER 538

An act to amend Sections 2000 and 20111 of the Public Contract Code, relating to public contracts.

[Approved by Governor August 23, 1988. Filed with Secretary of State August 24, 1988.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 2000 of the Public Contract Code is amended to read:

2000. (a) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the local agency relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the local agency for that participation, the local agency shall evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the local agency relating to participation in the contract by minority or women business enterprises.

(b) (1) The bidder attended any presolicitation or prebid meetings that were scheduled by the local agency to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A local agency may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity

for participation by those enterprises.

(3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the local agency for minority or women business enterprises that are interested in participating in the project. This paragraph applies only if the local agency gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.

(4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, the local agency shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the local agency as minority or women business enterprises. If the local agency does not provide that list or source of lists to the bidder, the bidder may utilize the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the local agency.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the local agency or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the local agency to produce a level of participation sufficient to meet the goals and requirements of the local agency.

(c) The performance by a bidder of all of the criteria specified in

subdivision (b) shall create a rebuttable presumption, affecting the burden of producing evidence, that a bidder has made a good faith effort to comply with the goals and requirements relating to participation by minority and women business enterprises established pursuant to subdivision (a).

(d) "Local agency," as used in this section, means a county or city, whether general law or chartered, city and county, school district, or other district. "District," as used in this section, means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(e) "Minority or women business enterprise," as used in this section, means a business enterprise that meets both of the following criteria:

(1) A business that is at least 51 percent owned by one or more minority persons or women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority persons or women.

(2) A business whose management and daily business operations are controlled by one or more minority persons or women.

(f) "Minority person," for purposes of this section, means Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), or any other group of natural persons identified as minorities in the project specifications by the local agency.

(g) This section does not apply to any of the following:

(1) Any contract, funded in whole or in part by the federal government, to the extent of any conflict between the requirements imposed by this section and any requirements imposed by the federal government relating to participation in a contract by a minority or women business enterprise as a condition of receipt of the federal funds.

(2) The San Francisco Bay Area Rapid Transit District, the Los Angeles County Transportation Commission, or any other local agency that has authority to facilitate the participation of minority or women business enterprises substantially similar to the authority granted to the San Francisco Bay Area Rapid Transit District pursuant to Section 20229 of this code or the Los Angeles County Transportation Commission pursuant to Section 130239 of the Public Utilities Code.

SEC. 2. Section 20111 of the Public Contract Code is amended to read:

20111. The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an

expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise.

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## CHAPTER 1408

An act to amend Sections 65858, 66435, 66435.1, 66443, 66452.5, and 66484 of, and to repeal Section 65858 of, and to repeal Chapter 13 (commencing with Section 4590) and Chapter 14 (commencing with Section 4600) of Division 5 of Title 1 of, the Government Code, and to add Part 4 (commencing with Section 22200) to, and to add and repeal Part 5 (commencing with Section 22300) of, Division 2 of, the Public Contract Code, relating to government.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 13 (commencing with Section 4590) of Division 5 of Title 1 of the Government Code is repealed.

SEC. 2. Chapter 14 (commencing with Section 4600) of Division 5 of Title 1 of the Government Code is repealed.

SEC. 3. Section 65858 of the Government Code as amended by Section 24 of Chapter 1009 of the Statutes of 1984, is amended to read:

65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body, to protect the public safety, health and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains a finding that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in a threat to public health,

(k) Nothing in this section precludes a county or city from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

SEC. 10. Part 4 (commencing with Section 22200) is added to Division 2 of the Public Contract Code, to read:

## PART 4. ARBITRATION OF PUBLIC WORKS CONTRACT CLAIMS

22200. As used in this part:

(a) "Public works contract" means, except for a contract awarded pursuant to the State Contract Act (Part 2 (commencing with Section 10100)), a contract awarded through competitive bids or otherwise by the state, any of its political subdivisions or public agencies for the erection, construction, alteration, repair, or improvement of any kind upon real property.

(b) "Claim" means a demand for monetary compensation or damages, arising under or relating to the performance of any public works contract.

22201. Unless otherwise prohibited by law, the terms of any public works contract may include at the time of bidding and of award a provision for arbitration of any claim pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

SEC. 11. Part 5 (commencing with Section 22300) is added to Division 2 of the Public Contract Code, to read:

## PART 5. WITHHELD CONTRACT FUNDS

22300. Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities

substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors in public contract procedures.

The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____ whose address is _____ _____ hereinafter called "Owner," _____ whose address is _____ _____ hereinafter called "Contractor" and _____ whose address is _____ _____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) Alternatively, the Owner may make payments directly to Escrow Agent in the amount of retention for the benefit of the Owner until such time as the escrow created hereunder is

terminated.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the Contractor and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the contractor. Upon seven days' written notice to the escrow agent from the owner of the default, the escrow agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (4) to (6), inclusive, of this agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

| On behalf of Owner: | On behalf of Contractor: |
|---|---|
| Title | Title |
| Name | Name |
| Signature | Signature |
| Address | Address |

139590

On behalf of Escrow Agent:

_____
Title

_____
Name

_____
Signature

_____
Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

| Owner | Contractor |
|---|---|
| _____ | _____ |
| Title | Title |
| _____ | _____ |
| Name | Name |
| _____ | _____ |
| Signature | Signature |

This part shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1992, deletes or extends that date.

SEC. 12. The transfer of provisions of law from the Government Code to the Public Contract Code made by Sections 1, 2, 10, and 11 of this act does not constitute a change in, but is declaratory of, the existing law.

SEC. 13. The Legislature finds and declares that unique circumstances exist in the unincorporated area of San Diego County which require a different definition of "construction" in Section 66484 of the Government Code amended by Section 9 of this act and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because self-financing authority is provided in Section 66451.2 of the Government Code and because this act affirms for the state that which has been declared existing law or regulated by action of the courts to cover any costs that may be incurred in carrying on any program or performing any service required to be carried on or performed by this act.

# CHAPTER 330

An act to add Section 7104 to the Public Contract Code, relating to public works.

[Approved by Governor September 8, 1989. Filed with Secretary of State September 8, 1989.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 7104 is added to the Public Contract Code, to read:

7104. Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

(a) That the contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) That the public entity shall promptly investigate the

conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.

(c) That, in the event that a dispute arises between the public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

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# CHAPTER 863

An act to add Section 7028.15 to the Business and Professions Code, relating to contractors.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 7028.15 is added to the Business and Professions Code, to read:

7028.15. (a) It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:

(1) The person is particularly exempted from the provisions of this chapter.

(2) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code.

(b) If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this subdivision means the aggregate sum of the cost of materials and labor furnished and the

cost of completing the work to be performed.

(c) This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.

(d) This section shall not affect the right or ability of a licensed architect or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.

(e) A licensed contractor shall not submit a bid to a public agency unless his or her contractor's license number appears clearly on the bid, the license expiration date is stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. Any bid not containing this information, or a bid containing information which is subsequently proven false, shall be considered nonresponsive and shall be rejected by the public agency.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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# CHAPTER 1163

An act to amend Sections 20111, 20129, 20192, and 20405 of, to add Sections 20107, 20189, 20201.5, 20204.3, 20214, 20224.5, 20234, 20242, 20251.5, 20262, 20274, 20284, 20294, 20302, 20314, 20322, 20332, 20342, 20352, 20374, 20392.5, 20471.5, 20522, 20551.5, 20564.5, 20584.5, 20602.5, 20624, 20633.5, 20642.5, 20651.5, 20685.5, 20688.25, 20694.5, 20724, 20737, 20752.2, 20761.5, 20784, 20804.5, 20832.5, 20843.5, 20893.5, and 20916.5 to, to add Article 60.5 (commencing with Section 20920) to Chapter 1.5 of Part 3 of Division 2 of, and to repeal and add Sections 20413, 20483, 20501, 20512, 20532, 20674, and 20867 of, the Public Contract Code, and to amend Section 130232 of the Public Utilities Code, relating to public contracts.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 20107 is added to the Public Contract Code, to read:

20107. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the school district.

(c) A certified check made payable to the school district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

SEC. 2. Section 20111 of the Public Contract Code is amended to read:

20111. (a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all materials and supplies whether patented or otherwise.

SEC. 3. Section 20129 of the Public Contract Code is amended to read:

20129. (a) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the county.

(3) A certified check made payable to the county.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the county.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

(b) The person to whom the contract is awarded shall execute a bond to be approved by the board for the faithful performance of the contract.

SEC. 4. Section 20189 is added to the Public Contract Code, to read:

20189. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the local agency.

(c) A certified check made payable to the local agency.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the local agency.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the local agency beyond 60 days from the time the award is made.

SEC. 5. Section 20192 of the Public Contract Code is amended to read:

20192. (a) Whenever the cost of construction of any office building, warehouse, or garage of the district constructed under Section 20191 exceeds the sum of two thousand dollars ($2,000), the district shall adopt plans and specifications and working details, as may be proper, and shall advertise for bids for the work in accordance with the plans and specifications so adopted. All bidders shall be afforded an opportunity to examine the plans and specifications and the district shall award the contract to the lowest responsible bidder.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.
(2) A cashier's check made payable to the district.
(3) A certified check made payable to the district.
(4) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

(c) The person or corporation to whom the contract is awarded shall be required to execute a bond for the faithful performance of the contract. The form of the bond shall be approved by the board of directors. In cases of great emergency and when necessary to protect life and property, the board of directors, by unanimous vote of all members present, may without advertising for bids therefor, have the work done by day labor.

SEC. 6. Section 20201.5 is added to the Public Contract Code, to read:

20201.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
(a) Cash.
(b) A cashier's check made payable to the district.
(c) A certified check made payable to the district.
(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 7. Section 20204.3 is added to the Public Contract Code, to read:

20204.3. All bids submitted pursuant to this article shall be presented under sealed cover and shall be accompanied by one of the following forms of security:
(a) Cash.
(b) A cashier's check made payable to the district.
(c) A certified check made payable to the district.
(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 8. Section 20214 is added to the Public Contract Code, to read:

20214. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
(a) Cash.
(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 9. Section 20224.5 is added to the Public Contract Code, to read:

20224.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 10. Section 20234 is added to the Public Contract Code, to read:

20234. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 11. Section 20242 is added to the Public Contract Code, to read:

20242. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 12. Section 20251.5 is added to the Public Contract Code, to read:

20251.5. All bids shall be presented under sealed cover and shall

be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 13. Section 20262 is added to the Public Contract Code, to read:

20262. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 14. Section 20274 is added to the Public Contract Code, to read:

20274. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 15. Section 20284 is added to the Public Contract Code, to read:

20284. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 16. Section 20294 is added to the Public Contract Code, to read:

20294. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 17. Section 20302 is added to the Public Contract Code, to read:

20302. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 18. Section 20314 is added to the Public Contract Code, to read:

20314. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 19. Section 20322 is added to the Public Contract Code, to read:

20322. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful

bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 20. Section 20332 is added to the Public Contract Code, to read:

20332. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 21. Section 20342 is added to the Public Contract Code, to read:

20342. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the board.

(c) A certified check made payable to the board.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the board.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the board beyond 60 days from the time the award is made.

SEC. 22. Section 20352 is added to the Public Contract Code, to read:

20352. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the board.

(c) A certified check made payable to the board.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the board.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the board beyond 60 days from the time the award is made.

SEC. 23. Section 20374 is added to the Public Contract Code, to read:

20374. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 24. Section 20392.5 is added to the Public Contract Code, to read:

20392.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the county.

(c) A certified check made payable to the county.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the county.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

SEC. 25. Section 20405 of the Public Contract Code is amended to read:

20405. (a) The board shall afford all bidders an opportunity to examine the plans, specifications, and working details, and shall award the contract to the lowest responsible bidder. The board may provide by resolution that the bids be opened, examined, and declared by an officer designated in the resolution. The resolution shall require that the bids be opened at a public meeting called by the officer and that the results of the bidding be reported to the board at a subsequent regular board meeting. The notice inviting bids shall state the time and place of the public meeting and the name of the designated officer.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the county.

(3) A certified check made payable to the county.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the county.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

(c) The person to whom the contract is awarded shall execute a bond, approved by the board for the faithful performance of the contract. The person shall perform the work in accordance with the plans, specifications, and working details, unless all or any of them are modified by a four-fifths vote of the members of the board. In that case, if the cost of the work is reduced by reason of the modification, the person to whom the contract is awarded shall make

an allowance on the contract price to the extent of the reduction.

SEC. 26. Section 20413 of the Public Contract Code is repealed.

SEC. 27. Section 20413 is added to the Public Contract Code, to read:

20413. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the city.

(c) A certified check made payable to the city.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the city.

The security shall be in an amount equal to at least 10 percent of the amount of the bid. No bid shall be considered unless one of the forms of bidder's security is enclosed with it.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the city beyond 60 days from the time the award is made.

SEC. 28. Section 20471.5 is added to the Public Contract Code, to read:

20471.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidders security:

(a) Cash.

(b) A cashier check made payable to the commission.

(c) A certified check made payable to the commission.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the time the award is made.

SEC. 29. Section 20483 of the Public Contract Code is repealed.

SEC. 30. Section 20483 is added to the Public Contract Code, to read:

20483. (a) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security which amounts to 10 percent of the bid:

(1) Cash.

(2) A cashier's check made payable to the legislative body.

(3) A certified check made payable to the legislative body.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the legislative body.

The amount so posted shall be forfeited to the municipality if the bidder does not, within 15 days after written notice that the contract has been awarded to the bidder, enter into a contract with the municipality for the work. Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the legislative body beyond 60 days from the time the award is made.

(b) The faithful performance of the contract shall be secured by an undertaking in that penal sum as the legislative body requires, but not less than 25 percent of the contract price, satisfactory to the legislative body. When the proceedings include the acquisition or construction of works, appliances, or improvements to be owned, managed or controlled by a public agency other than the municipality making the acquisitions or ordering the work done, the legislative body of the municipality may require that the undertaking also inure to the benefit of the public agency to the extent of its interest in the entire project. The contractor shall also furnish a labor and material bond as required by law in a sum not less than 50 percent of the contract price.

SEC. 31. Section 20501 of the Public Contract Code is repealed.

SEC. 32. Section 20501 is added to the Public Contract Code, to read:

20501. (a) The city council shall, within 10 days after the establishment of the district, invite bids for the making of the improvement by ordering a notice of the invitation to be published by two successive insertions in a daily or weekly newspaper published or circulated in the city and designated by the city council for that purpose. However, if the city council determines that there is only one contractor practically capable of serving the street lighting system to be improved in the manner provided in the plans and specifications contained in the report provided for in Chapter 3 (commencing with Section 18040) of Part 1 of Division 14 of the Streets and Highways Code and that the contractor is subject to the jurisdiction of the Public Utilities Commission of the State of California, the city council may, in its discretion, without competitive bidding, order the improvement to be carried out by the contractor in accordance with rates and rules filed by it from time to time with the Public Utilities Commission.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security which amounts to 10 percent of the bid:

(1) Cash.

(2) A cashier's check made payable to the city.

(3) A certified check made payable to the city.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the city.

The security shall be forfeited to the city in case the bidder depositing it does not, within 15 days after the notice that the contract has been awarded to him or her, enter into a contract with the city for making the improvement, the faithful performance of which shall be secured by an undertaking in those penal sums as the city council shall require, with sureties satisfactory to that body. In any case where competitive bidding is required, the contract shall be awarded to the lowest responsible bidder. Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that

security be held by the city beyond 60 days from the time the award is made.

SEC. 33. Section 20512 of the Public Contract Code is repealed.

SEC. 34. Section 20512 is added to the Public Contract Code, to read:

20512. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security which amounts to 10 percent of the bid:

(a) Cash.

(b) A cashier's check made payable to the city.

(c) A certified check made payable to the city.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the city.

The check or bond shall be forfeited to the city if the bidder depositing it does not within 10 days after the publication of a notice of award of the contract to him or her, enter into the necessary contract with the city. Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the city beyond 60 days from the time the award is made.

SEC. 35. Section 20522 is added to the Public Contract Code, to read:

20522. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessul bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 36. Section 20532 of the Public Contract is repealed.

SEC. 37. Section 20532 is added to the Public Contract Code, to read:

20532. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 38. Section 20551.5 is added to the Public Contract Code, to read:

20551.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 39. Section 20564.5 is added to the Public Contract Code, to read:

20564.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 40. Section 20584.5 is added to the Public Contract Code, to read:

20584.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 41. Section 20602.5 is added to the Public Contract Code, to read:

20602.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from

the time the award is made.

