



General Assembly

January Session, 2003

Raised Bill No. 1153

LCO No. 4445

Referred to Committee on Education

Introduced by:
(ED)

AN ACT CONCERNING PREQUALIFICATION OF BIDDERS ON SCHOOL CONSTRUCTION PROJECTS AND CONCERNING DEBARMENT OF SCHOOL CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 10-282 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2003*):

3 As used in this chapter, [section] sections 10-65 and [section] 10-76e
4 and sections 2 to 4, inclusive, of this act:

5 (1) "Elementary school building" means any public school building
6 designed to house any combination of grades below grade seven or
7 children requiring special education who are described in subdivision
8 (2) of subsection (b) of section 10-76d;

9 (2) "Secondary school building" means any public school building
10 designed to house any combination of grades seven through twelve or
11 any regional vocational agriculture center established under the
12 provisions of part IV of chapter 164, and may also include any separate
13 combination of grades five and six or grade six with grades seven and

14 eight in a program approved by the State Board of Education when the
15 use of special facilities generally associated with secondary schools is
16 an essential part of the program for all grades included in such school;

17 (3) "School building project", except as used in section 10-289, means
18 (A) the construction, purchase, extension, replacement, renovation or
19 major alteration of a building to be used for public school purposes,
20 including the equipping and furnishing of any such construction,
21 purchase, extension, replacement, renovation or major alteration, the
22 improvement of land therefor, or the improvement of the site of an
23 existing building for public school purposes, but shall not include the
24 cost of a site, except as provided in subsection (b) of section 10-286d;
25 (B) the construction and equipping and furnishing of any such
26 construction of any building which the towns of Norwich, Winchester
27 and Woodstock may provide by lease or otherwise for use by the
28 Norwich Free Academy, Gilbert School and Woodstock Academy,
29 respectively, in furnishing education for public school pupils under the
30 provisions of section 10-34; and (C) the addition to, renovation of and
31 equipping and furnishing of any such addition to or renovation of any
32 building which may be leased, upon the approval of the Commissioner
33 of Education, to any local or regional board of education for a term of
34 twenty years or more for use by such local or regional board in
35 furnishing education of public school pupils;

36 (4) "Extension" of an existing school building means the addition to
37 an existing building or remaining portion of an existing building
38 damaged by fire, flood or other natural catastrophe, or the erection of a
39 new structure or group of structures on the same site which, together
40 with the existing building, is designed to house pupils in an
41 educational program under the supervision of one school principal;

42 (5) "Replacement" of a school building means the erection of a new
43 structure on the same or another site to replace a school building
44 totally destroyed by fire, flood or other natural catastrophe or one to be
45 abandoned for school use upon completion of its replacement;

46 (6) "Major alteration" means a capital improvement of an existing
47 building, the total project costs of which exceed ten thousand dollars
48 except for projects approved pursuant to subsection (a) of section 10-
49 65, for public school purposes resulting in improved educational
50 conditions;

51 (7) "Code violation" means the correction of any condition in an
52 existing building for public school purposes, the total project costs of
53 which exceed ten thousand dollars, and which condition is in violation
54 of the requirements of the State Building, Fire Safety or Public Health
55 Codes, state or federal Occupational, Safety and Health
56 Administration Codes, federal or state accessibility requirements or
57 regulations of the federal Environmental Protection Agency or the
58 state Department of Environmental Protection, state Department of
59 Public Health regulations for radon or federal standards for lead
60 contamination in school drinking water;

61 (8) "Completed school building project" means a school building
62 project declared complete by the applicant board of education as of the
63 date shown on the final application for grant payment purposes as
64 submitted by said board to the Commissioner of Education or his
65 agent;

66 (9) "Date of beginning of construction" means the date on which the
67 general construction contract or the first phase thereof, purchase
68 agreement or leasing agreement is signed by the authorized agent of
69 the town or regional school district;

70 (10) "Standards" means architectural, engineering and education
71 space specifications and standards for facility eligibility;

72 (11) "Application" or "grant application" means formal notification
73 of intention to apply for a state grant-in-aid for a particular school
74 building project;

75 (12) "Net eligible costs" means eligible project costs adjusted for the

76 state standard education space specifications;

77 (13) "Regional educational service center" means a body corporate
78 and politic established pursuant to the provisions of part IVa of
79 chapter 164;

80 (14) "Regional educational service center administrative or service
81 facility" means a building designed for administrative offices or
82 residential facilities, operated by a regional educational service center;

