



Memorandum

TO: Superintendents of Schools
Business Managers of Schools

FROM: Craig Russell
Director, State & School Construction Support Services

DATE: November 28, 2014

SUBJECT: Procurement Standards for School Construction Projects.

The purpose of this Memorandum is to prevent problems that may occur in the procurement of contractors for purposes of school construction projects that receive financial assistance from the State of Connecticut.

Use of Consortium Contracts:

A municipal school construction project that receives state financial assistance cannot utilize the service of a national procurement agency to supplant the requirement for a public bid in accordance with the requirements of Connecticut General Statute ("C.G.S.") Section 10-287(b)(1). This statute requires ***project specific bids*** in which the ***public invitation to bid is advertised in a newspaper having circulation in the town in which construction is to take place*** (and, per C.G.S. Sec. 4b-91(a), on the State Contracting Portal). The use of a consortium-type bid through a national procurement organization, therefore, does not meet these requirements. Any questions concerning whether the procurement of a contract complies with these statutory requirements should be directed to the Office of School Facilities prior to the award of such contract.

Sole Source Specifications

As mentioned above, C.G.S. Sec. 10-287(b) (1) of the CGS requires that all orders and contracts for school building construction receiving state assistance shall be awarded to the lowest responsible qualified bidder. The statute neither permits nor prohibits sole source bidding. Under Connecticut case law, sole source specifications may be permissible when a determination has been made that the specification is in the best interests of the public and is not done for the purpose of favoring one vendor over another so as to undermine the integrity of the competitive bidding process. As the Department of Administrative Services (DAS) is statutorily charged with providing local districts with guidance and advice on the standards, practices and procedures for school building construction projects receiving state assistance; See, e.g., *CGS Section 10-290a, 10-290b and 10-290f(b)*; SCG will reference and distribute the procedures and standards manual used by the Department of Construction Services (DCS) for making sole source



specifications as the guide for sole source specification when issuing its notice of approval of final plans, and specifications, revisions and corrections for public bid.

The Division of Construction Services, through the Consultant's Procedures Manual, requires the design team to either specify a minimum of three reasonable equal products or to use a performance specification that does not include the manufacturer's name. If a client agency believes that there is a need for sole source specification it is required to make a written request to the governing body that provides detailed documentation for sole source specification, including a cost benefit analysis, and provides competitors an opportunity to address the issue prior to making a decision. Such documentation shall be submitted by the district and included in the project file for review either at a plan review stage or during the audit of the project. The review will consider whether the sole source manufacturer assisted in the preparation of the specifications that listed it or a related company as the sole source. An improper specification may result in the costs for that portion of the work being declared ineligible for reimbursement.

Prequalification of Bidders

School construction projects receiving grant assistance from the state fall within the purview of Section 4b-91(a). When a contract is estimated to cost more than five hundred thousand dollars and it must be awarded to a bidder that is prequalified pursuant to CGS Section 4a-100. A trade package that is estimated to be less than \$500 thousand and was published as such, but upon submission is in excess of \$500 thousand, the trade contractor cannot perform work on the project unless it is pre-qualified with the DAS. It is the contracted cost of the work to be performed, not the estimate of the work, which determines whether the bidder must be prequalified in order to comply with the statute.

Should you have any questions regarding these matters, please contact my office at (860) 713-5470.

cc: Pasquale Salemi, Deputy Commissioner
Kevin Kopetz, Legal Council
Kermit Thompson, Architect