



# Senate

General Assembly

**File No. 511**

February Session, 2008

Substitute Senate Bill No. 435

*Senate, April 7, 2008*

The Committee on Education reported through SEN. GAFFEY of the 13th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT CONCERNING ORDERS AND CONTRACTS FOR ARCHITECTURAL AND CONSTRUCTION MANAGEMENT SERVICES FOR SCHOOL CONSTRUCTION PROJECTS.**

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

1 Section 1. Subsection (b) of section 10-287 of the 2008 supplement to  
2 the general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective July 1, 2008*):

4 (b) (1) All orders and contracts for school building construction  
5 receiving state assistance under this chapter, including orders and  
6 contracts for architectural or construction management services  
7 pursuant to the provisions of subdivision (2) of this subsection, shall be  
8 awarded to the lowest responsible qualified bidder only after a public  
9 invitation to bid, which shall be advertised in a newspaper having  
10 circulation in the town in which construction is to take place, except  
11 for [(1)] (A) school building projects for which the town or regional  
12 school district is using a state contract pursuant to subsection (d) of  
13 section 10-292, and [(2)] (B) change orders, those contracts or orders

14 costing less than ten thousand dollars and those of an emergency  
15 nature, as determined by the Commissioner of Education, in which  
16 cases the contractor or vendor may be selected by negotiation,  
17 provided no local fiscal regulations, ordinances or charter provisions  
18 conflict.

19 (2) All orders and contracts for architectural or construction  
20 management services shall be awarded from a pool of not more than  
21 the four lowest responsible qualified bidders after a public selection  
22 process. Such process shall, at a minimum, involve requests for  
23 qualifications, followed by requests for proposals and bids from the  
24 bidders meeting the qualifications criteria of the request for  
25 qualifications process. Public advertisements shall be required in a  
26 newspaper having circulation in the town in which construction is to  
27 take place, except for (A) school building projects for which the town  
28 or regional school district is using a state contract pursuant to  
29 subsection (d) of section 10-292, and (B) change orders, those contracts  
30 or orders costing less than ten thousand dollars, and those of an  
31 emergency nature, as determined by the Commissioner of Education,  
32 in which cases the contractor or vendor may be selected by  
33 negotiation, provided no local fiscal regulations, ordinances or charter  
34 provisions conflict. Following the bidding process, the awarding  
35 authority shall evaluate the bids and proposals of not more than the  
36 four lowest responsible qualified bidders using those criteria  
37 previously listed in the requests for qualifications and requests for  
38 proposals that are specific to the project or school district in selecting  
39 architectural or construction management services from the four  
40 lowest responsible qualified bidders in order to qualify the bids. Such  
41 evaluation shall include consideration of the firm's experience with  
42 work of similar size and scope as required for the order or contract,  
43 organizational and team structure for the order or contract, past  
44 performance data including, but not limited to, adherence to project  
45 schedules and project budgets and the number of change orders for  
46 projects, the approach to the work required for the contract and  
47 documented contract oversight capabilities. Final selection by the  
48 awarding authority is limited to the pool of the four lowest responsible

49 qualified bidders and shall include consideration of all factors  
 50 included within the bid proposal. As used in this subdivision, "lowest  
 51 responsible qualified bidder" means the bidder who is qualified by the  
 52 awarding authority when considering price and the factors necessary  
 53 for faithful performance of the work based on the criteria and scope of  
 54 work included in the request for proposals.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2008	10-287(b)

**ED**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Education, Dept.	GF - Cost	Potential Significant	Potential Significant

Note: GF=General Fund

**Municipal Impact:**

Municipalities	Effect	FY 09 \$	FY 10 \$
Local and Regional School Districts	Cost	Potential Significant	Potential Significant

**Explanation**

The bill requires school districts to award contracts for architectural or construction management services using a public selection process containing no more than four bidders in making its final selection. The bill establishes minimum considerations that school districts must use to narrow the field to a maximum of four bidders and to select the winning bid from among the four finalists.

It is unknown the extent to which local school districts will still (despite the new provisions contained in the bill) opt for the lowest bidder, or will opt for a finalist other than the lowest bidder. Assuming a 3% cost differential<sup>1</sup> for each project (a 1% cost differential for architectural services and a 2% differential for construction management services), if the state authorizes approximately \$800 million in school construction projects in FY 09, and if the average reimbursement rate to municipalities is 70%, the aggregate grants on the Priority List would be approximately \$560 million<sup>2</sup>. Based on the

<sup>1</sup> The 3% differential is an assumption based on average differentials between the lowest bidder, and the second lowest bidder.