SEC. 42. Section 20624 is added to the Public Contract Code, to read:

20624. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 43. Section 20633.5 is added to the Public Contract Code, to read:

20633.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 44. Section 20642.5 is added to the Public Contract Code, to read:

20642.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 45. Section 20651.5 is added to the Public Contract Code, to read:

20651.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 46. Section 20674 of the Public Contract Code is repealed.

SEC. 47. Section 20674 is added to the Public Contract Code, to read:

20674. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the public entity.

(c) A certified check made payable to the public entity.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the public entity.

Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids by written request for the withdrawal of the bid filed with the public leaseback corporation. The request shall be executed by the bidder or the bidder's duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to submit a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the public entity beyond 60 days from the time the award is made.

SEC. 48. Section 20685.5 is added to the Public Contract Code, to read:

20685.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 49. Section 20688.25 is added to the Public Contract Code, to read:

20688.25. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the local agency.

(c) A certified check made payable to the local agency.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the agency.

Upon an award to the lowest bidder, the security of an unsuccessful

bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the local agency beyond 60 days from the time the award is made.

SEC. 50. Section 20694.5 is added to the Public Contract Code, to read:

20694.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the commission.

(c) A certified check made payable to the commission.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the time the award is made.

SEC. 51. Section 20724 is added to the Public Contract Code, to read:

20724. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 52. Section 20737 is added to the Public Contract Code, to read:

20737. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 53. Section 20752.2 is added to the Public Contract Code, to read:

20752.2. Notwithstanding Section 20751, all bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 54. Section 20761.5 is added to the Public Contract Code, to read:

20761.5. Notwithstanding Section 20761, all bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 55. Section 20784 is added to the Public Contract Code, to read:

20784. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 56. Section 20804.5 is added to the Public Contract Code, to read:

20804.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 57. Section 20832.5 is added to the Public Contract Code, to read:

20832.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 58. Section 20843.5 is added to the Public Contract Code, to read:

20843.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 59. Section 20867 of the Public Contract Code is repealed.

SEC. 60. Section 20867 is added to the Public Contract Code, to read:

20867. The legislative body shall award the contract for doing the work to the lowest responsible bidder. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the public entity.

(c) A certified check made payable to the public entity.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the public entity.

The bids shall be delivered, opened, and award of contract made, all as provided by Chapter 9 (commencing with Section 5240) of Part 3 of Division 7 of the Streets and Highways Code, except that no notice of award shall be published. Upon the award being made, the superintendent of streets shall enter into a contract with the person to whom the contract was awarded for doing the work described in the notice inviting bids, and at the price stated in the bid. The contractor shall execute a bond in the manner required by Section 5254 of the Streets and Highways Code.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the public entity beyond 60 days from the time the award is made.

SEC. 61. Section 20893.5 is added to the Public Contract Code, to read:

20893.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the local agency.

(c) A certified check made payable to the local agency.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the local agency.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the local agency beyond 60 days from the time the award is made.

SEC. 62. Section 20916.5 is added to the Public Contract Code, to read:

20916.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 63. Article 60.5 (commencing with Section 20920) is added to Chapter 1.5 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 60.5. Water District Contract Bids

20920. All bids requested by an agency or district covered by this chapter shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the agency or district.

(c) A certified check made payable to the agency or district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the agency or district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the agency or district beyond 60 days from the time the award is made.

SEC. 64. Section 130232 of the Public Utilities Code is amended to read:

130232. (a) The purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars

($25,000), shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 10 days before the date for the receipt of the bids. The commission, at its discretion, may reject any and all bids and readvertise.

(b) Whenever the expected expenditure required exceeds one thousand dollars ($1,000), but not twenty-five thousand dollars ($25,000), the commission shall obtain a minimum of three quotations, either written or oral, which permit prices and terms to be compared.

(c) Where the expenditure required by the bid price is less than fifty thousand dollars ($50,000), the executive director may act for the commission.

(d) All bids submitted pursuant to this section shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the commission.

(3) A certified check made payable to the commission.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the time the award is made.

SEC. 65. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

# CHAPTER 321

An act to amend Section 7028.15 of the Business and Professions Code, and to add Section 20104 to the Public Contract Code, relating to contractors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 16, 1990. Filed with Secretary of State July 17, 1990.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 7028.15 of the Business and Professions Code is amended to read:

7028.15. (a) It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:

(1) The person is particularly exempted from this chapter.

(2) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code or on any local agency project governed by Section 20104 of the Public Contract Code.

(b) If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(c) This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.

(d) This section shall not affect the right or ability of a licensed architect or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their

respective practices.

(e) Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a bid, verify that the contractor was properly licensed when the contractor submitted the bid.

(f) Any compliance or noncompliance with subdivision (e) of this section, as added by Chapter 863 of the Statutes of 1989, shall not invalidate any contract or bid awarded by a public agency during which time that subdivision was in effect.

SEC. 2. Section 20104 is added to the Public Contract Code, to read:

20104. In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. The agency shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid the continued disruption of the process of bidding

for public works contracts, it is necessary for this act to take effect immediately.

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## CHAPTER 694

An act to amend Section 4550 of, to repeal Sections 980, and 4551 of, and to repeal Chapter 2.5 (commencing with Section 4150) of Division 5 of Title 1 of, the Government Code, and to amend Sections 20102, 20150.10, 20341, 22038, and 22039 of, to add Sections 7103, 7104, 9202, and 9203 to, and to repeal Section 20103 of, the Public Contract Code, relating to public projects.

[Approved by Governor September 10, 1990. Filed with Secretary of State September 12, 1990.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 980 of the Government Code is repealed.

SEC. 2. Chapter 2.5 (commencing with Section 4150) of Division 5 of Title 1 of the Government Code is repealed.

SEC. 3. Section 4550 of the Government Code is amended to read:

4550. As used in this chapter:

(a) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

(b) "Public purchasing body" means the state or the subdivision or agency making a public purchase.

SEC. 4. Section 4551 of the Government Code is repealed.

SEC. 5. Section 7103 is added to the Public Contract Code, to read:

7103. (a) As used in this section:

(1) "Public works contract" means a contract awarded through competitive bids by the state or any of its political subdivisions or public agencies, on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code, for the erection, construction, alteration, repair, or improvement of any structure, building, road, or other improvement of any kind.

(2) "Awarding body" means the state or the subdivision or agency awarding a public works contract.

(b) In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

(c) The provisions of subdivision (b) shall be included in full in the specifications for the public works contract or in the general provisions incorporated therein and shall be included in full in the public works contract or in the general provisions incorporated therein.

SEC. 6. Section 7104 is added to the Public Contract Code, to read:

7104. (a) Construction contracts of public agencies shall not require the contractor to be responsible for the cost of repairing or

provision providing for the termination.

(3) Contracts of public agencies may include provisions for termination for environmental considerations at the discretion of the public agencies.

SEC. 7. Section 9202 is added to the Public Contract Code, to read:

9202. (a) Whenever a request for payment from the state or a local entity pursuant to the terms of a contract for the construction of a public works project, as defined in Section 1720 of the Labor Code, is properly filed and the validity of the claim is not disputed or has been settled or agreed upon, payment of the claim by the disbursing officer of the state or local public entity shall include interest at the legal rate of 7 percent per annum commencing on the date upon which the claim was submitted if payment has not been made by the 60th day after the proper submission of the claim.

(b) If a request for payment has not been properly filed at an earlier date, then the request shall be deemed to be properly filed on the next business day after the contractor provides written notification to the public entity's designated jobsite representative that the contractor accepts the proposed final estimate as prepared by the public entity. This subdivision shall not apply to the California State University.

SEC. 8. Section 9203 is added to the Public Contract Code, to read:

9203. Payment on any contract with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars ($5,000), shall be made as the legislative body prescribes upon estimates approved by the legislative body, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed.

SEC. 9. Section 20102 of the Public Contract Code is amended to read:

20102. Notwithstanding any other provision of this part to the contrary, where plans and specifications have been prepared by a public agency, whose activities are subject to this part, in order for a public project to be put out for formal or informal bid, and, subsequently, the public agency elects to perform the work by day's labor, the public agency shall perform the work in strict accordance with these same plans and specifications.

Revisions of the plans and specifications may be made once a

justification detailing the specific reasons for the change or changes has been approved by the public agency or its project director and a copy of the change and its justification is placed in the project file.

SEC. 10. Section 20103 of the Public Contract Code is repealed.

SEC. 11. Section 20341 of the Public Contract Code is amended to read:

20341. (a) Contracts for construction in excess of twenty thousand dollars ($20,000) shall be awarded to the lowest responsible bidder submitting a responsive bid after competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board. When the expected construction contract exceeds one thousand dollars ($1,000) and does not exceed twenty thousand dollars ($20,000), the board shall seek a minimum of three quotations, either written or oral, which permit prices and other terms to be compared.

(b) If no bids are received, the project may be performed by a negotiated contract.

SEC. 12. Section 20150.10 of the Public Contract Code is amended to read:

20150.10. Notwithstanding the provisions of Section 20150.9, on any project which is less than seventy-five thousand dollars ($75,000), if, after the first invitation for bids, all bids are rejected, the county may, after reevaluating its cost estimates of the project, pass a resolution by a four-fifths vote of its board of supervisors declaring that the project can be performed more economically by county personnel, or that in its opinion a contract to perform the project can be negotiated with the original bidders at a lower price than that in any of the bids, or the materials or supplies furnished at a lower price in the open market. Upon adoption of the resolution, it may have the project done in the manner stated without further complying with this article.

SEC. 13. Section 22038 of the Public Contract Code is amended to read:

22038. (a) In its discretion, the public agency may reject any bids presented. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the public agency shall have the option of either of the following:

(1) Abandoning the project or readvertising for bids in the manner described by this article.

(2) By passage of a resolution by a four-fifths vote of its governing body declaring that the project can be performed more economically by the employees of the public agency, may have the project done by force account without further complying with this article.

(b) If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the public agency may accept the one it chooses.

(c) If no bids are received through the formal or informal procedure, the project may be performed by the employees of the public agency by force account, or negotiated contract without

further complying with this article.

This section shall become operative on January 1, 1991.

SEC. 14. Section 22039 of the Public Contract Code is amended to read:

22039. The governing body of the public agency shall adopt plans, specifications, and working details for all public projects exceeding the amount specified in subdivision (c) of Section 22032.

SEC. 15. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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# CHAPTER 808

An act to amend Sections 20107, 20111, 20129, 20189, 20192, 20201.5, 20204.3, 20214, 20224.5, 20234, 20242, 20251.5, 20262, 20274, 20284, 20294, 20302, 20314, 20322, 20332, 20342, 20352, 20374, 20392.5, 20405, 20413, 20471.5, 20483, 20501, 20512, 20522, 20532, 20551.5, 20564.5, 20584.5, 20602.5, 20624, 20633.5, 20642.5, 20651.5, 20674, 20685.5, 20688.25, 20694.5, 20724, 20737, 20752.2, 20761.5, 20784, 20804.5, 20832.5, 20843.5, 20867, 20893.5, 20916.5, and 20920 of the Public Contract Code, and to amend Section 130232 of the Public Utilities Code, relating to public contracts.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 20107 of the Public Contract Code is amended to read:

20107. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the school district.

(c) A certified check made payable to the school district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

SEC. 4. Section 20111 of the Public Contract Code is amended to read:

20111. (a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.
(3) A certified check made payable to the school district.
(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all materials and supplies whether patented or otherwise.

SEC. 5. Section 20129 of the Public Contract Code is amended to read:

20129. (a) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.
(2) A cashier's check made payable to the county.
(3) A certified check made payable to the county.
(4) A bidder's bond executed by an admitted surety insurer, made payable to the county.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

(b) The person to whom the contract is awarded shall execute a bond to be approved by the board for the faithful performance of the contract.

SEC. 6. Section 20189 of the Public Contract Code is amended to read:

20189. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.
(b) A cashier's check made payable to the local agency.
(c) A certified check made payable to the local agency.
(d) A bidder's bond executed by an admitted surety insurer, made payable to the local agency.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the local agency beyond 60 days from the time the award is made.

SEC. 7. Section 20192 of the Public Contract Code is amended to read:

20192. (a) Whenever the cost of construction of any office building, warehouse, or garage of the district constructed under Section 20191 exceeds the sum of two thousand dollars ($2,000), the district shall adopt plans and specifications and working details, as may be proper, and shall advertise for bids for the work in accordance with the plans and specifications so adopted. All bidders

be compared.

(c) Where the expenditure required by the bid price is less than fifty thousand dollars ($50,000), the executive director may act for the commission.

(d) All bids for construction work submitted pursuant to this section shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the commission.

(3) A certified check made payable to the commission.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the time the award is made.

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## CHAPTER 1414

An act to amend Section 20207.7 of, to amend and renumber Section 20104 of, and to add and repeal Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public construction.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 20104 of the Public Contract Code is amended and renumbered to read:

20103.5. In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall

be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. The agency shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

SEC. 2. Article 1.5 (commencing with Section 20104) is added to Chapter 1 of Part 3 of the Public Contract Code, to read:

Article 1.5. Resolution of Construction Claims

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

20104.2. For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars ($50,000), the

local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) If following the meet and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

20104.8. (a) This article shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

(b) As stated in subdivision (c) of Section 20104, any contract entered into between January 1, 1991, and January 1, 1994, which is subject to this article shall incorporate this article. To that end, these contracts shall be subject to this article even if this article is repealed pursuant to subdivision (a).

SEC. 3. Section 20207.7 of the Public Contract Code is amended to read:

20207.7. Unless the amount involved in the purchase at any one time of any articles for which no contract has been entered into exceeds ten thousand dollars ($10,000), the board may purchase the articles without the necessity of advertising or letting contracts. Where the cost of any articles for which no contract has been entered into exceeds ten thousand dollars ($10,000), the board shall advertise for sealed bids for furnishing the district the articles. In the matter of advertising, opening and accepting bids, and the letting of

contracts, the board shall proceed in all respects in the manner and form provided in the case of contracts for annual supplies.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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# CHAPTER 785

An act to amend Sections 7028.7 and 7028.15 of the Business and Professions Code, relating to contractors, and making an appropriation therefor.

[Approved by Governor October 9, 1991. Filed with Secretary of State October 10, 1991.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 7028.7 of the Business and Professions Code is amended to read:

7028.7. If upon inspection or investigation, either upon complaint or otherwise, the registrar has probable cause to believe that a person is acting in the capacity of or engaging in the business of a contractor within this state without having a license in good standing to so act or engage, and the person is not otherwise exempted from this chapter, the registrar shall issue a citation to that person. Within 72 hours of receiving notice that a public entity is intending to award, or has awarded, a contract to an unlicensed contractor, the registrar shall give written notice to the public entity that a citation may be issued if a contract is awarded to an unlicensed contractor. If after receiving the written notice from the registrar the public entity has awarded or awards the contract to an unlicensed contractor the registrar may issue a citation to the responsible officer or employee of the public entity as specified in Section 7028.15. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars ($200) nor more than four thousand five hundred dollars ($4,500). With the approval of the Contractors' State License Board the registrar shall prescribe procedures for the issuance of a citation under this section. The Contractors' State License Board shall adopt regulations covering the assessment of a civil penalty which shall give due consideration to the gravity of the violation, and any history of previous violations. The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil or criminal.

SEC. 2. Section 7028.15 of the Business and Professions Code is amended to read:

7028.15. (a) It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:

(1) The person is particularly exempted from this chapter.

(2) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code or on any local agency project governed by Section 20104 of the Public Contract Code.

(b) If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(c) This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.

(d) This section shall not affect the right or ability of a licensed architect, land surveyor, or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.

(e) Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. Notwithstanding any other provision of law, unless one of the foregoing exceptions applies, the registrar may issue a citation to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. The amount of civil penalties, appeal, and finality of such citations shall be subject to Sections 7028.7 to 7028.13, inclusive. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed pursuant to this chapter is void.

(f) Any compliance or noncompliance with subdivision (e) of this section, as added by Chapter 863 of the Statutes of 1989, shall not invalidate any contract or bid awarded by a public agency during which time that subdivision was in effect.

(g) A public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing agency made an inquiry to the board for the purposes of verifying the license status of any person or contractor and the board failed to respond to the inquiry within three business days. For purposes of this section, a telephone response by the board shall be deemed sufficient.

# CHAPTER 933

An act to amend Section 22300 of the Public Contract Code, relating to public contracts.

[Approved by Governor October 13, 1991. Filed with Secretary of State October 14, 1991.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 22300 of the Public Contract Code is amended to read:

22300. (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. The contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the contractor.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest

thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors in public contract procedures.