83 (15) "Vocational agriculture" includes vocational aquaculture and
84 marine-related employment;

85 (16) "Bonds or municipal bonds", except as used in section 10-289,
86 means (A) any bond, note, certificate or other evidence of
87 indebtedness, and (B) any energy conservation lease purchase
88 agreement;

89 (17) "Energy conservation lease purchase agreement" means any
90 lease purchase agreement, installment sale agreement or other similar
91 agreement providing for periodic payments by a town or regional
92 school district which (A) has as its purpose the financing of a school
93 building project concerning energy conservation, (B) separately states
94 the principal and interest components of the periodic payments to be
95 made under the agreement, and (C) provides that the town or regional
96 school district acquire title to the school building project upon
97 payment of the total amount outstanding under the agreement;

98 (18) "Renovation" means a school building project to totally
99 refurbish an existing building which results in the renovated facility
100 taking on a useful life comparable to that of a new facility and which
101 will cost less than building a new facility as determined by the
102 department, provided the school district may submit a feasibility study
103 and cost analysis of the project prepared by an independent licensed
104 architect to the department prior to final plan approval;

105 (19) "Contractor" means any person or entity that furnishes supplies

106 or services under a contract with the awarding authority for a school
107 building project;

108 (20) "Awarding authority" means the local or regional board of
109 education that enters into a contract with a contractor, or the state in
110 the case of a contract concerning a regional vocational-technical school;

111 (21) "Subcontractor" means any person or entity under a contract
112 with a contractor to furnish supplies or services for a school building
113 project;

114 (22) "Debarment" means a prohibition against a contractor or
115 subcontractor from entering into a contract with an awarding
116 authority;

117 (23) "Suspension" means the temporary prohibition from entering
118 into a contract with an awarding authority as a contractor or
119 subcontractor;

120 (24) "Construction manager" means any person or entity providing
121 construction management services as an agent of the awarding
122 authority.

123 Sec. 2. Section 10-287 of the general statutes is repealed and the
124 following is substituted in lieu thereof (*Effective July 1, 2003*):

125 (a) A grant for a school building project under this chapter to meet
126 project costs not eligible for state financial assistance under section 10-
127 287a shall be paid in installments, the number and time of payment of
128 which shall correspond to the number and time of principal
129 installment payments on municipal bonds, including principal
130 payments to retire temporary notes renewed for the third and
131 subsequent years pursuant to section 7-378a or 7-378e, issued for the
132 purpose of financing such costs and shall be equal to the state's share
133 of project costs per principal installment on municipal bonds or notes,
134 except in cases where the project has been fully paid for, in which case
135 the number of installments shall be five or, in the case of a regional

136 vocational agriculture center or a cooperative regional special
137 educational facility, shall be one; provided final payment shall not be
138 made prior to an audit conducted by the State Board of Education for
139 each project for which a final calculation was not made prior to July 31,
140 1983. Grants under twenty-five thousand dollars shall be paid in one
141 lump sum. The Commissioner of Education shall certify to the State
142 Comptroller, upon completion of the issuance of bonds or such
143 renewal of temporary notes to finance each school building project, the
144 dates and amounts of grant payments to be made pursuant to this
145 chapter and the State Comptroller shall draw an order on the State
146 Treasurer upon such certification to pay the amounts so certified when
147 due. All site acquisition and project cost grant payments shall be made
148 at least ten days prior to the principal payment on bonds or temporary
149 notes related thereto or short-term financing issued to finance such site
150 acquisition or project. Annual grant installments paid pursuant to this
151 section on principal installment payments to retire temporary notes
152 renewed pursuant to section 7-378a or 7-378e shall be based each year
153 on the amount required to be retired pursuant to said sections, as
154 adjusted for any ineligible project costs, and shall be paid only if at the
155 time such temporary notes are renewed the rate of interest applicable
156 to such notes is less than the rate of interest that would be applicable
157 with respect to twenty-year bonds if issued at the time of such
158 renewal. The determination related to such rates of interest pursuant to
159 this subsection may be reviewed and shall be subject to approval by
160 the Commissioner of Education prior to renewal of such notes. In the
161 event that a school building project is not completed at the time bonds
162 or temporary notes related thereto are issued to finance the project, the
163 certification of the grant payments made pursuant to this section by
164 the Commissioner of Education may be based on estimates, provided
165 upon completion of such project and notification of final acceptance to
166 the state, the Commissioner of Education shall adjust and recertify the
167 dates and amounts of subsequent grant payments based on the state's
168 share of final eligible costs.

