



DEPARTMENT OF ADMINISTRATIVE SERVICES

STATE OF CONNECTICUT

SB 454

165 Capitol Avenue
Hartford, CT 06106-1658

An Act Increasing the Transparency of General Bids for State Contracts

Government Administration & Elections Committee
March 17, 2014

As the agency responsible for administering construction contracts for most executive branch agencies, the Department of Administrative Services (DAS) would like to thank the Committee for the opportunity to provide comments on Senate Bill 454.

Within DAS, our Division of Construction Services (DCS) staff provides capital project planning and management services for any state construction project over \$500,000, with the exception of the University of Connecticut and the Department of Transportation. The project teams consist of architects, engineers and construction specialists. The DCS project manager develops an agency's construction concept from inception through project delivery, including scope development, creation of a project budget, formal selection for a design professional, oversight of the design process, recommendation and award of a construction contract, oversight and enforcement of the construction process, and project completion and turnover of the final product to the client agency. These services are provided to twelve Community Technical Colleges, the Board of Regents, and 23 executive branch agencies, including the Judicial Branch.

It appears that the purpose of this bill is to preclude a general contractor awarded a bid to negotiate downward a subcontractor's final price to perform its work, or "shopping" the subcontractor's final price to other subcontractors in hopes of getting a lower price. DAS supports transparency and fairness in all of its procurement processes; however, DAS does have concerns about the possible unintended consequences of this legislation as well as technical issues with certain sections.

The proposed legislation makes a significant change to the bid process for both design-bid-build projects as well as Construction Manager at Risk (CMR) projects. Under the existing law (C.G.S. §§4b-91 to 4b-100) on design-bid-build construction projects, the general contractor lists on the DAS bid form the names and prices for subcontractors in the following classes of work: masonry, electrical, mechanical and HVAC, as applicable for a particular project. The general contractor is required to use the listed subcontractor for the class of work at the amount stated on the bid form.

Section 2 would remove the four major classification components outlined in C.G.S. §4-93, and substitute the over 30 DAS contractor prequalification classifications in their

place. Moreover, Section 2 would require each contractor to obtain from the subcontractors any lower tier subcontractor who will perform work for each subcontractor, and list those companies on the bid form as well.

This bill also changes the bid process for projects utilizing the CMR delivery method. With this method, the CMR publicly bids each project element, and then holds the contract with the successful lowest and responsible qualified bidders. Even though the CMR process is significantly different from the design-bid-build process, SB 454 seeks to require CMRs to follow the same new bidding procedures as it establishes for the design-bid-build process, thereby undermining the efficiencies and economies the CMR process is designed to achieve.

SB 454 will have a direct effect on DAS in a number of ways. DAS will need to revise a number of its bid forms, policies and procedures, and its project management staff may be required to conduct additional scope reviews and to spend time assessing the legitimacy of an increased number of requests to substitute subcontractors and lower tier subcontractors. In addition, because the requirement to list the four classes of subcontractors has been the basis of bid protests in the past, DAS anticipates that the expansion of this obligation to over 30 classes of subcontractors and lower tier subcontractors may result in a similar expansion in protest petitions.

In addition to these administrative concerns, there are a number of technical concerns with some of the language in SB 454 that DAS would like to discuss with the Committee should this bill move forward.

For example, Section 5 requires that a CMR, within five days of being awarded a contract by DAS, present a subcontract to the listed subcontractors. Under the CMR project delivery method, a CMR is awarded a contract during pre-construction and prior to bidding any trade packages. The CMR could not comply with this new statutory provision. Also the subcontract that is explicitly set forth in the statute is for design-bid-build projects, not for CMR projects.

Another technical issue concerns the addition of the phrase "or anyone acting on behalf of or as agent of the state" to the terms "awarding authority" and "contracting agency." DAS does not understand the need for or impact of this additional language.

DAS shares the Committee's interest in increasing the transparency in the contracting process and have been engaged in discussions with various stakeholders about effective ways to achieve that goal, including engaging in a state-wide effort to improve the collection and reporting of construction records. DAS would be happy to provide more information about those efforts to the Committee, and to continue discussions with stakeholders about this proposal.