<sup>2</sup> \$800 million \* 70% = \$560

assumption that not selecting the lowest bidder (and selecting another of the four finalists) could result in a 3% increase for architectural and construction management fees, the cost to the state could be up to \$16.8 million<sup>3</sup> in FY 09.

Additionally, assuming a cost differential of 3% and the extent to which municipalities select one of the four finalists who is not the lowest bidder, the cost to municipalities could be up to \$7.2 million<sup>4</sup> in FY 09.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to the cost differential between the lowest bidder and the second lowest bidder, and the extent to which municipalities choose one of the four finalists other than the lowest bidder.

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<sup>3</sup> \$560 million \* 3% = \$16.8

<sup>4</sup> \$800 million \* 3% = \$24 million - (\$16.8 state costs) = \$7.2 municipal cost

**OLR Bill Analysis****sSB 435*****AN ACT CONCERNING ORDERS AND CONTRACTS FOR ARCHITECTURAL AND CONSTRUCTION MANAGEMENT SERVICES FOR SCHOOL CONSTRUCTION PROJECTS.*****SUMMARY:**

This bill establishes a process by which local school districts must award contracts for architectural or construction management services on school construction projects receiving state school construction grants.

By law, school districts must award such contracts to the lowest responsible qualified bidder. Current law requires a district to choose that bidder after a public invitation to bid advertised in a newspaper circulating in the town where the construction will occur. The bill requires school districts to award the contracts using a public selection process that contains certain prescribed steps. It requires districts to consider no more than four bidders in making its final selection and establishes minimum considerations they must use both to narrow the field to a maximum of four and to select the winning firm from among the finalists.

The bill also defines the “lowest responsible qualified bidder” for an architectural or construction manager services contract as the firm the school district selects after considering the price and the qualities needed to faithfully perform the work based on the criteria and work scope the district included in its request for proposals.

As under current law, the bill’s selection process applies unless (1) the district is using a state contract for the project; (2) the contract is for a change order, (3) the contract or other project order costs less than \$10,000, or (4) the education commissioner determines the project is an

emergency. In these cases, districts may choose a contractor by negotiation unless local regulations, ordinances, or charters conflict.

EFFECTIVE DATE: July 1, 2008

### **SELECTION PROCESS FOR ARCHITECTS AND CONSTRUCTION MANAGERS ON STATE-FUNDED SCHOOL PROJECTS**

The bill requires school districts to award contracts for architectural and construction management services on state-aided school construction projects to the lowest responsible qualified bidder through a public selection process that meets specified requirements. To start the process, a district must issue a request for qualifications (RFQ). From the firms responding to its RFQ, the district must solicit proposals and bids (RFP) from those firms that meet the RFQ criteria. The bill continues to require the same newspaper advertisements as the current law. Apparently, only the RFQ is subject to the advertising requirements, since the bill limits the firms that may submit proposals and bids to those that qualify according to the RFQ.

After the bidding process, the district must evaluate the bids and proposals from no more than the four lowest qualified responsible bidders. To determine the finalists, the district must use criteria listed in the RFQ and RFP that relate to the specific school project or district. In evaluating the finalists' bids, the district must at least consider:

1. each firm's experience with work of similar size and scope as that required for the project,
2. each firm's organization and team structure for the project,
3. each firm's past performance, including meeting project schedules and budgets, and the number of change orders for projects;
4. the work approach the project requires; and
5. documented contract oversight capabilities.

For final selection, a district is limited to the pool of no more than the four firms. In making the final selection, the district must consider all factors included in the finalists' bid proposals.

## **BACKGROUND**

### ***State-Aided Local School Construction Projects***

The state reimburses school districts for from 20% to 80% of the eligible costs of most local school construction projects. The reimbursement rate depends mostly on town wealth, but districts receive a higher reimbursement for certain types of projects, such as those involving space for school-readiness programs or full-day kindergarten. In addition, certain types of interdistrict projects (vocational agricultural centers, regional special education facilities, and interdistrict magnet schools) are reimbursed at the rate of 95% of eligible costs. Districts also receive a 10-percentage-point bonus for projects undertaken in cooperation with one or more other districts.

### ***Related Bill***

SB 683, reported by the Government Administration and Elections Committee, exempts school districts from the requirement that they award architectural and construction management services contracts for state-aided local school construction projects to the lowest responsible qualified bidder if they use a "qualification-based selection process" equivalent to the procedure the Department of Public Works uses to award state construction contracts, as described in Chapter 60 of the General Statutes.

## **COMMITTEE ACTION**

Education Committee

Joint Favorable Substitute

Yea 28 Nay 0 (03/18/2008)