169 (b) All orders and contracts for school building construction

170 receiving state assistance under this chapter shall be awarded to the
171 lowest responsible [qualified] bidder prequalified pursuant to section
172 3 of this act only after a public invitation to bid, which shall be
173 advertised in a newspaper having circulation in the town in which
174 construction is to take place, except for (1) school building projects for
175 which the town or regional school district is using a state contract
176 pursuant to subsection (d) of section 10-292, and (2) change orders,
177 those contracts or orders costing less than ten thousand dollars and
178 those of an emergency nature, as determined by the Commissioner of
179 Education, in which cases the contractor or vendor may be selected by
180 negotiation, provided no local fiscal regulations, ordinances or charter
181 provisions conflict.

182 (c) If the commissioner determines that a building project has not
183 met the approved conditions of the original application, the [State
184 Board of Education] commissioner may withhold subsequent state
185 grant payments for said project until appropriate action, as determined
186 by the commissioner, is taken to cause the building project to be in
187 compliance with the approved conditions or may require repayment of
188 all state grant payments for said project when such appropriate action
189 is not undertaken within a reasonable time.

190 (d) Each town or regional school district shall submit a final grant
191 application to the [state] Department of Education within one year
192 from the date of completion and acceptance of the building project by
193 the town or regional school district. If a town or regional school district
194 fails to submit a final grant application within said period of time, the
195 commissioner may withhold ten per cent of the state reimbursement
196 for such project.

197 (e) If the commissioner determines that (1) any contractor or
198 subcontractor debarred pursuant to the provisions of section 4 of this
199 act, or (2) a construction manager not prequalified pursuant to section
200 3 of this act is involved with any school building construction project
201 receiving state assistance under this chapter, the commissioner shall

202 withhold state grant payments for such project.

203 Sec. 3. (NEW) (*Effective July 1, 2003*) (a) The Commissioner of
204 Education shall prequalify (1) as bidders, potential contractors, and (2)
205 potential construction managers for any school building project
206 authorized by the General Assembly on or after July 1, 2004. Not later
207 than October 1, 2003, the State Board of Education shall make
208 available, upon request, a written policy concerning prequalification of
209 potential contractors and construction managers pursuant to this
210 section. In determining whether a potential contractor or construction
211 manager shall be prequalified, the commissioner may consider a
212 potential contractor or construction manager's (A) experience on the
213 type of project to be bid or managed, (B) ability to administer and meet
214 the project schedule, (C) financial strength and, in the case of a
215 construction manager, payment records on past or current building
216 construction projects, (D) safety record and procedures, including, but
217 not limited to, drug testing, (E) employee training and retention, and
218 (F) performance on past or current building construction projects. The
219 commissioner's consideration of these factors shall be based on
220 objective information of the prequalification process and shall be a
221 matter of public record. The prequalification process shall be
222 conducted quarterly during each fiscal year. The department shall
223 advertise all periods when prequalification requests may be submitted.
224 The commissioner shall notify, in writing, any potential contractor or
225 construction manager who is disqualified not later than fourteen days
226 after submission of a request to be prequalified.

227 (b) The Commissioner of Education shall attempt to prequalify and
228 maintain a list of at least ten potential contractors for each building
229 trade associated with grants authorized pursuant to the provisions of
230 chapter 173 of the general statutes and ten potential construction
231 managers.

232 Sec. 4. (NEW) (*Effective July 1, 2003*) (a) The Commissioner of
233 Education shall establish and maintain a list of contractors and

234 subcontractors debarred pursuant to this section and a list of
235 contractors and subcontractors suspended pursuant to this section. The
236 lists shall show information, including but not limited to: (1) The
237 names of contractors or subcontractors debarred or suspended in
238 alphabetical order with appropriate cross reference where more than
239 one name is involved in a single debarment or suspension; (2) the
240 reason for each debarment or suspension; (3) the extent of restrictions
241 imposed; (4) the termination date of each debarment or suspension;
242 and (5) in the case of a suspension, the hearing date, if and when set,
243 for debarment proceedings. The commissioner shall cause the lists to
244 be kept current by the issuance of notices of additions and deletions.
245 The lists shall be published on a periodic basis, together with notices of
246 additions and deletions from the lists and made available to awarding
247 authorities.

