

**Testimony of the  
International Union of Operating Engineers Local 478  
GAE Committee  
on Raised Bill 5373  
March 23, 2009**

The International Union of Operating Engineers is here today to testify against HB 5373, which would expand the ability to use reverse auction bidding from goods and supplies to services, specifically construction services. Local 478 strongly supports full and open competition among general contractors, subcontractors, suppliers and service providers, and the use of electronic bidding processes to achieve this aim. We believe, however, that electronic bidding should in no circumstances be expanded to allow the use of reverse auction bidding procedures for the acquisition of construction services. We are against this because we have found again and again when contractors begin to compete in an arena where only price matters, worker's safety, pay and benefits are always one of the casualties. In a reverse auction, when a contractor has only minutes to lower their price or see a job they may view as critical slip away, decisions are sometimes faulty and shortcuts are taken that will affect the project regardless of the laws that are in place to protect workers.

The idea behind any type of bidding process is to obtain the best price for a commodity while maintaining adherence to the design, specifications and quality that the owner is looking for in the product. Sealed bids work well for any type of commodity. There are other processes that may work well for procuring some types of products, and not well for others. Reverse auction bidding is one of these. Reverse auction bidding allows bidders, over a set period of time, to view the bids that have been made by their competition and to lower their bid, usually by 1% or greater, to beat the other bids. The deadline can be extended in increments if a new or revised bid is received within a few minutes of the closing time of the auction. When no more new or revised bids are received, the auction will be declared closed and the lowest bid will be declared the winner.

In the case of manufactured goods or commodities this is a process that works well, and can lead to lower prices. The price savings have been shown to peak after 2 or 3 auctions because on manufactured products the producer always knows the cost point. Bidding below that cost point to win a contract is counterproductive, and will lead to the manufacturer or seller not being able to cover costs. The object of business is to make money, so the lowest price on a uniform, replicable commodity will be soon realized and the savings will cease auction to auction. Bob Emiliani is President of the Kensington Connecticut based Center for Lean Business Management, LLC. He ran reverse auctions during his 20 year career in aerospace, consumer products and service industries. In Electrical Construction and Maintenance magazine Mr. Emiliani states that since the introduction of reverse auctions in 1995 the number of companies providing the service has plunged from the hundreds to dozens due to the lack of substantial cost reductions to the buyers or the sellers. He says "Building owners may believe that they are going to save money on the construction job, but our research has shown that is not the case. If you peel back the layers and look carefully at the measurement that the owners use to track savings and purchasing, you find out that the numbers are very easy to play games with, and a lot of savings turns out to be not a lot of savings".

This occurs because construction is a different type of commodity from pencils, cars and machine parts. Highways, schools and municipal buildings are not manufactured. In truth the construction process is vastly different from any manufacturing process. In manufacturing the object is to eliminate variables from the process, to make each widget or pencil the exact same as the previous widget or pencil. The same manufactured product rarely varies or changes from manufacturer to manufacturer in application or design. A gas filter for an 83 Pontiac is a gas filter for an 83 an Pontiac, no matter who makes it. It has to fit in the same spot, and perform the same function. In construction there is no such thing as an exact duplicate of a project. Variables like site configuration, weather, differences in the project team, differences in local regulations, different schedules and countless other variables make exact uniformity impossible. Even when the plans used are identical, project costs will be different. Many of these variables cannot be planned for. They can be accounted for in the bidding process and a prudent contractor needs time to take these into consideration when preparing a bid. The result of not doing this, or in changing an estimate when caught up in the frenzy of an auction process can be underestimating the true cost to build a project. That underestimation leads to problems on the project when it is under construction. In the most severe case this can lead to the inability to complete a critical part of a project on time or within budget. John Conroy, the President of the Hamden Connecticut based electrical and voice/data/video contractor Xcelem, Inc. is quoted, also in Electrical Construction and Maintenance magazine, as saying "Reverse auctions are like an E-Bay nightmare. We put our number out and end up in a

downward spiraling gaming type atmosphere. Any differences in how each competitor is planning on building the project, or in quality of work, or even in ability to build within the slated timeframe seems to be ignored in this type of process". Mr. Conroy goes on to note that in some cases the final bid price is below any quality contractors cost, and he reasons that some of the winning bidders will end up in financial difficulty as the projects progress. Not exactly a ringing endorsement.

Another problem to take into account in reverse auctions for construction is the surety bond issue. Surety bond issuers decide whether or not to issue a bond on a job based on their knowledge of a contractors bidding procedures. They know what they are bonding, and they know the contractors price for the job when they submit the bond with the initial bid. In the Mohegan Sun like atmosphere in the final minutes of a reverse auction bid a contractor can be convinced to drop their bid below a prudent price. This leaves the surety company on the hook for the contractor's impulsiveness, even though the bond issuer believed they were supplying a bond for a responsibly priced bid. Combine this with SB 1035, which would eliminate the need for a subcontractor to post a bond on a job that a general contractor has bonded and you really have a recipe for fiscal disaster.

My final point has to do with the type of contractor and subcontractor we want to work on our public buildings and schools. When responsible contractors bid in a sealed bid environment they must submit their lowest practical cost estimate the first time. There is no do over, if their bid is too high they lose the job. Responsible contractors realize this. Bottom feeding contractors and subcontractors that exploit workers and do shoddy work will often bid 15 to 20 % lower in this system to assure themselves of getting a job if they are allowed on a bid list. Switching to a strictly lowest price reverse auction system will encourage more of these bottom feeders to enter the process, and General Contractors will have an incentive to allow this. We have seen the results of this in Connecticut at UConn, the Stamford Courthouse and the Southington School system and other jobs. Does Connecticut wish to encourage this type of behavior by allowing that type of bottom feeder to lower their bid 1% at a time until they have priced the responsible contractors out, thus increasing their profits? I hope not.