(e) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____ whose address is _____ hereinafter called "Owner," whose address is _____ hereinafter called "Contractor" and _____ whose address is _____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the owner makes payment of retentions earned directly

to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (4) to (6), inclusive, of this agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

Title

Name

Signature

Address

On behalf of Contractor:

Title

Name

Signature

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Title

Name

Signature

Contractor

Title

Name

Signature

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

## CHAPTER 294

An act to amend Sections 7028.15, 7071.8, 7099.10, and 7099.11 of the Business and Professions Code, relating to contractors.

[Approved by Governor July 22, 1992. Filed with Secretary of State July 23, 1992.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 7028.15 of the Business and Professions Code is amended to read:

7028.15. (a) It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:

(1) The person is particularly exempted from this chapter.

(2) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code or on any local agency project governed by Section 20103.5 of the Public Contract Code.

(b) If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(c) This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.

(d) This section shall not affect the right or ability of a licensed architect, land surveyor, or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.

(e) Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. Notwithstanding any other provision of law, unless one of the foregoing exceptions applies, the registrar may issue a citation to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. The amount of civil penalties, appeal, and finality of such citations shall be subject to Sections 7028.7 to 7028.13, inclusive. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed pursuant to this chapter is void.

(f) Any compliance or noncompliance with subdivision (e) of this section, as added by Chapter 863 of the Statutes of 1989, shall not invalidate any contract or bid awarded by a public agency during which time that subdivision was in effect.

(g) A public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing agency made an inquiry to the board for the purposes of verifying the license status of any person or contractor and the board failed to respond to the inquiry within three business days. For purposes of this section, a telephone response by the board shall be deemed sufficient.

SEC. 2. Section 7071.8 of the Business and Professions Code is amended to read:

7071.8. (a) This section applies to an application for a license, for restoration of a license, or for continued valid use of a license which has been disciplined, whether or not the disciplinary action has been stayed, made by any of the following persons or firms:

(1) Any person whose license has been suspended or revoked as a result of disciplinary action, or any person who was a qualifying individual for a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of the licensee's license, whether or not the qualifying individual had knowledge or participated in the prohibited act or omission.

(2) Any person who was an officer, director, member, or partner of a licensee at any time during which cause for disciplinary action

occurred resulting in suspension or revocation of the licensee's license and who had knowledge of or participated in the act or omission which was the cause for the disciplinary action.

(3) Any partnership, corporation, firm or association of which any officer, director, member, partner or qualifying person has had the license suspended or revoked as a result of disciplinary action.

(4) Any partnership, corporation, firm or association of which any officer, director, member, or partner or qualifying person was a member, officer, director, or partner of a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of the license, and who had knowledge of or participated in the act or omission which was the cause for the disciplinary action.

(b) The board shall require as a condition precedent to the issuance, reissuance or restoration of a license to the applicant, or removal of suspension, or to the continued valid use of a license which has been suspended or revoked, but which suspension or revocation has been stayed, that the applicant or licensee file or have on file a contractor's bond in a sum to be fixed by the registrar based upon the seriousness of the violation, but which sum shall not be less than fifteen thousand dollars ($15,000) nor more than 10 times that amount required by Section 7071.6.

(c) The bond is in addition to, may not be combined with, and does not replace any other type of bond required by this chapter. The bond shall remain on file with the registrar for a period of at least two years and for such additional time as the registrar may determine. The bond period shall run only while the license is current, active, and in good standing, and shall be extended until such time as the license has been current, active, and in good standing for the required period. Each applicant or licensee shall be required to file only one disciplinary contractor's bond of the type described in this section for each application or license subject to this bond requirement.

SEC. 3. Section 7099.10 of the Business and Professions Code is amended to read:

7099.10. (a) If, upon investigation, the registrar has probable cause to believe that a licensee, an applicant for a license, or an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, has violated Section 7027.1 by advertising for construction or work of improvement covered by this chapter in an alphabetical or classified directory, without being properly licensed, the registrar may issue a citation under Section 7099 containing an order of correction which requires the violator to cease the unlawful advertising and to notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person.

(b) If the person to whom a citation is issued under subdivision (a) notifies the registrar that he or she intends to contest the citation, the registrar shall afford an opportunity for a hearing, as specified in Section 7099.5, within 90 days after receiving the notification.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after the order is final, the registrar shall inform the Public Utilities Commission of the violation, and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

SEC. 4. Section 7099.11 of the Business and Professions Code is amended to read:

7099.11. (a) No person shall advertise, as that term is defined in Section 7027.1, to promote his or her services for the removal of asbestos unless he or she is certified to engage in asbestos-related work pursuant to Section 7058.5, and registered for that purpose pursuant to Section 6501.5 of the Labor Code. Each advertisement shall include that person's certification and registration numbers and shall use the same name under which that person is certified and registered.

(b) The registrar shall issue a notice to comply with the order of correction provisions of subdivision (a) of Section 7099.10, to any person who is certified and registered, as described in subdivision (a), and who fails to include in any advertisement his or her certification and registration numbers.

(c) The registrar shall issue a citation pursuant to Section 7099 to any person who fails to comply with the notice required by subdivision (b), or who advertises to promote his or her services for the removal of asbestos but does not possess valid certification and registration numbers as required by subdivision (a), or who fails to use in that advertisement the same name under which he or she is certified and registered.

Citations shall be issued and conducted pursuant to Sections 7099 to 7099.10, inclusive.

## CHAPTER 799

An act to add Section 10853 to Article 8 of Chapter 2.5 of Part 2 of Division 2 of, and to add Article 1.7 (commencing with Section 20104.50) to Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to contracts.

[Approved by Governor September 21, 1992. Filed with Secretary of State September 22, 1992.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 10853 is added to Article 8 of Chapter 2.5 of Part 2 of Division 2 of the Public Contract Code, to read:

10853. (a) If the trustees fail to make a progress payment on a contract within 39 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract, the trustees shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. If the payment is not made within 39 days of receipt of the contractor's request, and the Controller has processed the payment within 14 days of the receipt of the request, the trustees shall pay interest to the contractor equivalent to the legal rate as provided in subdivision (a) of Section 685.010 of the Code of Civil Procedure. If the payment is not made within 39 days of receipt of the contractor's request, and the trustees have processed the payment within 25 days after the receipt of the request, the Controller shall pay interest equivalent to the legal rate

as provided in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

(b) Upon receipt of a payment request, the trustees shall act in accordance with the following:

(1) Each payment request shall be reviewed by the trustees as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(3) Upon request from the trustees, the Controller may elect to expedite each payment request and may charge the trustees an appropriate amount, as determined by the Controller, for costs incurred in expediting the payment request.

(c) The number of days available to the trustees to make a payment without incurring interest shall be reduced by the number of days by which the trustees exceed the seven-day return requirement set forth in paragraph (2) of subdivision (b).

(d) A properly submitted payment request shall be defined as the date upon which the trustees receive a payment request, certified in accordance with the contract, at the address identified in the contract.

(e) For purposes of this section:

(1) A "progress payment" includes all payments due contractors, except that portion of the final payment withheld pursuant to Section 10851.

(2) A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the Controller.

SEC. 2. Article 1.7 (commencing with Section 20104.50) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 1.7. Modifications; Performance; Payment

20104.50. (a) (1) It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.

(2) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local

government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.

(b) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

(c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).

(e) For purposes of this article:

(1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.

(2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.

(3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

(f) Each local agency shall require that this article, or a summary thereof, be set forth in the terms of any contract subject to this article.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.

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## CHAPTER 1042

An act to add Section 7107 to the Public Contract Code, relating to public works contracts.

[Approved by Governor September 27, 1992. Filed with Secretary of State September 29, 1992.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 7107 is added to the Public Contract Code, to read:

7107. (a) This section is applicable with respect to all contracts entered into on or after January 1, 1993, relating to the construction of any public work of improvement.

(b) The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agent, of the work of improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

(d) Subject to subdivision (e), within 10 days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each

subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(g) If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261 of the Public Contract Code, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed retentions.

(h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 340 CHAPTERED 10/11/93

CHAPTER 1032
FILED WITH SECRETARY OF STATE OCTOBER 11, 1993
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INTRODUCED BY Assembly Member Katz
(Principal coauthors: Assembly Members Willie Brown and Lee)

(Principal coauthor: Senator Roberti)
(Coauthors: Assembly Members Alpert, Baca, Bowen, Bronshvag, Campbell, Costa, Eastin, Gotch, McDonald, Martinez, Moore, Murray, O'Connell, Peace, Solis, and Umberg)
(Coauthors: Senators Alquist, Dills, Hughes, Mello, Rosenthal, Torres, and Watson)

FEBRUARY 8, 1993

An act to amend Section 16857 of, and to add Section 16852.5 to, the Government Code, to add Section 999.10 to the Military and Veterans Code, and to amend Section 10115.10 of, and to add Sections 2001, 10108.7, and 10115.12 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 340, Katz. Public contracts: minority, women, and disabled veteran business enterprises.

(1) Existing law requires all contracts awarded by any state agency, department, officer, or other state governmental agency, and permits all contracts awarded by any local agency, for construction, certain professional services, materials, supplies, equipment, alteration, repair, or improvement to have participation goals of not less than 15% for minority business enterprises, 5% for women business enterprises, and 3% for disabled veteran business enterprises.

Existing law, the Subletting and Subcontracting Fair Practices Act, also imposes requirements on prime contractors with respect to providing certain information regarding subcontractors.

This bill would require that a contractor provide certain information in his or her bid or offer relating to the use of minority, women, or disabled veteran business enterprises as subcontractors in connection with the performance of the public contract, and would make provisions of the above act applicable to this information.

(2) Under existing law, it is unlawful for any person to commit certain acts in connection with state contracts, including those for professional bond services, awarded pursuant to statewide participation goals for minority, women, and disabled veteran business enterprises. Existing law further provides for the suspension of persons who violate these provisions and requires the Office of Small and Minority

Business to take certain actions in connection with violations of these provisions.

This bill would make it a misdemeanor for any person or firm to establish or cooperate in the establishment of, or exercise control over, a firm found to have violated these provisions, and would impose civil penalties in the amount not to exceed $50,000 for a 1st violation, and not to exceed $200,000 for each additional or subsequent violation. The bill would also broaden the suspension provisions and requirements on the office to include violations committed by firms. The creation of these new crimes would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 16852.5 is added to the Government Code, to read:

16852.5. (a) Any awarding department taking bids in connection with the award of any contract shall provide, in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code) shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, and disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113 of the Public Contract Code.

SEC. 2. Section 16857 of the Government Code is amended to read:

16857. (a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, acceptance or certification as a minority, women, or disabled veteran business enterprise, for the purposes of this chapter.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other

representation, to a state official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority, women, or disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority, women, or disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person or firm is not entitled under this chapter.

(5) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (4), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars ($50,000) for the first violation, and a civil penalty not to exceed two hundred thousand dollars ($200,000) for each additional or subsequent violation.

(6) This section shall not apply to minority and women business enterprise programs conducted by public utility companies pursuant to the California Public Utilities Commission's General Order 156.

(b) Any person who violates paragraphs (1) to (4), inclusive, of subdivision (a) is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars ($20,000) for each additional or subsequent violation.

(c) Any person or firm that violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor or subcontractor in, any contract awarded by the state for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation, the period of suspension shall be extended for a period of up to three years. Any person or firm that fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small and Minority Business. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person or firm suspended for violating this section during the period of the person's or firm's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or firm as a subcontractor suspended for violating this section during the period of the person's or firm's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person, firm, or contractor to whom the contract is being awarded, or any person, or firm, being utilized as a subcontractor by that person, firm, or contractor, is not under suspension for violating this section.

SEC. 3. Section 999.10 is added to the Military and Veterans Code, to read:

999.10. (a) Any awarding department taking bids in connection with the award of any contract shall provide, in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). Except in cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property, the prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code) shall apply to the information required by subdivision (a) relating to subcontractors certified as disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113 of the Public Contract Code.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 4. Section 2001 is added to the Public Contract Code, to read:

2001. (a) Any local agency, as defined in subdivision (d) of Section 2000, that requires that contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises shall provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) shall apply to the

information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 5. Section 10108.7 is added to the Public Contract Code, to read:

10108.7. (a) The Department of Corrections shall provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 6. Section 10115.10 of the Public Contract Code is amended to read:

10115.10. (a) It shall be unlawful for a person or firm to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, acceptance or certification as a minority, women, or disabled veteran business enterprise, for the purposes of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority, women, or disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority, women, or disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person or firm in

fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this article.

(5) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (4), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars ($50,000) for the first violation, and a civil penalty not to exceed two hundred thousand dollars ($200,000) for each additional, or subsequent violation.

(6) This section shall not apply to minority and women business enterprise programs conducted by public utility companies pursuant to the California Public Utilities Commission's General Order 156.

(b) Any person who violates paragraphs (1) to (4), inclusive, of subdivision (a) is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars ($20,000) for each additional or subsequent violation.

(c) Any person or firm that violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation the period of suspension shall be extended for a period of up to three years. Any person or firm that fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small and Minority Business. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person or firm suspended for violating this section during the period of the person's or firm's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or firm as a subcontractor suspended for violating this section during the period of the person's or firm's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person, firm, or contractor to whom the contract is being awarded, or any person or firm being utilized as a subcontractor by that person, firm, or contractor, is not under suspension for violating this section.

SEC. 7. Section 10115.12 is added to the Public Contract Code, to read:

10115.12. (a) Any awarding department taking bids in connection with the award of any contract shall provide in the general conditions under which bids will be received, that any

person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). Except in cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property, the prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

# CHAPTER 1195

An act to amend Sections 4201, 6159, 8162.9, 8180, 23101, 23119, 23130, 23133, 24000, 24250, 24256, 24304, 25332, 25845, 27008, 29088, 36934, 37110, 53080.1, 53534, 53901, 56844, 57025, and 68096.1 of, to add Sections 25521.5, 26990, 57330, and 65352.5 to, to repeal Section 40101 of, and to repeal Article 5.5 (commencing with Section 65958) of Chapter 4.5 of Division 1 of Title 7 of, the Government Code, to amend Sections 6937 and 6944 of, and to repeal Section 6832 of the Harbors and Navigation Code, to amend Sections 6487, 13800, and 13893 of, and to add Sections 4730.8 and 6480.7 to, the Health and Safety Code, to amend Sections 20206.9 and 22300 of, to add Section 20131 to, and to repeal Sections 9202, 20206.7, and 20206.8 of, the Public Contract Code, to add Sections 5541.2 and 5552.1 to the Public Resources Code, to add Section 97.05 to the Revenue and Taxation Code, to amend Section 1806 of the Streets and Highways Code, to amend Sections 21102, 21375, 21560, 22980, 74661, and 74466 of, and to add Section 75601 to, the Water Code, to amend Section 11 of Chapter 129 of the Statutes of 1868, to amend Sections 26.6 and 26.9 of Chapter 1405 of the Statutes of 1951, to amend Section 7.1 of Chapter 2137 of the Statutes of 1959, and to amend Section 700 of Chapter 1399 of the Statutes of 1987, relating to local agencies.

[Approved by Governor October 11, 1993. Filed with Secretary of State October 11, 1993.]

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known and may be cited as the Local Government Omnibus Act of 1993. The Legislature finds and declares that Californians desire their governments to be run efficiently and economically and that public officials should avoid waste and duplication whenever possible. The Legislature further finds and declares that it desires to reduce its own operating costs by reducing the number of separate bills affecting related topics. Therefore, in enacting this act, it is the intent of the Legislature to combine several minor, noncontroversial statutory changes relating to public agencies into a single measure.

SEC. 1.5. Section 4201 of the Government Code is amended to read:

4201. Any local agency that undertakes or contracts for an

county hospital without competitive bidding, so long as an appropriation for the costs of those purchases or contracts is included in the county budget.

As used in this subdivision, "medical or surgical equipment or supplies" means only equipment or supplies commonly, necessarily, and directly used by or under the direction of a physician and surgeon in caring for or treating a patient in a hospital.

SEC. 23. Section 20206.7 of the Public Contract Code is repealed.

SEC. 24. Section 20206.8 of the Public Contract Code is repealed.

SEC. 25. Section 20206.9 of the Public Contract Code is amended to read:

20206.9. The clerk shall furnish printed blanks for all proposals and contracts.

SEC. 25.5. Section 22300 of the Public Contract Code is amended to read:

22300. (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in California as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. The contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the contractor.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security

mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors in public contract procedures.