248 (b) The Commissioner of Education may debar a contractor or
249 subcontractor for the following reasons:

250 (1) Conviction or final adjudication by a court or administrative
251 agency of competent jurisdiction of any of the following offenses by a
252 contractor or subcontractor: (A) A criminal offense incident to
253 obtaining or attempting to obtain a public or private contract or in the
254 performance of such contract; (B) a criminal offense involving
255 embezzlement, theft, forgery, bribery, falsification or destruction of
256 records, receiving stolen property or any other offense indicating a
257 lack of business integrity or business honesty that seriously and
258 directly affects the contractor or subcontractor's present responsibility
259 as a contractor or subcontractor for any school construction project
260 receiving state assistance under chapter 173 of the general statutes; (C)
261 a violation of state or federal antitrust laws arising out of the
262 submission of bids or proposals; (D) a violation of state or federal laws
263 regulating campaign contributions; (E) a violation of any provision of
264 the general statutes concerning conduct of a public official; (F) a
265 violation of any state or federal law regulating hours of labor,
266 prevailing wages, minimum wages, overtime pay, equal pay, child

267 labor or worker's compensation; (G) a violation of any state or federal
268 law prohibiting discrimination in employment; or (H) repeated or
269 aggravated violations of any state or federal laws regulating labor
270 relations or occupational health or safety; or

271 (2) Substantial evidence, as determined by the Commissioner of
272 Education, of any of the following acts: (A) wilfully supplying
273 materially false information incident to obtaining or attempting to
274 obtain or performing any public contract; (B) wilful failure to comply
275 with recordkeeping and accounting requirements prescribed by law or
276 regulation; (C) a record of failure to perform or of unsatisfactory
277 performance in accordance with the terms of one or more public
278 contracts, provided such failure to perform or unsatisfactory
279 performance occurred within a reasonable period of time preceding
280 the determination to debar and provided further such failure to
281 perform or unsatisfactory performance was not caused by factors
282 beyond the contractor or subcontractor's control; (D) a record of health
283 and safety violations of a sufficient frequency and severity so as to
284 evidence a pattern of noncompliance with applicable state and federal
285 laws, or any rules and regulations applicable to such provisions; or (E)
286 any other cause affecting the responsibility of a contractor or
287 subcontractor that the commissioner determines to be of such serious
288 and compelling nature as to warrant debarment. Notwithstanding the
289 provisions of this section, any contractor or subcontractor debarred or
290 suspended by any agency of the United States shall by reason of such
291 debarment or suspension be simultaneously debarred or suspended
292 under this section, with respect to nonfederally aided contracts, the
293 commissioner may make a determination, in writing, that special
294 circumstances exist which justify contracting with the affected
295 contractor or subcontractor.

296 (c) (1) No contractor or subcontractor may be suspended unless the
297 Commissioner of Education has first informed the contractor or
298 subcontractor by written notice of the proposed suspension mailed, by
299 registered or certified mail, to the contractor or subcontractor's last-

300 known address, except when the commissioner determines that
301 immediate suspension is necessary to prevent serious harm, in which
302 case the suspension shall take effect immediately upon signing by the
303 commissioner of an order of suspension, and notice shall be mailed to
304 the contractor or subcontractor at the earliest opportunity. The notice
305 shall inform the contractor or subcontractor of the reasons for the
306 proposed suspension and shall state that the contractor or
307 subcontractor may, not later than fourteen days after receipt of the
308 notice, respond in writing and may request a hearing. The
309 commissioner may extend the period for response at the request of the
310 contractor or subcontractor. The commissioner shall determine
311 whether to impose the suspension or, in the case of an emergency
312 suspension imposed prior to notice to the contractor or subcontractor,
313 whether to continue the suspension after reviewing the contractor or
314 subcontractor's response, if any, and making such investigation as the
315 commissioner determines is necessary and appropriate. An indictment,
316 information or complaint filed by a state agency charging a criminal
317 offense, for any of the offenses listed in subdivision (1) of subsection
318 (b) of this section shall constitute adequate evidence to support a
319 suspension.

320 (2) If a contractor or subcontractor suspended pursuant to the
321 provisions of this section requests a hearing, and the suspension is not
322 based on an indictment, the commissioner shall conduct a hearing, in
323 accordance with the provisions of chapter 54 of the general statutes.
324 Such hearing shall be initiated no later than thirty days after the
325 imposition of the suspension, unless the contractor or subcontractor
326 requests that the hearing be delayed.

327 (3) A suspension shall not exceed twelve months unless a pending
328 administrative or judicial proceeding in which the contractor or
329 subcontractor is a party may result in a conviction or final adjudication
330 of an offense listed in subdivision (1) of subsection (b) of this section.

