

**Senate Bill 421, An Act Concerning Certain Bidding Preferences in State and Municipal Contracting**

**March 13, 2014**

**Public Hearing, Committee on Commerce**

Connecticut Construction Industries Association, Inc. (CCIA) represents the commercial construction industry in the state and seeks to advance and promote a better quality of life for all citizens in the state. Formed over 40 years ago, CCIA is an organization of associations, where all sectors of the commercial construction industry work together to advance and promote their shared interests. CCIA is comprised of more than 300 members, including contractors, subcontractors, suppliers and affiliated organizations representing many sectors of the construction industry. CCIA members have a long history of providing quality work for the public benefit.

AGC of Connecticut is the building division of CCIA, representing 150 commercial, industrial, and institutional construction contractors, subcontractors, material suppliers and professionals serving the Connecticut construction industry. AGC of Connecticut is a chapter of AGC of America. Other divisions that would be affected by this bill include the Connecticut Road Builders Association, and the Connecticut Environmental & Utility Contractors Association.

Senate Bill 421, An Act Concerning Certain Bidding Preferences in State and Municipal Contracting would create a new preference system for contractors who employ in-state workers, and allow municipalities to enact a preference for supplies, materials and equipment produced, assembled or manufactured in the state and services originating and provided in the state.

The preference system contained in Sec. 2 of the bill is an interesting concept; however, it raises more questions than it answers, and we are concerned that it will create confusion and uncertainty for both state agency procurement officials and construction firms when it comes to making decisions to award state projects to contractors. We are also concerned that it will lead other states to apply similar preference laws against Connecticut construction firms in retaliation.

The central theme of the preference system in Sec. 2 provides that *"a state contracting agency may adjust each bidder's bid to deduct the amount of state income taxes that will be paid during the term of the contract by such bidder's employees who are employed directly on the bid project. The calculation of such deduction shall be equal to the sum of deductions for each employee assigned to the project, calculated using the following formula: An assumed income tax rate of five per cent multiplied by the listed salary of the employee multiplied by the proportion of the employee's time that would be assigned to the project."*

The system is permissive in that it says a state contracting agency may adjust a bidder's bid. How is the state agency supposed to decide when it is appropriate to use this preference system? Is it every project? Assuming this bill is aimed at giving in-state contractors an advantage against out-of-state contractors, is it only for projects that the state agency expects out-of-state contractors to bid?

The term, "employees who are employed directly on the bid project," may mean different things to different people, and could easily be used by certain bidders to gain an advantage. Also, a contractor may not know at bid time how many workers they are going to use on a project. Depending on a variety of changing

conditions at any point during the process, a construction project that was conceived at bid time often turns out to be a very different project as it progresses, and more manpower is required than was originally estimated in order to get the job done.

Sec. 2(b) is somewhat confusing but we view it as a way to correct situations where a bidder underestimates the aggregate amount they would pay in state income taxes to employees working directly on the project. If we understand it correctly, it seems to provide that if the successful bidder ends up at the end of the project paying its employees less than the amount in state income taxes contained in the original bid, his or her payment is adjusted to back to the original bid before the adjustment for state income taxes was made. While such a provision may be useful in ensuring that the state doesn't pay more for the project than necessary, we can only imagine unsuccessful bidders asking themselves, "How is it fair that the successful bidder was rewarded with the project for underestimating his in-state worker income tax, and I was penalized for correctly estimating my income tax figures?"

In 2008, Connecticut established a reciprocal preference statute (Subsection (b) of section 4e-48 (CGS)) requiring state contracting agencies awarding a contract to increase the bid by an amount equal to the preference given to an out-of-state business in its home state. While this bill does not establish a traditional bid preference system by giving resident bidders a percentage advantage over non-resident bidders, the intent of the bill, by allowing a firm to deduct the amount of state income taxes to its workers directly working on the project from its bid, is to essentially give in-state bidders an advantage over non-resident firms. Consequently, we are concerned that the adoption of S.B. 421 could prompt other states to apply reciprocal laws which may disadvantage Connecticut construction firms when they bid in other states, potentially depriving them of much-needed work.

Thank you for your consideration and for the opportunity to present our views. For more information, contact John Butts at 860-529-6855.