(e) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between

_____

_____ whose address is _____

_____ hereinafter called "Owner,"

_____ whose address is _____

_____ hereinafter called "Contractor"

and

_____ whose address is _____

_____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the escrow agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the

Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees. for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

Title

Name

Signature

Address

On behalf of Contractor:

Title

Name

Signature

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Title

Name

Signature

Contractor

Title

Name

Signature

SEC. 25.7. Section 5541.2 is added to the Public Resources Code, to read:

5541.2. The Riverside County Regional Park and Open-Space District may plan, acquire, preserve, protect, and otherwise improve, extend, control, operate, and maintain open-space areas, greenbelt areas, wildlife habitat areas, and regional parks for the use and enjoyment of all the inhabitants of the district. The district may select, designate, and acquire land, or rights in land, within or without the district, to be used and appropriated for those purposes.

SEC. 25.8. Section 5552.1 is added to the Public Resources Code, to read:

use of land served by the water-producing facility, crops grown on land served by the water-producing facility, or any other criteria or criteria which may be used to determine with reasonable accuracy the amount of water produced from that water-producing facility. The district may levy an annual charge upon a water-producing facility for which no production has been recorded but which has not been permanently abandoned if that charge does not exceed the annual cost to the district of maintaining and administering the registration of that facility.

SEC. 31.7. Section 700 of the Colusa Basin Drainage District Act, Chapter 1399 of the Statutes of 1987, is amended to read:

Sec. 700. The district may levy benefit assessments on a districtwide basis or within any zone, upon land only, as follows:

(a) An initial assessment for district expenses may be levied on the basis of an equal amount per acre as shown on the assessment rolls, but not to exceed ten cents ($0.10) per acre. It is hereby declared for that purpose that the benefit of district activities is received equally by all land. This initial assessment may be levied annually in lieu of the assessment specified in subdivision (b) until a plan has been approved pursuant to Section 610.

(b) Annual assessments pursuant to Sections 703 to 708, inclusive.

SEC. 32. With respect to Sections 9 and 19 of this act, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitutions because of the unique circumstances of the Counties of Butte, Merced, Orange, Riverside, and Ventura and the Riverside County Regional Park and Open-Space District, Capistrano Beach Sanitary District and the Dana Point Sanitary District.

SEC. 33. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

# CHAPTER 726

An act to amend Sections 905.3, 930, 935.6, 11030.1, 11031, 13909, 13910, 13920, 13943.2, 16304.1, 16400, 16401, and 21152 of, to add Sections 965.1 and 17051.5 to, and to repeal Sections 13921, 13922, 13925, and 13927 of, the Government Code, to amend Section 5101 of, and to add Article 1.5 (commencing with Section 20104) to Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, and to amend Sections 6901, 6981, 7091, 8126, 8191, 9151, 9196, 11551, 11596, 12951, 12977, 19302, 19306, 19314, 19441, 21013, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, and 45801 of the Revenue and Taxation Code, relating to state boards, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature that the State Board of Control use its reduced General Fund budgetary resources to perform the following duties:

(a) Administer Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code in a manner that allows the state to conduct timely claim investigations of unjust claims, correct the conditions and practices that give rise to those claims, and settle just claims in order to avoid the costs of litigation.

(b) Adjudicate those protests of proposed state procurement contract awards that are filed under Section 10306 and subdivision

SEC. 21. Section 5101 of the Public Contract Code is amended to read:

5101. (a) A bidder shall not be relieved of the bid unless by consent of the awarding authority nor shall any change be made in the bid because of mistake, but the bidder may bring an action against the public entity in a court of competent jurisdiction in the county in which the bids were opened for the recovery of the amount forfeited, without interest or costs. If the plaintiff fails to recover judgment, the plaintiff shall pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court.

(b) If an awarding authority for the state consents to relieve a bidder of a bid because of mistake, the authority shall prepare a report in writing to document the facts establishing the existence of each element required by Section 5103. The report shall be available for inspection as a public record. In the case of the University of California or a California State University, the report shall be filed with the regents and the trustees, respectively, and shall be available as a public record.

SEC. 22. Article 1.5 (commencing with Section 20104) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 1.5. Resolution of Construction Claims

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

20104.2. For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars ($50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be

tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided

in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

SEC. 23. Section 6901 of the Revenue and Taxation Code is amended to read:

6901. If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors, if a determination by the board is made in any of the following cases:

(a) Any amount of tax, interest, or penalty was not required to be paid.

(b) Any amount of prepayment of sales tax, interest, or penalty paid pursuant to Article 1.5 (commencing with Section 6480) of Chapter 5 was not required to be paid.

(c) Any amount that is approved as a settlement pursuant to Section 7093.5.

Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to Article 1 (commencing with Section 6201) of Chapter 3 shall be credited or refunded by the state to the purchaser. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 24. Section 6981 of the Revenue and Taxation Code is amended to read:

6981. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 25. Section 7091 of the Revenue and Taxation Code is amended to read:

7091. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board

person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 51. Section 45651 of the Revenue and Taxation Code is amended to read:

45651. If the board determines that any amount of fee, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifteen thousand dollars ($15,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 52. Section 45801 of the Revenue and Taxation Code is amended to read:

45801. If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifteen thousand dollars ($15,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 53. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the State Board of Control is able to properly accommodate reductions in board funding by eliminating some of its nonessential functions and streamlining those functions remaining, it is necessary that this act take effect immediately.

# CHAPTER 504

An act to add Section 1373.95 to the Health and Safety Code, and to add Section 10133.55 to the Insurance Code, relating to health coverage.

[Approved by Governor October 3, 1995. Filed with Secretary of State October 4, 1995.]

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) The health care delivery system in California is increasingly relying upon various forms of managed care to control the costs of providing health care.

(b) Strong provider-patient relationships, particularly for patients with acute medical conditions, may enhance the curative process.

(c) Maintaining continuity of care as patients change providers and health plans is important to the health and well-being of the enrollees of managed care plans.

SEC. 2. Section 1373.95 is added to the Health and Safety Code, immediately following Section 1373.9, to read:

1373.95. (a) On or before July 1, 1996, every health care service plan that provides coverage on a group basis shall file with the Department of Corporations, a written policy describing how the health plan shall facilitate the continuity of care for new enrollees receiving services during a current episode of care for an acute condition from a nonparticipating provider. This written policy shall describe the process used to facilitate the continuity of care, including the assumption of care by a participating provider. Notice of the policy and information regarding how enrollees may request a review under the policy shall be provided to all new enrollees , except those enrollees who are not eligible as described in subdivision (e). A copy of the written policy shall be provided to eligible enrollees upon request.

(b) The written policy shall describe how requests to continue services with an existing provider are reviewed by the plan. The policy shall ensure that reasonable consideration is given to the potential clinical effect that a change of provider would have on the enrollee's treatment for the acute condition.

(c) A health care service plan may require any nonparticipating provider whose services are continued pursuant to the written policy to agree in writing to meet the same contractual terms and conditions that are imposed upon the plan's participating providers, including location within the plan's service area, reimbursement methodologies, and rates of payment. If the health care service plan determines that a patient's health care treatment should temporarily continue with the patient's existing provider, the health care service plan shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provision of services by the existing provider.

(d) Nothing in this section shall require a health care service plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.

(e) The written policy shall not apply to any enrollee who is offered an out-of-network option, or who had the option to continue

with his or her previous health plan or provider and instead voluntarily chose to change health plans.

(f) This section shall not apply to health plan contracts that include out-of-network coverage under which the enrollee is able to obtain services from the enrollee's existing provider.

(g) For purposes of this section, "provider" refers to a person who is described in subdivision (f) of Section 900 of the Business and Professions Code.

SEC. 3. Section 10133.55 is added to the Insurance Code, to read:

10133.55. (a) On or before July 1, 1996, every disability insurer covering hospital, medical, and surgical expenses on a group basis, or nonprofit hospital service plan providing coverage on a group basis, that contracts with providers for alternative rates pursuant to Section 10133 or Section 11512 and limit payments under those policies and plans to services secured by insureds and subscribers from providers charging alternative rates pursuant to these contracts, shall file with the Department of Insurance, a written policy describing how the health plan shall facilitate the continuity of care for new insureds or enrollees receiving services during a current episode of care for an acute condition from a noncontracting provider. This written policy shall describe the process used to facilitate continuity of care, including the assumption of care by a contracting provider. Notice of the policy and information regarding how insureds and subscribers may request a review under the policy shall be provided to all new insureds and subscribers , except those insureds or subscribers who are not eligible as described in subdivision (e). A copy of the written policy shall be provided to eligible insureds and subscribers upon request.

(b) The written policy shall describe how requests to continue services with an existing noncontracting provider are reviewed by the insurer or plan. The policy shall ensure that reasonable consideration is given to the potential clinical effect that a change of provider would have on the insured's or subscriber's treatment for the acute condition.

(c) An insurer or plan may require any nonparticipating provider whose services are continued pursuant to the written policy to agree in writing to meet the same contractual terms and conditions that are imposed upon the insurer's or plan's participating providers, including location within the plan's service area, reimbursement methodologies, and rates of payment. If the insurer or plan determines that a patient's health care treatment should temporarily continue with the patient's existing provider, the insurer or plan shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provision of services by the existing provider.

(d) Nothing in this section shall require an insurer or plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the policy or plan contract.

(e) The written policy shall not apply to any insured or subscriber who is offered an out-of-network option, or who had the option to continue with his or her previous health benefits carrier or provider and instead voluntarily chose to change health plans.

(f) This section shall not apply to health plan contracts that include out-of-network coverage under which the insured or subscriber is able to obtain services from the insured's or subscriber's existing provider.

(g) For purposes of this section, "provider" refers to a person who is described in subdivision (f) of Section 900 of the Business and Professions Code.

(h) This section shall only apply to a group disability insurance policy if it provides coverage for hospital, medical, or surgical benefits.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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# CHAPTER 897

An act to amend Sections 20111, 20113, 20114, 20116, 20651, 20654, 20655, and 20657 of, and to repeal Section 20651.5 of, the Public Contract Code, relating to local agency contracts.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 20111 of the Public Contract Code is amended to read:

20111. (a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.

(2) Services, except construction services.

(3) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all equipment, materials, or supplies, whether patented or otherwise, and to contracts awarded pursuant to subdivision (a) of Section 2000. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any work done by day labor or by force account pursuant to Section 20114.

(d) Commencing January 1, 1997, the Superintendent of Public Instruction shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100).

SEC. 2. Section 20113 of the Public Contract Code is amended to read:

20113. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property, the board may, by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

(1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

(2) Notwithstanding Section 20114, authorize the use of day labor or force account for the purpose.

(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

SEC. 3. Section 20114 of the Public Contract Code is amended to read:

20114. (a) In each school district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20115 by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Moreover, in any school district having an average daily attendance of 35,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20115, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of material does not exceed twenty-one thousand dollars ($21,000).

(b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

SEC. 4. Section 20116 of the Public Contract Code is amended to read:

20116. It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

Informal bidding may be used on work, projects, services, or purchases that cost up to the limits set forth in this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner as the district deems appropriate.

SEC. 5. Section 20651 of the Public Contract Code is amended to read:

20651. (a) The governing board of any community college district shall let any contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.

(2) Services, except construction services.

(3) Repairs, including maintenance as defined in Section 20656, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the community college district.

(3) A certified check made payable to the community college district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the community college district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

(c) This section applies to all equipment, materials, or supplies, whether patented or otherwise. This section shall not apply to

professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any works done by day labor or by force account pursuant to Section 20655.

(d) Commencing January 1, 1997, the Board of Governors of the California Community Colleges shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100).

SEC. 6. Section 20651.5 of the Public Contract Code is repealed.

SEC. 7. Section 20654 of the Public Contract Code is amended to read:

20654. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of the college, or to permit the continuance of existing college classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

(1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

(2) Notwithstanding Section 20655, authorize the use of day labor or force account for the purpose.

(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

SEC. 8. Section 20655 of the Public Contract Code is amended to read:

20655. (a) In each community college district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20656 by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Moreover, in any district whose number of full-time equivalent students is 15,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20656, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of materials does not exceed twenty-one thousand dollars ($21,000).

(b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

SEC. 9. Section 20657 of the Public Contract Code is amended to read:

20657. It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California Community College Budget and Accounting Manual for a period of not less than three years after completion of the project.

Informal bidding may be used on work, projects, services, or purchases that cost up to the limits set forth in this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects, in any manner as the district deems appropriate.

## Assembly Bill No. 611

## CHAPTER 390

An act to amend Sections 17280, 17295, 81130, and 81133 of the Education Code, and to amend Section 20111.5 of the Public Contract Code, relating to education facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 611, Villaraigosa. Educational facilities.

(1) Existing law requires the Department of General Services to supervise the construction of any public school building, and to supervise an alteration or reconstruction of, or addition to, any public school building when the estimated cost exceeds $20,000. Existing law requires the Department of General Services to pass on the construction of any public school building, and to pass on any alteration of a public school building when the estimated cost exceeds $20,000. Existing law requires a structural engineer to examine and report, as specified, on any alteration of a public school building, when the estimated cost exceeds $10,000 but does not exceed $20,000.

This bill would require the Department of General Services to pass on an alteration of any public school building when the estimated cost exceeds $25,000. This bill would require a licensed structural engineer to examine and report, as specified, on any alteration of a public school building, when the estimated cost exceeds $25,000 but does not exceed $100,000. This bill would require a design professional, as specified, to certify that the plans and specifications for any alteration of a public school building meet specified requirements when the alteration does not involve structural elements.

(2) Existing law permits a school district to prequalify prospective bidders for contracts with the district, as specified.

This bill would permit a school district to establish a process for prequalifying bidders on a quarterly basis and would authorize that prequalification to be considered valid for up to one calendar year following the date of initial prequalification.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17280 of the Education Code is amended to read:

17280. (a) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or the reconstruction or alteration of or addition to any school building, if not exempted under Section 17295, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a school district to perform work with its own forces in excess of the limitations set forth in Sections 17595 and 17599. In calculating the cost of any project of reconstruction or alteration of, or addition to, any school building for the purpose of determining the applicability of the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, the Department of General Services shall not include, as an element of that cost, any expenses of air-conditioning equipment or insulation materials for that building, or of installing the equipment or materials.

(b) Whenever repairs due to fire damage, not including any damage caused by wind or earthquake, must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original work under then existing rules, regulations, and building standards may be used without modification, providing all other provisions of this article are carried out.

(c) Notwithstanding any other provision of law, no school district shall be authorized to construct or reconstruct any school building, regardless of the source of funding, unless and until the governing board of the district, by resolution, has indicated the agreement of the district that any school building construction or reconstruction that exceeds those construction costs and allowable area standards or any allowable building area computed for an attendance area pursuant to Section 17041 shall, in the event of the district's subsequent application for state funding for school facility construction, be deducted from the allowable building area for which the district would otherwise have been eligible, which restriction shall not be subject to waiver or exception as otherwise may be provided by law.

(d) If it is determined that, for any reason, a school district failed to comply with the requirement of this section, the district shall not be eligible for any additional building area pursuant to Section 17049

and may be denied any time priority established for the particular project pursuant to Section 17016.

SEC. 2. Section 17295 of the Education Code is amended to read:

17295. (a) The Department of General Services shall pass upon and approve or reject all plans for the construction or, if the estimated cost exceeds twenty-five thousand dollars ($25,000), the alteration of any school building. To enable it to do so, the governing board of each school district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

(b) Notwithstanding subdivision (a) of Section 17295, where the estimated cost of the reconstruction or alteration of, or an addition to, any school building exceeds twenty-five thousand dollars ($25,000) but does not exceed one hundred thousand dollars ($100,000), a licensed structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and specifications for the project which shall be submitted to the Department of General Services for review and approval. A copy of the engineer's report stating that the work does not affect structural elements shall be filed with the Department of General Services.

(c) If a licensed structural engineer submits a report to the Department of General Services stating that the plans or activities authorized pursuant to subdivision (b) do not involve structural elements, then all of the following shall apply to that project:

(1) The design professional in responsible charge of the project undertaken pursuant to this subdivision shall certify that the plans and specifications for the project meet any applicable fire and life safety standards, and do not affect the disabled access requirements of Section 4450 of the Government Code, and shall submit this certification to the department. The letter of certification shall bear the identifying licensing stamp or seal of the design professional. This provision does not preclude a design professional from submitting plans and specifications to the department along with the appropriate fee for review.

