

Series: 2007-2008

Circular Letter: C-6

TO: Superintendents of Schools
School Business Managers
Chief Municipal Officers

FROM: Mark K. McQuillan
Commissioner of Education

DATE: October 1, 2007

SUBJECT: New Requirement to Publicly Bid Contracts for School Construction Architectural or
Construction Management Services

I am writing to inform you of recently passed legislation impacting contracts for architectural or construction management services within the context of school construction projects. Specifically, contracts for architectural or construction management services executed on or after July 1, 2007, must be awarded to the lowest responsible qualified bidder only after a public invitation to bid. Section 25 of Public Act 07-249 reads as follows:

Sec. 25. Subsection (b) of section 10-287 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(b) All orders and contracts for school building construction receiving state assistance under this chapter, including orders and contracts for architectural or construction management services, shall be awarded to the lowest responsible qualified bidder only after a public invitation to bid, which shall be advertised in a newspaper having circulation in the town in which construction is to take place, except for (1) school building projects for which the town or regional school district is using a state contract pursuant to subsection (d) of section 10-292, and (2) change orders, those contracts or orders costing less than ten thousand dollars and those of an emergency nature, as determined by the Commissioner of Education, in which cases the contractor or vendor may be selected by negotiation, provided no local fiscal regulations, ordinances or charter provisions conflict.

Please note that this new requirement is predicated on the date the contract is awarded, regardless of when a state grant commitment was authorized for the project. Architectural and construction management contracts which were awarded prior to July 1, 2007, without bidding remain eligible for state grant assistance, as they were issued prior to this legislation.

The State Department of Education may not reimburse districts for all expenses incurred for architectural or construction management services if contracts were entered into on or after July 1, 2007, and they were not publicly bid and awarded to the lowest responsible qualified bidder as required by Section 10-287 of the Connecticut General Statutes, as amended.

There is no change to the Department's guidelines pertaining to contracts being awarded to the lowest responsible qualified bidder. The determination as to which bidders are "responsible" and "qualified" continue to be matters left to local determination. The State Department of Education continues to require certification from the local board's attorney that the statutory bidding provisions noted above have been

complied with for the project. However, the district must maintain supporting documentation for post-project audit. This documentation includes, but is not limited to, newspaper advertisements, orders and invoices to support public advertising, bid summaries, and related documentation to support the district's choice.

Frequently asked questions:

Does this mean I must award my design contract to the "low bidder"? The statute requires the contract be awarded to the lowest **responsible qualified** bidder, not necessarily the *lowest* bidder. However, if a contract is awarded to an entity other than the low bidder, the district must be prepared to defend its action on the grounds that the lower bidders are either not qualified or are not responsible. We advise you to be guided by the advice of your board attorney. We also recommend that the district maintain documentation for audit purposes to support your choice.

We use an RFQ/RFP/QBS selection process. Does this meet the bid requirement? Neither of these processes by itself meets the requirements of the new law. However, if the process is publicly advertised as required and if the process includes the submission of a fee schedule, then the RFQ/RFP/QBS may be interpreted as meeting the bidding requirement. The submission of a fee schedule is key. We still recommend the use of an RFQ/RFP/QBS process for architect selection. However, a fee schedule must now be submitted and be included in that review and selection process.

My project was authorized many years ago. However, due to extenuating circumstances, it has been delayed and we have not hired a construction manager yet. Does this mean that even though I would not have been required to bid this contract several years ago, I must now comply with the new law? Yes.

What happens if we are required to bid an architectural contract but decide to award the contract to our architect of choice without bidding? If a contract required to be bid is awarded without a formal bid process, then all expenditures related to that contract will be ineligible for school construction grant assistance. Project costs otherwise eligible for grant assistance remain eligible, but all fees related to the unbid contract will be ineligible for grant assistance.

Does the State Department of Administrative Services or the Department of Education provide a list of architects "qualified" for school construction projects? No.

We have a small code compliance project, and the fees for architectural services will be less than \$10,000. Are we still required to bid this contract? Contracts less than \$10,000 are exempt from state school construction grant bidding requirements. However, all local ordinances and charter provisions must still be met.

Please feel free to contact David Wedge, Chief of the Bureau of School Facilities, at (860) 713-6467 if you have any questions.

MKM:kf/dw

cc: Brian Mahoney, Chief Financial Officer, Division of Finance and Internal Operations
Karen Flanagan, Acting Director, Division of Legal and Governmental Affairs
David Wedge, Chief, Bureau of School Facilities