

STATE SCHOOL CONSTRUCTION FUNDING REQUIREMENTS

PURPOSE OF REPORT

To clarify the State school construction funding requirements relative to the Division of the State Architect (DSA) plan approval date.

DESCRIPTION

It has come to the attention of the Office of Public School Construction (OPSC) that districts may be misinterpreting the timing of the DSA approvals relative to the district entering into a construction contract. Staff has prepared this report to clarify this requirement and to recommend remedial action.

AUTHORITY

Education Code (EC) Section 17307 cites that no contract for the construction of any school building is valid and no public money shall be paid for any work done under a contract unless the plans and specifications and estimates comply with the provisions and requirements of the DSA, as representative of the Department of General Services, and that approval has first been obtained in writing.

EC Section 17267 requires that the governing board of a school district shall, before letting any contract for the construction of a school building as defined in EC Section 17283 according to the plans and specifications, submit a file set of the plans and specifications with the DSA, accompanied by the remaining fee which is due according to the amount fixed by EC Section 17300.

EC Section 17297 states that "...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 (as represented by the DSA) shall be first had and obtained."

LEGAL ANALYSIS

Two provisions of the School Facilities Program (SFP) apply to this issue. EC Section 17072.30 requires the State Allocation Board (SAB) to apportion funds to an eligible school district only upon the approval of the project by the Department of General Services (DSA) pursuant to the Field Act. SAB and OPSC procedures require evidence of DSA approval prior to bringing apportionments to the SAB for approval. EC Section 17072.32 further provides that once an apportionment has been made, funding shall be released in amounts equal to the amount of the local match upon certification by the district that the district has entered into a binding contract for completion of the approved project. SAB and OPSC procedures require a district to provide this certification prior to obtaining a fund release. Current processes ensure that no apportionments are made and no State bond funds are released unless DSA approval has been given, unless DSA approval is not otherwise required.

STAFF COMMENTS

Prior to the inception of the Labor Compliance Program, the OPSC was not aware of the date construction contracts were signed when a district submitted an *Application for Funding*. Staff's recent revisions to the *Application for Funding* required that districts provide increased project data, which led to the OPSC becoming aware that districts were signing contracts prior to receiving the DSA approval. Prior to this, Staff was not able to make this determination until the close-out phase. The OPSC recently reviewed a sampling of applications (see Attachments) which further confirmed that some confusion exists regarding the timing for contract signature dates.

STAFF COMMENTS (cont.)

This review also indicated, overall, that the discrepancy of the signature dates relative to the DSA approval appears to be minimal. The total number of applications which may be affected cannot be readily determined as they range from those currently being received through those in the close-out audit phase.

To facilitate the processing of construction funding applications, Staff recommends that a grace period be provided that would allow applications where contracts were signed no later than April 26, 2006 to be considered for funding as long as the districts have received DSA approval of the plans and the school district has received written confirmation by the DSA which verifies that the approved plans accurately represent what was actually constructed.

To ensure that districts fully understand the requirement for receipt of the DSA final plan approval letter prior to entering into a construction contract, a letter of clarification will be mailed to all school districts and county offices of education. Additionally, an article detailing the requirement has been published in both the *Advisory Action Newsletter* and the bi-annual publication, *Breaking Ground*. Staff will also include this information in upcoming workshops.

The DSA has provided a letter, included as Attachment A, which verifies that the five projects included as a part of this item have constructed facilities in compliance with the DSA approved plans and specifications. Attachment B lists five current funding requests where contracts were signed outside of the required timelines. Staff includes a recommendation for each request.

RECOMMENDATIONS

1. Provide that all State school funding applications where contracts were signed on or prior to April 26, 2006 without written approval from the DSA, would still be considered for funding as long as the districts have received DSA approval of the plans and the school district has received written confirmation by the DSA verifying that the approved plans accurately represent what was actually constructed.
2. Provide that State school funding applications will not be approved for State funding where those contracts are signed after April 26, 2006, and have not secured written approval by the DSA prior to the contract signature date.
3. Provide that future applications considered for funding based on Recommendation Number 1 will be placed in the Consent section of the agenda with the DSA confirmation letter attached, and will be identified by a special condition included on the funding shell.

This Item was approved by the State Allocation Board on April 26, 2006.