(2) Within 10 days of the completion of any project authorized pursuant to subdivision (b), the school construction inspector of record on the project, who is certified by the department to inspect school buildings, shall certify in writing to the department that the reconstruction, alteration, or addition has been completed in compliance with the plans and specifications.

(3) The dollar amounts cited in this section shall be increased on an annual basis, commencing January 1, 1999, by the department

according to an inflationary index governing construction costs that is selected and recognized by the department.

(4) No school district shall subdivide a project for the purpose of evading the limitation on amounts cited in this

(d) For purposes of this section, "design professional in responsible charge" or "design professional" means the licensed architect, licensed structural engineer, or licensed civil engineer who is responsible for the completion of the design work involved with the project.

SEC. 3. Section 81130 of the Education Code is amended to read:

81130. (a) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or the reconstruction or alteration of, or addition to, any school building, if not exempted under Section 81133, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a community college district to perform work with its own forces in excess of the limitations set forth in Article 41 (commencing with Section 20650) of Part 3 of Division 2 of the Public Contract Code.

(b) Whenever repairs due to fire damage must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original work under then existing rules, regulations, and building standards may be used without modification, providing all other provisions of this article are carried out.

SEC. 4. Section 81133 of the Education Code is amended to read:

81133. (a) The Department of General Services shall pass upon and approve or reject all plans for the construction or, if the estimated cost exceeds twenty-five thousand dollars ($25,000), the alteration of any school building. To enable it to do so, the governing board of each community college district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

(b) Notwithstanding subdivision (a) , where the estimated cost of reconstruction or alteration of, or addition to, a school building exceeds twenty-five thousand dollars ($25,000), but does not exceed one hundred thousand dollars ($100,000), a licensed structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and

specifications for the project which shall be submitted to the Department of General Services for review and approval. A copy of the engineer's report stating that the work does not affect structural elements shall be filed with the Department of General Services.

(c) If a licensed structural engineer submits a report to the Department of General Services stating that the plans or activities authorized pursuant to subdivision (b) do not involve structural elements, then all of the following shall apply to that project:

(1) The design professional in responsible charge of the project undertaken pursuant to this subdivision shall certify that the plans and specifications for the project meet any applicable fire and life safety standards, and do not affect the disabled access requirements of Section 4450 of the Government Code, and shall submit this certification to the department. The letter of certification shall bear the identifying licensing stamp or seal of the design professional. This provision does not preclude a design professional from submitting plans and specifications to the department along with the appropriate fee for review.

(2) Within 10 days of the completion of any project authorized pursuant to subdivision (b), the school construction inspector of record on the project, who is certified by the department to inspect school buildings, shall certify in writing to the department that the reconstruction, alteration, or addition has been completed in compliance with the plans and specifications.

(3) The dollar amounts cited in this section shall be increased on an annual basis, commencing January 1, 1999, by the department according to an inflationary index governing construction costs that is selected and recognized by the department.

(4) No school district shall subdivide a project for the purpose of evading the limitation on amounts cited in this section.

(5) Before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Department of General Services, shall first be had and obtained.

(6) In each case the application for approval of the plans shall be accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and estimates of cost, which shall comply in every respect with any and all requirements prescribed by the Department of General Services.

(7) The application shall be accompanied by a filing fee in amounts as determined by the Department of General Services based on the estimated cost according to the following schedule:

(A) For the first one million dollars ($1,000,000), a fee of not more than 0.7 percent of the estimated cost.

(B) For all costs in excess of one million dollars ($1,000,000), a fee of not more than 0.6 percent of the estimated cost.

The minimum fee in any case shall be two hundred fifty dollars ($250). If the actual cost exceeds the estimated cost by more than 5 percent, a further fee shall be paid to the Department of General Services, based on the above schedule and computed on the amount by which the actual cost exceeds the amount of the estimated cost.

(8) All fees shall be paid into the State Treasury and credited to the Division of Architecture Public Building Fund, which fund is continued in existence and is retitled the Architecture Public Building Fund, and are continuously appropriated, without regard to fiscal years, for the use of the Department of General Services, subject to approval of the Department of Finance, in carrying out the provisions of this article.

Adjustments in the amounts of the fees, as determined by the Department of General Services and approved by the Department of Finance, shall be made within the limits set in subdivision (j) in order to maintain a reasonable working balance in the fund.

(9) No contract for the construction or alteration of any school building, made or executed by the governing board of any community college district or other public board, body, or officer otherwise vested with authority to make or execute this contract, is valid, and no public money shall be paid for any work done under this contract or for any labor or materials furnished in constructing or altering the building, unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Department of General Services and unless the approval thereof in writing has first been had and obtained from the Department of General Services.

(d) For purposes of this section, "design professional in responsible charge" or "design professional" means the licensed architect, licensed structural engineer, or licensed civil engineer who is responsible for the completion of the design work involved with the project.

SEC. 5. Section 20111.5 of the Public Contract Code is amended to read:

20111.5. (a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating

bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded.

(d) A proposal form required pursuant to subdivision (c) shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (b), for at least one day prior to that date.

(e) Notwithstanding subdivision (d), any school district may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and may authorize that prequalification to be considered valid for up to one calendar year following the date of initial prequalification.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to help expedite, as soon as possible, the approval process for structural alteration school construction projects, it is necessary that this act take effect immediately.

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## Assembly Bill No. 994

## CHAPTER 722

An act to add Section 20103.6 to the Public Contract Code, relating to local agency contracts.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 994, Sweeney. Local Agency Public Construction Act: architectural design services: bids.

The Local Agency Public Construction Act sets forth the procedures pursuant to which local agencies may solicit and evaluate bids or proposals for, and award, contracts for the construction of public works.

This bill would, as of July 1, 1998, require any local agency subject to the act, in the procurement of architectural design services requiring an expenditure in excess of $10,000, to include in any request for proposals for those services or invitation to bid from a prequalified list for a specific project, a disclosure of any contract provision that would require the contracting architect to indemnify and hold harmless the local agency against any and all liability, whether or not caused by the activity of the contracting architect. It would provide that, in the event a local agency fails to disclose such a contract provision in the request for proposals or invitation to bid, that local agency would (1) be precluded from requiring the selected architect to agree to any contract provision requiring the selected architect to indemnify or hold harmless the local agency against any and all liability not caused by the activity of the selected architect, (2) be required to cease discussions with the selected architect and reopen the request for proposals or invitations to bid, or (3) be required to mutually agree to an indemnity clause acceptable to both parties.

*The people of the State of California do enact as follows:*

SECTION 1. Section 20103.6 is added to the Public Contract Code, to read:

20103.6. (a) (1) Any local agency subject to this chapter shall, in the procurement of architectural design services requiring an expenditure in excess of ten thousand dollars ($10,000), include in any request for proposals for those services or invitations to bid from a prequalified list for a specific project a disclosure of any contract provision that would require the contracting architect to indemnify

and hold harmless the local agency against any and all liability, whether or not caused by the activity of the contracting architect.

(2) The disclosure statement shall be prominently set forth in bold type.

(b) In the event a local agency fails to comply with paragraph (1) of subdivision (a), that local agency shall (1) be precluded from requiring the selected architect to agree to any contract provision requiring the selected architect to indemnify or hold harmless the local agency against any and all liability not caused by the activity of the selected architect, (2) cease discussions with the selected architect and reopen the request for proposals or invitations to bid from a qualification list, or (3) mutually agree to an indemnity clause acceptable to both parties.

(c) This section shall become operative on July 1, 1998.

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# REAL PROPERTY—COMMUNITY COLLEGE DISTRICT—AUTHORIZATION AND REGULATIONS

## CHAPTER 657

A.B. No. 1921

**AN ACT to amend and renumber the heading of Article 1 (commencing with Section 81300) of Chapter 2 of, to add the heading of Chapter 2 (commencing with Section 81250) to, to add Article 1 (commencing with Section 81250) to Chapter 2 of, and to repeal the heading of Chapter 2 (commencing with Section 81300) of, Part 49 of the Education Code, and to add Section 20651.5 to the Public Contract Code, relating to community colleges.**

[Approved by Governor September 20, 1998.]

[Filed with Secretary of State September 21, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1921, Scott. Community colleges: real property of community college districts.

(1) Existing law authorizes the establishment of community college districts and their operation of community college campuses. Existing law prescribes procedures with regard to the sale, lease, use, gift, and exchange of real property by community college districts.

This bill would authorize the governing board of a community college district to request the Board of Governors of the California Community Colleges to waive, insofar as necessary to accomplish the purpose of the waiver request, all or a portion of the procedures regulating the sale, lease, use, gift, or exchange of community college district real property, other than any provision of the bill. The bill would require that this waiver could be requested only after a noticed public hearing, and only if the waiver request demonstrates that the district has provided the required written notice, that the district was unable to reach agreement with any public agency that sought to acquire the property, that the waiver will not substantially increase state costs or decrease state revenues, and that the waiver will further the ability of the district to meet the educational needs of the community. The bill would provide that the Board of Governors of the California Community Colleges may approve a request for a waiver upon finding that the waiver would promote efficiency and further the public benefit. The bill would require the Chancellor of the California Community Colleges to annually report to the

Governor and the Legislature on the number, types, and disposition of waiver requests submitted under the bill.

(2) Existing law requires the governing board of any community college district to let any contracts involving an expenditure of more than $50,000 for the purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district; for services, except construction services; or repairs, including maintenance as defined, that are not a public project, as defined. Existing law also requires the governing board of a community college district to let any contract for a public project, as defined, involving an expenditure of $15,000 or more to the lowest responsible bidder who gives security as the board requires, or else to reject all bids.

This bill would authorize a governing board of any community college district to require that each prospective bidder for a contract complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district. This bill would impose a state-mandated local program by requiring that a governing board of a community college district furnish prospective bidders for contracts subject to the bill with a standardized proposal form.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Chapter 2 (commencing with Section 81250) is added to Part 49 of the Education Code, to read:

CHAPTER 2. PROPERTY: SALE, LEASE, USE, GIFT, AND EXCHANGE

SEC. 2. Article 1 (commencing with Section 81250) is added to Chapter 2 of Part 49 of the Education Code, to read:

Article 1. General Provisions

81250. (a) The governing board of a community college district may, after a public hearing on the matter, request the Board of Governors of the California Community Colleges to waive, insofar as necessary to accomplish the purpose of the waiver request, all or part of any section of this chapter, other than any provision of this article, or any regulation adopted by the Board of Governors that implements a provision of this chapter.

(b) If a waiver request involves the sale or lease of district real property, the governing board of a district requesting a waiver shall provide written notice of the public hearing conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to any city, county, park or recreation district, regional park authority, or public housing authority within which the land may be situated.

81252. (a) The Board of Governors of the California Community Colleges may approve any request for waiver upon finding that the waiver would promote efficiency and further the public benefit. Waivers may be approved for purposes including, but not necessarily limited to, joint or shared use of property and facilities and for collaborative partnerships between colleges and other public and private entities.

(b) The Board of Governors of the California Community Colleges shall not approve any request for waiver of any provision of this chapter pursuant to Section 81250 unless the district seeking the waiver demonstrates all of the following:

(1) The district has provided the written notice required by subdivision (b) of Section 81250.

(2) The district, after making a good faith effort, was unable to reach agreement with any public agency that sought to acquire the site pursuant to Section 81363.5.

(3) The waiver will not substantially increase state costs or decrease state revenues.

(4) The waiver will further the ability of the district to meet the educational needs of the community.

81254. The Chancellor of the California Community Colleges shall annually report to the Governor and Legislature on the number, types, and disposition of waiver requests submitted pursuant to Section 81250.

SEC. 3. The heading of Chapter 2 (commencing with Section 81300) of Part 49 of the Education Code is repealed.

SEC. 4. The heading of Article 1 (commencing with Section 81300) of Chapter 2 of Part 49 of the Education Code is amended and renumbered to read:

Article 1.5. Conveyances

SEC. 5. Section 20651.5 is added to the Public Contract Code, to read:

20651.5. (a) The governing board of any community college district may require each prospective bidder for a contract, as described under Section 20651, to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaire responses of prospective bidders and their financial statements shall not be deemed public records and shall not be open to public inspection.

(b) Any community college district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed financially qualified to bid. The prequalification of a prospective bidder shall neither limit nor preclude a district's subsequent consideration of a prequalified bidder's responsibility on factors other than the prospective bidder's financial qualifications.

(c) Each prospective bidder on any contract described under Section 20651 that is subject to this section shall be furnished, by the community college district letting the contract, with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be deemed nonresponsive and shall be rejected. A proposal form shall not be accepted from any person who, or other entity which, is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but who or which has not done so at least five days prior to the date fixed for the public opening of sealed bids and has not been prequalified, pursuant to subdivision (b), at least one day prior to that date.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

# PUBLIC CONTRACTS—RETENTION PROCEEDS—SUBCONTRACTORS

## CHAPTER 857

A.B. No. 2084

**AN ACT to amend Section 3248 of the Civil Code, and to amend Sections 3400, 7107, 10121, 10127, 10140, 10240.1, 10261, 10262, 10262.5, 10263, and 22300 of, and to add Section 7200 to, the Public Contract Code, relating to public works contracts.**

[Approved by Governor September 24, 1998.]

[Filed with Secretary of State September 25, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2084, Miller. Public works contracts.

(1) Existing law requires a contractor in a public works contract to file a payment bond with the public entity in specified amounts depending on the value of the contract.

This bill would revise the amounts of the bond.

(2) Existing law governs the distribution of retention proceeds in a public works contract and requires an original contractor to pay subcontractors from whom a retention has been withheld within 10 days of receipt from the public agency of retention proceeds.

This bill would reduce that period to 7 days.

(3) Existing law sets forth the requirements respecting disbursement of retention proceeds withheld from any payment by a public entity to the original contractor for a work of improvement, or withheld from any payment by the original contractor to a subcontractor.

This bill would additionally specify that, with respect to a contract for the construction of any public work of improvement entered into on or after January 1, 1999, in a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the public entity and the original contractor, except as specified. It would also prohibit any party from requiring any other party to waive any of these provisions.

(4) The State Contract Act requires that the director of the respective state agency approve project plans, specifications, and estimates of cost.

This bill would delete that requirement.

(5) The act provides for arbitration of claims arising under project contracts.

This bill would shorten the time in which a claimant may initiate arbitration.

(6) The bill would make other changes with regard to the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, and would also require a contractor who elects to receive interest on moneys withheld in retention by a public agency to offer that option to subcontractors.

The bill would provide that its provisions shall apply only with respect to contracts entered into on or after January 1, 1999.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3248 of the Civil Code is amended to read:

3248. In order to be approved, the payment bond shall satisfy all of the following requirements:

(a) The bond shall be in a sum not less than that prescribed in the following paragraph which is applicable to the total amount payable:

(1) * * * One hundred percent of the total amount payable by the terms of the contract when the total amount payable does not equal or exceed five million dollars ($5,000,000).

(2) * * * Fifty percent of the total amount payable by the terms of the contract when the total amount payable is not less than five million dollars ($5,000,000) and does not exceed ten million dollars ($10,000,000).

(3) * * * Twenty-five percent of the total amount payable by the terms of the contract if the contract exceeds ten million dollars ($10,000,000) * * *.

(b) The bond shall provide that if the original contractor or a subcontractor fails to pay (1) any of the persons named in Section 3181, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code * * * with respect to the work and labor, that the sureties will pay for the same, and also, in case suit is brought upon the bond, a reasonable attorney's fee, to be fixed by the court. The original contractor may require of the subcontractors a bond to indemnify the original contractor for any loss sustained by the original contractor because of any default by the subcontractors under this section.

(c) The bond shall, by its terms, inure to the benefit of any of the persons named in Section 3181 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

(d) The bond shall be in the form of a bond and not a deposit in lieu of a bond.

SEC. 2. Section 3400 of the Public Contract Code is amended to read:

3400. (a) No agency of the state nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in such a manner as to limit the bidding, directly or indirectly, to any one specific concern, or (2) except in those instances where the product is designated to match others in use on a particular public improvement either completed or in the course of completion, calling for a designated material, product, thing, or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in * * * this state, name that product in the specification. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the specifying agency, it may list only one. Specifications shall provide a period of time * * * prior to the award of the contract for submission of data substantiating a request for a substitution of "an equal" item.

(b) Subdivision (a) shall not be applicable if the governing body of one of the entities named therein by resolution makes a finding that is included in the specifications that a particular material, product, thing, or service is designated by specific brand or trade name in order that a field test or experiment may be made to determine the product's suitability for future use.