331 (d) No contractor or subcontractor may be debarred under the

332 provisions of this section unless the commissioner has first informed
333 the contractor or subcontractor by written notice of the proposed
334 debarment mailed, by registered or certified mail, to the contractor or
335 subcontractor's last-known address. The notice shall inform the
336 contractor or subcontractor of the reasons for the debarment and shall
337 state that the contractor or subcontractor will be accorded an
338 opportunity for a hearing conducted in accordance with the provisions
339 of chapter 54 of the general statutes if the contractor so requests not
340 later than fourteen days after receipt of the notice. Officers and
341 employees of the office of the Attorney General and records of said
342 office shall not be subject to subpoena for such hearing if, in the
343 opinion of the Attorney General, production of records or testimony
344 would prejudice any pending investigation by said office. A hearing
345 requested under this subsection shall be conducted by the
346 commissioner not later than sixty days after receipt of the request,
347 unless the commissioner grants additional time at the request of the
348 contractor. The commissioner shall not impose debarment until (1)
349 fourteen days after receipt by the contractor of notice of the proposed
350 debarment if no hearing is requested, or (2) the issuance of a written
351 decision by the commissioner that makes specific findings that there is
352 sufficient evidence to support the debarment and that debarment for
353 the period specified in the decision is required to protect the integrity
354 of the school building project contracting process. A contractor or
355 subcontractor shall be notified immediately of the decision by
356 registered or certified mail, and of the contractor or subcontractor's
357 right to judicial review in the event that the decision is adverse to the
358 contractor or subcontractor. If a suspension precedes a debarment, the
359 suspension period shall be considered in determining the debarment
360 period.

361 (e) A debarment or suspension pursuant to this section may include
362 all known affiliates of a contractor or subcontractor. The decision to
363 include a known affiliate within the scope of a debarment or
364 suspension shall be made on a case-by-case basis, after giving due
365 regard to all relevant facts and circumstances. The offense or act of a

366 contractor or subcontractor justifying suspension, or the evidence
367 justifying a suspension, may be imputed to the affiliate with which the
368 contractor or subcontractor is connected when such offense or act
369 occurred in connection with the contractor or subcontractor's
370 performance of duties for or on behalf of the affiliate or with the
371 knowledge, approval or acquiescence of the affiliate or one or more of
372 its principals. The affiliate's acceptance of the benefits derived from the
373 conduct subject to suspension or debarment shall be evidence of such
374 knowledge, approval or acquiescence. The offense or act of contractor
375 or subcontractor justifying debarment, or the evidence justifying a
376 suspension, may be imputed to any officer, director, shareholder,
377 partner, employee or other individual associated with the affiliate who
378 participated in, knew of, or had reason to know of the contractor or
379 subcontractor's act. For purposes of this subsection, "affiliate" means a
380 person or entity directly or indirectly controlled by or in control of a
381 contractor or subcontractor.

382 (f) In determining whether to debar a contractor, subcontractor or
383 an affiliate, or the period of a debarment, all mitigating facts and
384 circumstances shall be taken into consideration. A debarment may be
385 removed or the period of such debarment may be reduced by the
386 Commissioner of Education upon the submission of an application
387 supported by documentary evidence setting forth appropriate grounds
388 for the granting of relief, such as newly discovered material evidence,
389 reversal of a judgment or conviction, bona fide change of ownership or
390 management, or the elimination of the cause for which the debarment
391 was imposed.

392 (g) During the period for which a contractor, subcontractor or an
393 affiliate has been debarred or suspended pursuant to this section, the
394 contractor, subcontractor or an affiliate shall not submit or cause to be
395 submitted offers, bids or proposals for any school building
396 construction project receiving state assistance under chapter 173 of the
397 general statutes.

398 Sec. 5. (NEW) (*Effective July 1, 2003*) The State Board of Education
399 shall adopt regulations, in accordance with the provisions of chapter
400 54 of the general statutes, to carry out the provisions of section 10-287
401 of the general statutes, as amended by this act, and section 3 of this act.

This act shall take effect as follows:	
Section 1	<i>July 1, 2003</i>
Sec. 2	<i>July 1, 2003</i>
Sec. 3	<i>July 1, 2003</i>
Sec. 4	<i>July 1, 2003</i>
Sec. 5	<i>July 1, 2003</i>

Statement of Purpose:

To provide for prequalification of contractors and construction managers for school construction projects and to provide for debarment of contractors and subcontractors.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]