SEC. 3. Section 7107 of the Public Contract Code is amended to read:

7107. (a) This section is applicable with respect to all contracts entered into on or after January 1, 1993, relating to the construction of any public work of improvement.

(b) The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision "completion" means any of the following:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agent, of the work of improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

(d) Subject to subdivision (e), within seven days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(g) If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261 * * *, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed retentions.

(h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.

SEC. 4. Section 7200 is added to the Public Contract Code, to read:

7200. (a)(1) This section shall apply with respect to all contracts entered into on or after January 1, 1999, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(2) For purposes of this section, "public entity" means the state, including every state agency, office, department, division, bureau, board, or commission, a city, county, city and county, including chartered cities and chartered counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the public entity and the original contractor.

(c) When a performance and payment bond is required in the solicitation for bids, subdivision (b) shall not apply to either of the following:

(1) The original contractor, if the subcontractor fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the original contractor.

(2) The subcontractor, if a subcontractor thereunder fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the subcontractor.

On behalf of the escrow agent:

Title

Name

Signature

Address

At the time the escrow account is opened, the owner and contractor shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

| Owner | Contractor |
|---|---|
| Title | Title |
| Name | Name |
| Signature | Signature |

SEC. 13. Section 22300 of the Public Contract Code is amended to read:

22300. (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract * * *; however, substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in * * * this state as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. * * *

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d)(1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the

subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.

(3) No contractor shall require any subcontractor to waive any provision of this section.

(e) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.

(f) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____ whose address is _____ _____ hereinafter called "Owner," _____ whose address is _____ _____ hereinafter called "Contractor" and _____ whose address is _____ _____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Contractor:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Escrow Agent:

_____
Title

_____
Name

_____
Signature

_____
Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

_____
Title

_____
Name

Contractor

_____
Title

_____
Name

Signature Signature

SEC. 14. The provisions of this act shall apply only with respect to contracts entered into on or after January 1, 1999.

**Assembly Bill No. 574**

CHAPTER 972

An act to amend Section 4107 of, and to add Sections 1103 and 20101 to, the Public Contract Code, relating to public contracts.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 574, Hertzberg. Public contracts: responsible bidder.

Existing law defines the terms "public entity" and "public works contract" for the purposes of specified provisions of the Public Contract Code.

This bill would define the term "responsible bidder" for these purposes, and would authorize a public entity to require each prospective bidder for a contract to complete and submit to the entity a standardized questionnaire and financial statement. This bill would require, with a specified exception, any public entity requiring standard questionnaires and financial statements to adopt and apply a uniform system of rating bidders on the basis of standard questionnaires and financial statements. This bill would require the Department of Industrial Relations, in collaboration with affected agencies and interested parties, to develop and draft a standardized questionnaire that public entities may use and to develop guidelines for rating bidders. The bill would also require the public entity requiring the prequalification to establish a process to permit prospective bidders to dispute their proposed prequalification rating.

Under existing law, a prime contractor whose bid is accepted may not substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority may, except as otherwise provided, consent to the substitution of another person as a subcontractor in specified situations.

This bill would provide for the consent to the substitution in the situation when the awarding authority determines that a listed subcontractor is not a responsible contractor.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature hereby finds and declares that the establishment by public agencies of a uniform system to evaluate the ability, competency, and integrity of bidders on public works projects is in the public interest, will result in the construction of public works projects of the highest quality for the lowest costs, and is in

furtherance of the objectives stated in Section 100 of the Public Contract Code.

SEC. 2. Section 1103 is added to the Public Contract Code, to read:

1103. "Responsible bidder," as used in this part, means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.

The Legislature finds and declares that this section is declaratory of existing law.

SEC. 3. Section 4107 of the Public Contract Code is amended to read:

4107. A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes bankrupt or insolvent.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

SEC. 4. Section 20101 is added to the Public Contract Code, to read:

20101. (a) Except as provided in Section 20111.5, a public entity subject to this part may require that each prospective bidder for a contract complete and submit to the entity a standardized questionnaire and financial statement in a form specified by the entity, including a complete statement of the prospective bidder's experience in performing public works. The standardized questionnaire may not require prospective bidders to disclose any violations of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code committed prior to January 1, 1998, if a violation was based on a subcontractor's failure to comply with these provisions and the bidder had no knowledge of the subcontractor's violations. The Department of Industrial Relations, in collaboration with affected agencies and interested parties, shall develop model guidelines for rating bidders, and draft the standardized questionnaire, that may be used by public entities for the purposes of this part. The Department of Industrial Relations, in developing the standardized questionnaire, shall consult with affected public agencies, cities and counties, the construction industry, the surety industry, and other interested parties. The questionnaire and financial statement shall be verified under oath by

the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection; however, records of the names of contractors applying for prequalification status shall be public records subject to disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Any public entity requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. The uniform system of rating prospective bidders shall be based on objective criteria.

(c) A public entity may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and a prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(d) Any public entity requiring prospective bidders on a public works project to prequalify pursuant to this section shall establish a process that will allow prospective bidders to dispute their proposed prequalification rating prior to the closing time for receipt of bids. The appeal process shall include the following:

(1) Upon request of the prospective bidder, the public entity shall provide notification to the prospective bidder in writing of the basis for the prospective bidder's disqualification and any supporting evidence that has been received from others or adduced as a result of an investigation by the public entity.

(2) The prospective bidder shall be given the opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the public entity as to why the prospective bidder should be found qualified.

(3) If the prospective bidder chooses not to avail itself of this process, the proposed prequalification rating may be adopted without further proceedings.

(e) For the purposes of subdivision (a), a financial statement shall not be required from a contractor who has qualified as a Small Business Administration entity pursuant to paragraph (1) of subdivision (d) of Section 14837 of the Government Code, when the bid is no more than 25 percent of the qualifying amount provided in paragraph (1) of subdivision (d) of Section 14837 of the Government Code.

(f) Nothing in this section shall preclude an awarding agency from prequalifying or disqualifying a subcontractor. The disqualification of

a subcontractor by an awarding agency does not disqualify an otherwise prequalified contractor.

SEC. 5. Nothing contained in this act shall apply to services procured pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

O

**Assembly Bill No. 2336**

CHAPTER 126

An act to amend Section 9203 of the Public Contract Code, relating to public contracts.

[Approved by Governor July 8, 2000. Filed with Secretary of State July 10, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2336, Zettel. Local agency contracts.

Existing law prescribes limits on progress payment that may be made on any contract with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, that exceeds $5,000.

This bill would provide that a county water authority shall be subject to a $25,000 limit for purposes of these provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 9203 of the Public Contract Code is amended to read:

9203. (a) Payment on any contract with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars ($5,000), shall be made as the legislative body prescribes upon estimates approved by the legislative body, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed.

(b) Notwithstanding the dollar limit specified in subdivision (a), a county water authority shall be subject to a twenty-five thousand dollar ($25,000) limit for purposes of subdivision (a).

O

## Assembly Bill No. 2866

## CHAPTER 127

An act to amend Sections 215, 631, 1730, 1734, 1735, and 1742 of the Code of Civil Procedure, to amend Section 14038 of the Corporations Code, to amend Section 17070.70 of the Education Code, to amend Sections 12012.85, 12439, 16429.30, and 53661 of, to amend and add Section 15202 to, to add Section 19134 to, to add Chapter 1.4 (commencing with Section 15363.70) to Part 6.7 of Division 3 of Title 2 of, to add and repeal Section 13968.7 of, and to repeal Sections 16429.34, 16429.36, 16429.38, 16429.40, and 16429.49 of, the Government Code, to amend Sections 51451 and 51452 of the Health and Safety Code, to amend Section 2675.5 of, and to add Sections 3099.5 and 7929.5 to, the Labor Code, to add Section 531 to the Military and Veterans Code, to add Sections 3006 and 5024 to the Penal Code, to add Section 10299 to the Public Contract Code, to add Section 355.1 to the Public Utilities Code, and to add Section 140.3 to the Streets and Highways Code, relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 8, 2000. Filed with Secretary of State July 10, 2000.]

I am signing Assembly Bill No. 2866; however, I am concerned about several provisions contained in this measure.

First, I am deleting Section 10 of this measure, because it contains an appropriation. This section would authorize the Board of Control to enter into an interagency agreement with the University of California, San Francisco, to establish a victims of crime recovery center, as a pilot project until June 30, 2004, at San Francisco General Hospital; and to establish supplemental mental health rates for eligible victims. By providing for new and expanded uses of a continuously appropriated fund, Section 10 of this bill would make an appropriation.

Consistent with my strong support for victims' rights, I sustained a total of $525,000 in the 2000 Budget Act for one-time start-up costs for the victims of crime recovery center. However, I am concerned Section 10 would fund services that are normally not reimbursed and at rates that are twice the current level. The enhanced mental health reimbursement rates, funded by the Restitution Fund, which is continuously appropriated to the Board of Control, could set a potentially costly precedent that could ultimately have a negative impact on the Restitution Fund and the ability to fund services to victims on a statewide basis.

I am also deleting Section 36 to conform with this action.

Second, I am concerned about provisions included in this measure that would require an assessment of rail transportation in California and recommendations for projects. While I do not object to assessing the potential for greater connectivity of the passenger rail system with other passenger travel modes, improved public safety, and mitigating congestion on rail corridors providing passenger service, I am concerned with the bill's implication that the State should propose projects to support private freight rail capital needs.

(1) Improvements in the existing statewide master agreement procedures for purchasing contract and noncontract drugs at a discount from drug manufacturers.

(2) Participation by offenders in state custody infected with human immunodeficiency virus (HIV), the etiologic agent of acquired immune deficiency syndrome (AIDS), in the AIDS Drug Assistance Program.

(3) Membership in the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) or other cooperative purchasing arrangements with other governmental entities.

(4) Greater centralization or standardization of procurement of drugs and medical supplies among individual prisons in the Department of Corrections prison system.

(d) The Bureau of State Audits shall report to the Legislature and the Governor by January 10, 2002, its findings in regard to:

(1) An evaluation of the trends in state costs for the procurement of drugs and medical supplies for offenders in state custody, and an assessment of the major factors affecting those trends.

(2) A summary of the steps taken by the Department of Corrections, the Department of General Services, and other appropriate state agencies to implement this section.

(3) An evaluation of the compliance by these state agencies with the findings and recommendations of the January 2000 Bureau of State Audits report for reform of procurement of drugs and medical supplies for offenders in state custody.

(4) Any further recommendations of the Bureau of State Audits for reform of state drug procurement practices, policies, or statutes.

SEC. 30. Section 10299 is added to the Public Contract Code, to read:

10299. (a) Notwithstanding any other provision of law, the director may consolidate the needs of multiple state agencies for information technology goods and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State agencies and local agencies may contract with suppliers awarded the contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed upon, to any school district empowered to expend public funds. These school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by

school districts for the acquisition of information technology, goods, and services. The state shall incur no financial responsibility in connection with the contracting of local agencies under this section.

SEC. 31. Section 355.1 is added to the Public Utilities Code, to read:

355.1. The commission may investigate issues associated with multiple qualified exchanges. If the commission determines that allowing electrical corporations to purchase from multiple qualified exchanges is in the public interest, the commission shall prepare and submit findings and recommendations to the Legislature on or before June 1, 2001. Prior to June 1, 2001, the commission may not implement the part of any decision authorizing electrical corporations to purchase from exchanges other than the Power Exchange. That portion of any decision of the commission adopted prior to January 1, 2001, but after June 1, 2000, authorizing electrical corporations to purchase from multiple qualified exchanges, may not be implemented.

SEC. 32. Section 140.3 is added to the Streets and Highways Code, to read:

140.3. (a) For the purposes of this section, the following terms have the following meanings:

(1) (A) "Mobile equipment" means devices owned by the department by which any person or property may be propelled, moved, or drawn on or off highway and that are used for employee transportation or material movement, or for construction or maintenance work relating to transportation, including, but not limited to, passenger vehicles, heavy duty trucks, boats, trailers, motorized construction equipment, and "slip-in" accessories or attachments that are used by more than one functional unit.

(B) "Mobile equipment" does not include any of the following:

(i) Office equipment, computers, and any other stationary, nonmovable, and integral part of a transportation facility.

(ii) Passenger vehicles used to transport the public.

(iii) Aircraft or related aeronautics equipment.

(iv) Rolling stock used for intercity rail operations.

(2) "Mobile equipment services" includes, but is not limited to, all of the following:

(A) Use of mobile equipment and services, including, but not limited to, the purchase of new vehicles.

(B) Receiving, servicing, and equipping new mobile equipment units.

(C) Assembling components into completed mobile equipment units.

(D) Managing mobile equipment and services, including, but not limited to, payment for fuel and insurance.

(E) Repairing, rehabilitating, and maintaining mobile equipment.

SEC. 39. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 40. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the statutory changes to implement the Budget Act of 2000 at the earliest possible time, it is necessary that this act take effect immediately.

O

**Senate Bill No. 266**

CHAPTER 159

An act to add Section 6610 to the Public Contract Code, relating to public contracts.

[Approved by Governor July 21, 2000. Filed with Secretary of State July 21, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 266, Chesbro. Public contracts: bids.

Existing law generally requires public agencies and contractors to take various actions with regard to bidding for public contracts.

This bill would impose a state-mandated local program by requiring that when a public agency invites formal bids for public projects, and requires that there be a mandatory prebid site visit, conference, or other mandatory meeting prior to the submission of the bid by a contractor, that the public agency provide a notice of that requirement that includes specified information.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6610 is added to the Public Contract Code, to read:

6610. Notice inviting formal bids for projects by a public agency that include a requirement for any type of mandatory prebid conference, site visit, or meeting shall include the time, date, and location of the mandatory prebid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory prebid site visit, conference or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. This provision shall not apply to the Regents of the University of California.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

O

**Assembly Bill No. 2182**

CHAPTER 292

An act to amend Section 10126 of, to add Section 10780.5 to, and to add Article 1.3 (commencing with Section 20103.8) to Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 1, 2000. Filed with Secretary of State September 5, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2182, Mazzoni. Bidding procedures: alternative bids.

Existing law establishes procedures for competitive bidding of certain contracts by public entities, and permits designated state officials to approve cost estimates that contain additions to or deletions from the base bid.

This bill would revise procedures affecting state contracts to prescribe procedures for determining the lowest bidder if additions or deletions from the base bid are considered. The bill would also authorize local agencies and the Trustees of the California State University to include alternatives that may be added to or deleted from the final bid award for a project, and would specify how those alternatives shall be considered in determining who is the lowest responsible bidder.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Because the dollar amount of the lowest bid is not known until the bids are received and opened on bid day, and because the amount of money available for public works projects is limited, public entities need the budgetary flexibility afforded by allowing them to list items on which bidders must provide bid prices, but which may or may not be added to, or deleted from, the contract, depending upon the availability of funds.

(b) Selective use of additive and deductive bid items to determine the lowest responsible bidder can violate the public policies described in subdivisions (c) and (d) of Section 100 of the Public Contract Code.

(c) The public policies described in subdivisions (c) and (d) of Section 100 of the Public Contract Code can be satisfied by a process in which additive and deductive bid items are selectively used to determine the lowest monetary bidder after the bids are received, if

no information that would identify any of the bidders is revealed to the public entity before the lowest monetary bidder is determined.

SEC. 2. Section 10126 of the Public Contract Code is amended to read:

10126. Notwithstanding the provisions of Section 10125, the estimate of cost may be approved by the director, which includes alternates contemplating additions to, or deletions from, the base bid, provided that all of the following requirements are met:

(a) Estimates are made for each contingency and, in the aggregate, such alternates do not exceed 10 percent of the estimated cost for the project.

(b) The available funds are at least sufficient to cover the filed estimate for the base project.

(c) Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by paragraph (1) will be used:

(1) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(2) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(3) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending upon available funds as identified in the solicitation.

(4) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

(d) The contract is awarded to the lowest bidder, as determined by the method prescribed in subdivision (c).

(e) A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the public entity from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

SEC. 3. Section 10780.5 is added to the Public Contract Code, to read:

10780.5. The trustees may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a

bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending upon available funds as identified in the solicitation.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the trustees from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

SEC. 4. Article 1.3 (commencing with Section 20103.8) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 1.3. Award of Contracts

20103.8. A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order

from a specifically identified list of those items, depending upon available funds as identified in the solicitation.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

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## Assembly Bill No. 2890

## CHAPTER 776

An act to amend Section 3320 of the Civil Code, to amend Section 14838.5 of the Government Code, to amend Section 38079 of the Health and Safety Code, to amend Sections 10295.5, 10300, 10302.5, 10302.6, 10304, 10307, 10308, 10308.5, 10309, 10310, 10311, 10312, 10313, 10314, 10315, 10318, 10319, 10320, 10320.5, 10321, 10325, 10326, 10327, 10328, 10330, 10331, 10332, 10333, 10334, 12100.5, 12100.7, 12101, 12102, 12103, 12104, 12108, 12109, 12112, 12113, and 12120 of, to amend the heading of Article 3 (commencing with Section 10300) of Chapter 2 of, to amend the heading of Chapter 2 (commencing with Section 10290) of, and to amend the heading of Chapter 3 (commencing with Section 12100) of, Part 2 of Division 2 of, and to repeal Sections 10295.1, 10295.3, 12111, and 12113.5 of, the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2890, Committee on Consumer Protection, Governmental Efficiency and Economic Development. Public contracts.

Under existing law, a state agency may award a contract for goods, services, or information technology that has an estimated value between $2,500 and $50,000 by obtaining quotations from at least 2 small businesses. For these contracts, a state agency does not have to comply with bidding and contract award requirements that govern contracts of greater value.

This bill would make corrective changes to these provisions, to clarify that contracts with a value greater than $2,500 and less than $50,000 do not have to comply with various provisions that generally govern public contracts.

Existing law generally governs the state procurement of materials, supplies, equipment, and services, and the acquisition of electronic data-processing and telecommunications goods and services.

This bill would make various technical and clarifying changes to these provisions and would delete outdated provisions.

This bill would incorporate additional changes in Section 14838.5 of the Government Code, proposed by SB 1049, to be operative only if SB 1049 and this bill are both chaptered and become effective on or before January 1, 2001, and this bill is chaptered last.

The bill would declare that it is to take effect immediately as an urgency statute.

acquisitions from the previous fiscal year that were subject to this chapter and involved the replacement of a computer central processing unit when only one bid was received and the bid was from the supplier whose equipment was being replaced. The report shall be submitted to the chairperson of the committee in each house that considers appropriations and the Chairperson of the Joint Legislative Budget Committee.

SEC. 45. Section 12108 of the Public Contract Code is amended to read:

12108. Until the time that the Department of General Services has published in the State Administrative Manual the procedures required in accordance with Section 12102, acquisitions of information technology goods and services shall be accomplished in accordance with either existing State Administrative Manual procedures for the acquisition of information technology goods and services, or Article 2 (commencing with Section 14790) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code, as determined by the Department of General Services.

SEC. 46. Section 12109 of the Public Contract Code is amended to read:

12109. The Director of General Services may make the services of the department under this chapter available, upon the terms and conditions that may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the acquisition of information technology goods or services.

SEC. 47. Section 12111 of the Public Contract Code is repealed.

SEC. 48. Section 12112 of the Public Contract Code is amended to read:

12112. Any contract for information technology goods or services, to be manufactured or performed by the contractor especially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

SEC. 49. Section 12113 of the Public Contract Code is amended to read:

12113. (a) Notwithstanding any other provision of law, state and local agencies may enter into agreements to pay for telecommunications services to be utilized beyond the current fiscal year. "Telecommunications services" for purposes of this section

budgetary objectives. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the Department of Finance and the Department of General Services with regard to acquisition of telecommunication goods and services by the California State University and the California Community Colleges, respectively. The trustees and the board shall each grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

SEC. 52. Section 2.5 of this bill incorporates amendments to Section 14838.5 of the Government Code proposed by both this bill and SB 1049. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 14838.5 of the Government Code, and (3) this bill is enacted after SB 1094, in which case Section 14838.5 of the Government Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 1049, at which time Section 2.5 of this bill shall become operative.

SEC. 53. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the statutory changes necessary to increase small business participation in state contracts, it is necessary for this act to take effect immediately as an urgency measure.

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**Assembly Bill No. 138**

CHAPTER 455

An act to amend Sections 10126, 10780.5, and 20103.8 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 11, 2002. Filed with Secretary of State September 11, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 138, Nation. Bidding procedures: alternative bids.

Existing law affecting state contracts prescribes procedures for determining the lowest bidder if additions or deletions from the base bid are considered, authorizes local agencies and the Trustees of the California State University to include alternatives that may be added to, or deleted from, the final bid award for a project, and specifies how those alternatives shall be considered in determining who is the lowest responsible bidder. Existing law requires the lowest bid to be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

This bill would also require the determination of the lowest bid to be made in a manner that prevents any information that would identify any of the proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

*The people of the State of California do enact as follows:*

SECTION 1. Section 10126 of the Public Contract Code is amended to read:

10126. Notwithstanding the provisions of Section 10125, the estimate of cost may be approved by the director, which includes alternates contemplating additions to, or deletions from, the base bid, provided that all of the following requirements are met:

(a) Estimates are made for each contingency and, in the aggregate, the alternates do not exceed 10 percent of the estimated cost for the project.

(b) The available funds are at least sufficient to cover the filed estimate for the base project.

(c) Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be

used to determine the lowest bid. In the absence of such a specification, only the method provided by paragraph (1) will be used:

(1) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(2) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(3) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that, when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the department before the first bid is opened.

(4) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

(d) The contract is awarded to the lowest bidder, as determined by the method prescribed in subdivision (c).

(e) A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the department from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

(f) Nothing in this section shall preclude the prequalification of subcontractors.

SEC. 2. Section 10780.5 of the Public Contract Code is amended to read:

10780.5. The trustees may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that, when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the trustees before the first bid is opened.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the trustees from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

(e) Nothing in this section shall preclude the prequalification of subcontractors.

SEC. 3. Section 20103.8 of the Public Contract Code is amended to read:

20103.8. A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items that, when in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity

before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

(e) Nothing in this section shall preclude the prequalification of subcontractors.

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# EXHIBIT 3
# COPIES OF CODE SECTIONS CITED

**§ 2000. Lowest bidders who meet specified requirements relating to minority and women business enterprises; definitions; application of section**

(a) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the local agency relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the local agency for that participation, the local agency shall evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the local agency relating to participation in the contract by minority or women business enterprises.

(b) (1) The bidder attended any presolicitation or prebid meetings that were scheduled by the local agency to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A local agency may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the local agency for minority or women business enterprises that are interested in participating in the project. This paragraph applies only if the local agency gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.

(4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, the local agency shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the local agency as minority or women business enterprises. If the local agency does not provide that list or source of lists to the bidder, the bidder may utilize the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the local agency.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the local agency or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the local agency to produce a level of participation sufficient to meet the goals and requirements of the local agency.

(c) The performance by a bidder of all of the criteria specified in subdivision (b) shall create a rebuttable presumption, affecting the burden of producing evidence, that a bidder has made a good faith effort to comply with the goals and requirements relating to participation by minority and women business enterprises established pursuant to subdivision (a).

(d) "Local agency," as used in this section, means a county or city, whether general law or chartered, city and county, school district, or other district. "District," as used in this section, means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(e) "Minority or women business enterprise," as used in this section, means a business enterprise that meets both of the following criteria:

(1) A business that is at least 51 percent owned by one or more minority persons or women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority persons or women.

(2) A business whose management and daily business operations are controlled by one or more minority persons or women.

(f) "Minority person," for purposes of this section, means Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian–Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), or any other group of natural persons identified as minorities in the project specifications by the local agency.

(g) This section does not apply to any of the following:

(1) Any contract, funded in whole or in part by the federal government, to the extent of any conflict between the requirements imposed by this section and any requirements imposed by the federal government relating to participation in a contract by a minority or women business enterprise as a condition of receipt of the federal funds.

(2) The San Francisco Bay Area Rapid Transit District, the Los Angeles County Transportation Commission, or any other local agency that has authority to facilitate the participation of minority or women business enterprises substantially similar to the authority granted to the San Francisco Bay Area Rapid Transit District pursuant to Section 20229 of this code or the Los Angeles County Transportation Commission pursuant to Section 130239 of the Public Utilities Code.

(Added by Stats.1986, c. 1060, § 2. Amended by Stats.1988, c. 538, § 1.)

**§ 2001. Contracts; bid contracts; minority, women, or disabled veteran business enterprises**

(a) Any local agency, as defined in subdivision (d) of Section 2000, that requires that contracts bi awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participatior goals for minority, women, or disabled veteran business enterprises shall provide in the genera conditions under which bids will be received, that any person making a bid or offer to perform a contrac shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(Added by Stats.1993, c. 1032 (A.B.340), § 4.)

**§ 3300. Specification of classification of contractor's license at time contract is awarded; failure of entity to comply**

(a) Any public entity, as defined in Section 1100, the University of California, and the California State University shall specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded. The specification shall be included in any plans prepared for a public project and in any notice inviting bids required pursuant to this code.

This requirement shall apply only with respect to contractors who contract directly with the public entity.

(b) A contractor who is not awarded a public contract because of the failure of an entity, as defined in subdivision (a), to comply with that subdivision shall not receive damages for the loss of the contract.

(Added by Stats.1985, c. 1073, § 2.)

**§ 6610. Formal bid notice including mandatory prebid conference; site visit or meeting; criteria**

Notice inviting formal bids for projects by a public agency that include a requirement for any type of mandatory prebid conference, site visit, or meeting shall include the time, date, and location of the mandatory prebid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory prebid site visit, conference or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. This provision shall not apply to the Regents of the University of California.

(Added by Stats.2000, c. 159 (S.B.266), § 1.)

**§ 7104. Contracts for digging trenches or excavations; notice on discovery of hazardous waste or other unusual conditions; investigations; change orders; effect on contract**

Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

(a) That the contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) That the public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.

(c) That, in the event that a dispute arises between the public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

(Added by Stats.1989, c. 330, § 1.)

§ 7107. **Retention proceeds; withholding; disbursement**

(a) This section is applicable with respect to all contracts entered into on or after January 1, 1993, relating to the construction of any public work of improvement.

(b) The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agent, of the work of improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

(d) Subject to subdivision (e), within seven days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(g) If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261 * * *, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed retentions.

(h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.

(Added by Stats.1992, c. 1042 (A.B.1702), § 1. Amended by Stats.1998, c. 857 (A.B.2084), § 3.)

**§ 7109. Graffiti; vulnerable projects; antigraffiti technology; abatement and deterrence programs**

(a) For purposes of this section:

(1) "Antigraffiti technology" means landscaping, paint, or other covering resistant to graffiti, or other procedures to deter graffiti.

(2) "Graffiti" means any unauthorized inscription, work, figure, or design that is marked, etched, scratched, drawn, or painted on any structural component of any building, structure, or other facility regardless of its content or nature and regardless of the nature of the material of the structural component.

(3) "Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(b) If a public entity determines that a project may be vulnerable to graffiti and the public entity will be awarding a public works contract after January 1, 1996, for that project, it is the intent of the Legislature that the public entity may do one or more of the following:

(1) Include a provision in the public works contract that specifies requirements for antigraffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti.

(Added by Stats.1994, c. 504 (A.B.2519), § 1.)

**§ 9203. Payments for projects costing over $5,000; progress payments; limitation on amount**

(a) Payment on any contract with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars ($5,000), shall be made as the legislative body prescribes upon estimates approved by the legislative body, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed.

(b) Notwithstanding the dollar limit specified in subdivision (a), a county water authority shall be subject to a twenty-five thousand dollar ($25,000) limit for purposes of subdivision (a).

(Added by Stats.1990, c. 694 (A.B.3416), § 8. Amended by Stats.2000, c. 126 (A.B.2336), § 1.)

**§ 10299. Consolidation of needs of multiple state agencies in order to increase buying power; provision of services to school districts**

(a) Notwithstanding any other provision of law, the director may consolidate the needs of multiple state agencies for information technology goods and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State agencies and local agencies may contract with suppliers awarded the contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed upon, to any school district empowered to expend public funds. These school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services. The state shall incur no financial responsibility in connection with the contracting of local agencies under this section.

(Added by Stats.2000, c. 71 (S.B.1667), § 33, eff. July 5, 2000; Stats.2000, c. 127 (A.B.2866), § 30, eff. July 10, 2000.)

**§ 12109. Availability of services to tax-supported public agencies**

The Director of General Services may make the services of the department under this chapter available, upon the terms and conditions that may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the * * * acquisition of * * * information technology goods or services.

(Amended by Stats.2000, c. 776 (A.B.2890), § 46, eff. Sept. 27, 2000.)

## § 20100. Short title

This chapter may be cited as the Local Agency Public Construction Act.

(Added by Stats.1982, c. 465, p. 1914, § 11.)

**§ 20101. Prospective bidders; questionnaires and financial statements; prequalification**

(a) Except as provided in Section 20111.5, a public entity subject to this part may require that each prospective bidder for a contract complete and submit to the entity a standardized questionnaire and financial statement in a form specified by the entity, including a complete statement of the prospective bidder's experience in performing public works. The standardized questionnaire may not require prospective bidders to disclose any violations of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code committed prior to January 1, 1998, if a violation was based on a subcontractor's failure to comply with these provisions and the bidder had no knowledge of the subcontractor's violations. The Department of Industrial Relations, in collaboration with affected agencies and interested parties, shall develop model guidelines for rating bidders, and draft the standardized questionnaire, that may be used by public entities for the purposes of this part. The Department of Industrial Relations, in developing the standardized questionnaire, shall consult with affected public agencies, cities and counties, the construction industry, the surety industry, and other interested parties. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection; however, records of the names of contractors applying for prequalification status shall be public records subject to disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Any public entity requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. The uniform system of rating prospective bidders shall be based on objective criteria.

(c) A public entity may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and a prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(d) Any public entity requiring prospective bidders on a public works project to prequalify pursuant to this section shall establish a process that will allow prospective bidders to dispute their proposed prequalification rating prior to the closing time for receipt of bids. The appeal process shall include the following:

(1) Upon request of the prospective bidder, the public entity shall provide notification to the prospective bidder in writing of the basis for the prospective bidder's disqualification and any supporting evidence that has been received from others or adduced as a result of an investigation by the public entity.

(2) The prospective bidder shall be given the opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the public entity as to why the prospective bidder should be found qualified.

(3) If the prospective bidder chooses not to avail itself of this process, the proposed prequalification rating may be adopted without further proceedings.

(e) For the purposes of subdivision (a), a financial statement shall not be required from a contractor who has qualified as a Small Business Administration entity pursuant to paragraph (1) of subdivision (d) of Section 14837 of the Government Code, when the bid is no more than 25 percent of the qualifying amount provided in paragraph (1) of subdivision (d) of Section 14837 of the Government Code.

(f) Nothing in this section shall preclude an awarding agency from prequalifying or disqualifying a subcontractor. The disqualification of a subcontractor by an awarding agency does not disqualify an otherwise prequalified contractor.

(Added by Stats.1999, c. 972 (A.B.574), § 4.)

**§ 20102. Performance of work by day's labor; plans and specifications; revision**

Notwithstanding any other provision of this part to the contrary, where plans and specifications have been prepared by a public agency, whose activities are subject to this part, in order for a public project to be put out for formal or informal bid, and, subsequently, the public agency elects to perform the work by day's labor, the public agency shall perform the work in strict accordance with these same plans and specifications.

Revisions of the plans and specifications may be made once a justification detailing the specific reasons for the change or changes has been approved by the public agency or its project director and a copy of the change and its justification is placed in the project file.

* * *

(Amended by Stats.1990, c. 688 (A.B.3226), § 1; Stats.1990, c. 694 (A.B.3416), § 9.)

**§ 20102. Performance of work by day's labor; plans and specifications; revision**

Notwithstanding any other provision of this part to the contrary, where plans and specifications have been prepared by a public agency, whose activities are subject to this part, in order for a public project to be put out for formal or informal bid, and, subsequently, the public agency elects to perform the work by day's labor, the public agency shall perform the work in strict accordance with these same plans and specifications.

Revisions of the plans and specifications may be made once a justification detailing the specific reasons for the change or changes has been approved by the public agency or its project director and a copy of the change and its justification is placed in the project file.

* * *

(Amended by Stats.1990, c. 688 (A.B.3226), § 1; Stats.1990, c. 694 (A.B.3416), § 9.)

§ 20103.5. Contracts involving federal funds; failure to obtain license; penalties

In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. The agency shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

(Added by Stats.1990, c. 321 (S.B.929), § 2, eff. July 17, 1990. Renumbered § 20103.5 and amended by Stats.1990, c. 1414 (A.B.4165), § 1.)

**§ 20103.6. Local agencies; procurement of architectural design services; bids from prequalified list; disclosure statement**

(a)(1) Any local agency subject to this chapter shall, in the procurement of architectural design services requiring an expenditure in excess of ten thousand dollars ($10,000), include in any request for proposals for those services or invitations to bid from a prequalified list for a specific project a disclosure of any contract provision that would require the contracting architect to indemnify and hold harmless the local agency against any and all liability, whether or not caused by the activity of the contracting architect.

(2) The disclosure statement shall be prominently set forth in bold type.

(b) In the event a local agency fails to comply with paragraph (1) of subdivision (a), that local agency shall (1) be precluded from requiring the selected architect to agree to any contract provision requiring the selected architect to indemnify or hold harmless the local agency against any and all liability not caused by the activity of the selected architect, (2) cease discussions with the selected architect and reopen the request for proposals or invitations to bid from a qualification list, or (3) mutually agree to an indemnity clause acceptable to both parties.

(c) This section shall become operative on July 1, 1998.

(Added by Stats.1997, c. 722 (A.B.994), § 1, operative July 1, 1998.)

§ 20103.8. **Additive and deductive items**

A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items * * * that, when in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

(e) Nothing in this section shall preclude the prequalification of subcontractors.

(Added by Stats.2000, c. 292 (A.B.2182), § 4. Amended by Stats.2002, c. 455 (A.B.138), § 3.)

§ 20104. Application of article; provisions included in plans and specifications

(a)(1) This article applies to all public works claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b)(1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

(Added by Stats.1994, c. 726 (A.B.3069), § 22, eff. Sept. 22, 1994.)

§ 20104.2. Claims; requirements; tort claims excluded

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b)(1) For claims of less than fifty thousand dollars ($50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c)(1) For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

(Added by Stats.1994, c. 726 (A.B.3069), § 22, eff. Sept. 22, 1994.)

§ 20104.4. **Civil action procedures; mediation and arbitration; trial de novo; witnesses**

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

(Added by Stats.1994, c. 726 (A.B.3069), § 22, eff. Sept. 22, 1994.)

§ 20104.6. **Payment on undisputed portion of claim; interest on arbitration awards or judgments**

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

(Added by Stats.1994, c. 726 (A.B.3069), § 22, eff. Sept. 22, 1994.)

**§ 20104.50. Timely progress payments; legislative intent; interest; payment requests**

(a) (1) It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.

(2) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.

(b) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

(c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).

(e) For purposes of this article:

(1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.

(2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.

(3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

(f) Each local agency shall require that this article, or a summary thereof, be set forth in the terms of any contract subject to this article.

(Added by Stats.1992, c. 799 (S.B.56), § 2.)

§ 20107. **Bidder's security**

All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the school district.

(c) A certified check made payable to the school district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(Added by Stats.1989, c. 1163, § 1. Amended by Stats.1990, c. 808 (S.B.886), § 1.)

**§ 20110. School districts; contracts; application of Part 3**

The provisions of this part shall apply to contracts awarded by school districts subject to Part 21 (commencing with Section 35000) of Division 3 of Title 2 of the Education Code.

(Added by Stats.1982, c. 465, p. 1914, § 11.)

§ 20111. **Expenditures in excess of specified amount; purpose of expenditure; periodic adjustment of specified amount**

(a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifty thousand dollars ($50,000) for * * * any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district * * *.

(2) Services, except construction services.

(3) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all equipment, materials * * *, or supplies, whether patented or otherwise, and to contracts awarded pursuant to subdivision (a) of Section 2000. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any work done by day labor or by force account pursuant to Section 20114.

(d) Commencing January 1, 1997, the Superintendent of Public Instruction shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100).

(Added by Stats.1982, c. 465, p. 1914, § 11. Amended by Stats.1984, c. 173, § 3; Stats.1988, c. 538, § 2; Stats.1989, c. 1163, § 2; Stats.1990, c. 808 (S.B.886), § 4; Stats.1995, c. 897 (S.B.429), § 1.)

**§ 20111.5. Bidder questionnaire and financial statement; bid proposal form**

(a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded.

(d) A proposal form required pursuant to subdivision (c) shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (b), for at least one day prior to that date.

(e) Notwithstanding subdivision (d), any school district may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and may authorize that prequalification to be considered valid for up to one calendar year following the date of initial prequalification.

(Added by Stats.1986, c. 886, § 33. Amended by Stats.1987, c. 102, § 1; Stats.1997, c. 390 (A.B.611), § 5, eff. Aug. 27, 1997.)

**§ 20116. Split or separation into smaller work orders or projects; total cost of projects; records; informal bids**

It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring * * * contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

* * * Informal bidding may be used on work, projects * * *, services, or purchases that cost up to * * * the limits set forth in * * * this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner as the district deems appropriate.

(Amended by Stats.1995, c. 897 (S.B.429), § 4.)

### § 20650. Application of article; community college districts

The provisions of this article shall apply to contracts by community college districts as provided for in Part 49 (commencing with Section 81000) of the Education Code.

(Added by Stats. 1983, c. 256, § 84.)

§ 20651. **Letting contracts; necessity of bids; security**

(a) The governing board of any community college district shall let any contracts involving an expenditure of more than fifty thousand dollars * * * ($50,000) for any of the following:

(1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district* * *.

(2) Services, except construction services.

(3) Repairs, including maintenance as defined in Section 20656, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give * * * security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the community college district.

(3) A certified check made payable to the community college district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the community college district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

(c) This section applies to all equipment, materials * * *, or supplies, whether patented or otherwise. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any works done by day labor or by force account pursuant to Section 20655.

(d) Commencing January 1, 1997, the Board of Governors of the California Community Colleges shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100).

(Amended by Stats.1995, c. 897 (S.B.429), § 5.)

**§ 20651.5. Bidder questionnaire and financial statement; prequalified bidder; proposal form**

(a) The governing board of any community college district may require each prospective bidder for a contract, as described under Section 20651, to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaire responses of prospective bidders and their financial statements shall not be deemed public records and shall not be open to public inspection.

(b) Any community college district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed financially qualified to bid. The prequalification of a prospective bidder shall neither limit nor preclude a district's subsequent consideration of a prequalified bidder's responsibility on factors other than the prospective bidder's financial qualifications.

(c) Each prospective bidder on any contract described under Section 20651 that is subject to this section shall be furnished, by the community college district letting the contract, with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be deemed nonresponsive and shall be rejected. A proposal form shall not be accepted from any person who, or other entity which, is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but who or which has not done so at least five days prior to the date fixed for the public opening of sealed bids and has not been prequalified, pursuant to subdivision (b), at least one day prior to that date.

(Added by Stats.1998, c. 657 (A.B.1921), § 5.)

**§ 20657. Splitting projects to evade article prohibited; records; informal bidding; annual publication of notice of opportunity to register**

It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring * * * contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California Community College Budget and Accounting Manual for a period of not less than three years after completion of the project.

* * * Informal bidding may be used on work, projects * * *, services, or purchases that cost up to * * * the limits set forth in * * * this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects, in any manner as the district deems appropriate.

(Amended by Stats.1995, c. 897 (S.B.429), § 9.)

### § 20659. Changes or alterations of contracts; necessity of writing; proceeding without bids

If any change or alteration of a contract governed by the provisions of this article is ordered by the governing board of the community college district, such change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

(a) The amount specified in Section 20651 or 20655, whichever is applicable to the original contract; or

(b) Ten percent of the original contract price.

(Added by Stats.1983, c. 256, § 84.)

§ 22300. **Performance retentions; provision for substitute security; escrow agreement**

(a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract * * *; however, substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in * * * this state as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. * * *

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d)(1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.

(3) No contractor shall require any subcontractor to waive any provision of this section.

(e) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.

(f) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____ whose address is _____ hereinafter called "Owner," whose address is _____ hereinafter called "Contractor" and whose address is _____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Contractor:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Escrow Agent:

_____
Title

_____
Name

_____
Signature

_____
Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

_____
Title

_____
Name

_____
Signature

Contractor

_____
Title

_____
Name

_____
Signature

(Added by Stats.1988, c. 1408, § 11. Amended by Stats.1991, c. 933 (A.B.1648), § 1; Stats.1993, c. 1195 (S.B.405), § 25.5; Stats.1998, c. 857 (A.B.2084), § 13.)

## § 7028.15. Submission of a bid to a public agency without a license; misdemeanor; exceptions; previous conviction; fine; application; citation to public officer or employee; verification of license status

(a) It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:

(1) The person is particularly exempted from this chapter.

(2) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code or on any local agency project governed by Section 20103.5 of the Public Contract Code.

(b) If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(c) This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.

(d) This section shall not affect the right or ability of a licensed architect, land surveyor, or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.

(e) Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. Notwithstanding any other provision of law, unless one of the foregoing exceptions applies, the registrar may issue a citation to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. The amount of civil penalties, appeal, and finality of such citations shall be subject to Sections 7028.7 to 7028.13, inclusive. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed pursuant to this chapter is void.

(f) Any compliance or noncompliance with subdivision (e) of this section, as added by Chapter 863 of the Statutes of 1989, shall not invalidate any contract or bid awarded by a public agency during which time that subdivision was in effect.

(g) A public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing agency made an inquiry to the board for the purposes of verifying the license status of any person or contractor and the board failed to respond to the inquiry within three business days. For purposes of this section, a telephone response by the board shall be deemed sufficient.

(Added by Stats.1989, c. 863, § 1. Amended by Stats.1990, c. 321 (S.B.929), § 1, eff. July 17, 1990; Stats.1991, c. 785 (A.B.800), § 2; Stats.1992, c. 294 (A.B.2347), § 1.)

# EXHIBIT 4
# COPIES OF REGULATIONS CITED

(c) Records of students shall be transferred to the district which, after the date on which the reorganization becomes effective for all purposes, maintains the college in which a student was last enrolled.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Renumbering and amendment of former section 53540 to section 59424 filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

## Subchapter 9. Minority, Women, and Disabled Veteran Business Enterprise Participation Goals for the California Community Colleges

### § 59500. Scope of Subchapter.

(a) The California Community Colleges shall provide opportunities for minority, women, and disabled veteran business enterprise participation in the award of district contracts consistent with this Subchapter. The statewide goal for such participation is not less than 15 percent minority business enterprise participation, not less than 5 percent women business enterprise participation, and not less than 3 percent disabled veteran business enterprise participation of the dollar amount expended by all districts each year for construction, professional services, materials, supplies, equipment, alternation, repair, or improvement. However, each district shall have flexibility to determine whether or not to seek participation by minority, women, and disabled veteran business enterprises for any given contract.

(b) Nothing in this Subchapter authorizes any district to discriminate in awarding contracts on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disability.

NOTE: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code.

HISTORY

1. New subchapter 9 and section filed 12–29–93; operative 1–28–94. Submitted to OAL for printing only (Register 94, No. 6). For prior history of former chapter 11 (sections 59500–59503), see Register 88, No. 16.
2. Editorial correction removing duplicative sections and amending HISTORY 1 (Register 98, No. 18).

### § 59502. Definitions.

The definitions set forth in Subsections (d), (e), and (f) of Section 10115.1 of the Public Contract Code, as they may be amended from time to time, apply to this Subchapter and are incorporated herein as though fully set forth in addition, for purposes of this Subchapter:

(a) "Certification" means a process to identify minority, women, and disabled veteran business enterprises.

(b) "Contract" includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the district. The term "contract" does not include payments to utility companies or purchases, leases or services secured through other public agencies and corporations, the Department of General Services, or the federal government pursuant to Public Contract Code sections 20652 and 20653 and Education Code Section 81653;

(c) "Contractor" means any person or persons, regardless of ethnic group identification, ancestry, religion, sex, race, or color, or any firm, partnership, corporation, or combination thereof, whether or not a minority, women, and disabled veteran business enterprise, who enters into a contract with a district.

(d) "District" means any community college district, board of trustees or officer, employee, or agent of such a district or board empowered to enter into contracts on behalf of the district.

(e) "MBE/WBE/DVBE" means a minority business enterprise, a women business enterprise, and/or a disabled veteran business enterprise. Although a business enterprise may qualify under multiple categories, the entry shall be designated in one specific category for the purposes of these regulations.

(f) "Goal" means a numerically expressed objective for systemwide MBE/WBE/DVBE participation that districts are expected to contribute to achieving. Goals are not quotas, set–asides, or rigid proportions.

(g) "Disabled veteran business enterprise" means a business enterprise certified as a disabled veteran business enterprise by the Office of Small and Minority Business, pursuant to Military and Veterans Code Section 999, or a business enterprise that certifies that it has met such standards.

NOTE: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code.

HISTORY

1. New section filed 12–29–93; operative 1–28–94. Submitted to OAL for printing only (Register 94, No. 6).

### § 59504. Efforts by Districts.

Each district shall undertake appropriate efforts to provide participation opportunities for minority, women, and disabled veteran business enterprises in district contracts. Appropriate efforts may include vendor and service contractor orientation programs related to participating in district contracts or in understanding and complying with the provisions of this Subchapter, developing a listing of minority, women, and disabled veteran business enterprises potentially available as contractors or suppliers, or such other activities they may assist interested parties in being considered for participation in district contracts. Districts shall also undertake efforts to contribute to achievement of the systemwide goals established in Section 59500 by seeking minority, women, and disabled veteran business enterprises as contractors for such contracts as the district may deem appropriate pursuant to Section 59505.

NOTE: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code.

HISTORY

1. New section filed 12–29–93; operative 1–28–94. Submitted to OAL for printing only (Register 94, No. 6).

### § 59505. Application of Participation Goals.

(a) If a district elects to apply MBE/WBE/DVBE goals to any contract which is to be awarded to the lowest responsible bidder, bidding notices shall include a statement that at the time of bid opening, bidders shall be considered responsive only if they document to the satisfaction of the district that they meet or have made a good faith effort to meet minority, women, and disabled veteran business enterprise participation goals.

(b) A responsive bidder documents a good faith effort to meet the participation goals if, in connection with the submission of a bid, the bidder provides evidence satisfactory to the district that efforts were made to seek out and consider minority, women, and disabled veteran business enterprises as potential subcontractors, materials and/or equipment suppliers, or both subcontractors and/or suppliers.

(c) The district may also elect to seek minority, women, and disabled veteran business enterprises to serve as contractors for any other contracts not covered by subsection (a).

(d) The district shall assess the status of each of its contractors and, if the contractor is a certified or self–certified minority, women, and disabled veteran business enterprise subcontractors and/or suppliers to the satisfaction of the district, the district may include the actual dollar amount attributable to minority, women, and disabled veteran business enterprise participation in reporting its participation activity pursuant to Section 59509.

NOTE: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, part 1, Public Contract Code.

HISTORY

1. New section filed 12–29–93; operative 1–28–94. Submitted to OAL for printing only (Register 94, No. 6).

### § 59506. Certification.

(a) Each district shall establish a process to collect and retain certification information provided by a business enterprise claiming minority, women, and disabled veteran business enterprise status.

(b) The process described in subsection (a) shall include notification to responsive bidders subject to Section 59505(a) of the requirements for qualification as a responsive bidder.

NOTE: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code.

HISTORY

1. New section filed 12–29–93; operative 1–28–94. Submitted to OAL for printing only (Register 94, No. 6).

### § 59508. Enforcement of Contracts and Severability Provision.

(a) Notwithstanding any other provision of this Subchapter, the participation goals established herein shall not affect the validity or enforceability of any contract or any bonds, notes or other obligations issued by the district to provide for the payment of any contract subject to this Subchapter.

(b) If any provision of this Subchapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the Subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Subchapter are severable.

NOTE: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code.

HISTORY

1. New section filed 12–29–93; operative 1–28–94. Submitted to OAL for printing only (Register 94, No. 6).

### § 59509. Monitoring of Participation Goals.

Each district shall monitor its participation as specified in this Subchapter. Beginning October 15, 1994, and by each October 15 thereafter, each district shall report to the Chancellor the level of participation by minority, women, and disabled veteran business enterprises pursuant to this Subchapter for the previously completed fiscal year. Even if a district elects not to apply minority, women, and disabled veteran business enterprise goals to one or more particular contract(s), all such contracts shall be reported to the Chancellor and shall be taken into account in determining whether the community college system as a whole has achieved the goals set forth in Section 59500.

The Chancellor shall prescribe forms to be used by the districts in making their yearly reports.

NOTE: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code.

HISTORY

1. New section filed 12–29–93; operative 1–28–94. Submitted to OAL for printing only (Register 94, No. 6).

* * *