



# House of Representatives

General Assembly

**File No. 432**

February Session, 2018

Substitute House Bill No. 5270

*House of Representatives, April 12, 2018*

The Committee on Government Administration and Elections reported through REP. FOX of the 148th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT PROHIBITING BID SHOPPING.***

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

1 Section 1. (NEW) (*Effective October 1, 2018*) As used in this section,  
2 sections 2 and 3 of this act and sections 4b-91 to 4b-103, inclusive, of  
3 the general statutes, as amended by this act:

4 (1) "General contractor" means any contractor that submits a bid to  
5 an awarding authority, or to any construction manager at-risk  
6 pursuant to part II of chapter 60 of the general statutes;

7 (2) "Subcontractor" means any contractor that submits a bid to  
8 perform work for, or to supply materials to, a general contractor or  
9 another subcontractor in relation to a general contractor's bid on a  
10 construction project that is subject to any of the requirements  
11 established under part II of chapter 60 of the general statutes;

12 (3) "Bid submission" or "submit a bid" means, with respect to a

13 general contractor, providing a bid package to an awarding authority  
14 or construction manager at-risk, and with respect to a subcontractor,  
15 submitting a sub-bid;

16 (4) "Sub-bid" means the bid submission of a subcontractor, made by  
17 writing and signing a sub-bid on a form provided by the Department  
18 of Administrative Services and providing such form to a general  
19 contractor or another subcontractor pursuant to part II of chapter 60 of  
20 the general statutes;

21 (5) "Higher-tier subcontractor" means any subcontractor that  
22 contracts with a general contractor;

23 (6) "Lower-tier subcontractor" means any subcontractor that  
24 contracts with a higher-tier subcontractor;

25 (7) "Bid shopping" means any effort by a general contractor after bid  
26 submission to obtain a lower price from a subcontractor that such  
27 contractor has previously solicited bids from with respect to the project  
28 for which such bid was submitted, including using one subcontractor's  
29 bid to coerce lower bids from other subcontractors, but excluding the  
30 substitution of a contractor in accordance with section 2 of this act; and

31 (8) "Awarding authority" has the same meaning as provided in  
32 section 4b-91 of the general statutes, as amended by this act.

33 Sec. 2. (NEW) (*Effective October 1, 2018*) (a) The Department of  
34 Administrative Services shall adopt regulations in accordance with the  
35 provisions of chapter 54 of the general statutes to set a threshold value  
36 for sub-bids and provide that any sub-bid that exceeds such threshold  
37 value is required to be delineated in the bid submission of a general  
38 contractor. For purposes of this section, "threshold value" means the  
39 threshold value determined by the Department of Administrative  
40 Services under such regulations.

41 (b) On and after the date the regulations required under subsection  
42 (a) of this section are effective, each invitation to bid on a contract  
43 under part II of chapter 60 of the general statutes issued by an

44 awarding authority, including invitations issued by a construction  
45 manager at-risk, shall require bidders to: (1) List the name, location of  
46 the place of business and Connecticut business identification number  
47 of all subcontractors that are to perform any work on the project in an  
48 amount in excess of the threshold value; (2) list the dollar amount of  
49 each sub-bid; (3) submit the written sub-bids, signed by each  
50 subcontractor that is proposing to perform the work in an amount in  
51 excess of the threshold value, and if applicable, the subcontractor's  
52 prequalification certificate obtained in accordance with section 4a-100  
53 of the general statutes; and (4) identify any portion of work in excess of  
54 the threshold value that the general contractor will self-perform and  
55 list such work in accordance with section 4b-95a of the general  
56 statutes, as amended by this act. The bid of any general contractor who  
57 fails to list a sub-bid in excess of the threshold value shall be rejected if  
58 the awarding authority or construction manager at-risk determines  
59 that it is unreasonable for such contractor to subcontract for less than  
60 the threshold value given the scope of the project and the bid  
61 specifications submitted in accordance with section 4b-93 or 4b-103 of  
62 the general statutes, as amended by this act.

63 (c) Each subcontractor shall submit all sub-bids to the prospective  
64 general contractor, including any bids in excess of the threshold value  
65 of lower-tier subcontractors to higher-tier subcontractors, prior to the  
66 general contractor's bid submission. All subcontractors submitting  
67 sub-bids in excess of the threshold value, including lower-tier  
68 subcontractors, shall write and sign their bids on a form prescribed by  
69 the Department of Administrative Services. If a general contractor  
70 obtains bids from multiple subcontractors with respect to a single  
71 project, the general contractor may select among the various bids,  
72 provided the general contractor does not unilaterally pair any higher-  
73 tier and lower-tier sub-bids together unless they were originally  
74 submitted together by the respective subcontractors.

75 (d) A general contractor executing a contract under part II of  
76 chapter 60 of the general statutes shall offer the listed higher-tier  
77 subcontractors a written subcontract not later than five business days

78 after execution of the contract, consistent with any other applicable  
79 requirements set forth in section 4b-96 of the general statutes, as  
80 amended by this act. All subcontractors executing a contract under  
81 part II of chapter 60 of the general statutes shall offer the listed lower-  
82 tier subcontractors a subcontract not later than five business days after  
83 execution of the contract. No listed subcontractor may commence  
84 performing work on a project prior to signing a subcontract and filing  
85 such contract with either the awarding authority or construction  
86 manager at-risk.

87 (e) A general contractor or higher-tier subcontractor may not  
88 substitute any listed subcontractors after the submission of a bid,  
89 unless: (1) The subcontractor refused to execute a written subcontract  
90 not later than five business days after being offered the subcontract; (2)  
91 the value of the contract with the proposed substitute subcontractor  
92 (A) does not differ by more than one-half of a per cent than the listed  
93 sub-bid, or (B) differs by more than one-half of a per cent but is less  
94 than the listed sub-bid, in which latter case the general contractor or  
95 higher-tier subcontractor, as applicable, shall agree, in writing, that the  
96 savings from the substitute subcontractor shall be paid to the state by  
97 the general contractor or higher-tier subcontractor by check payable to  
98 the State Treasurer not later than thirty days after the completion of  
99 the project; (3) the general contractor or higher-tier subcontractor has  
100 good cause, as described in subsection (c) of section 4b-95 of the  
101 general statutes, as amended by this act, for requesting a substitute; (4)  
102 the general contractor or higher-tier subcontractor receives written  
103 permission from the awarding authority or construction manager at-  
104 risk to substitute a listed subcontractor; and (5) the general contractor  
105 or higher-tier subcontractor has otherwise met any applicable  
106 requirements set forth in section 4b-96 of the general statutes, as  
107 amended by this act.

108 (f) Any attempt by a general contractor to circumvent the  
109 requirements of this section by (1) listing another contractor who will  
110 subcontract portions of the contract in excess of the threshold value  
111 covered by the contract to an unlisted subcontractor, or (2) failing to

112 comply with the requirements of subsection (e) of this section, shall  
113 constitute a violation of this section and may result in the  
114 disqualification of the contractor from bidding on projects under  
115 chapter 60 of the general statutes for up to five years after the  
116 discovery of the violation. The Department of Administrative Services  
117 shall provide thirty days' written notice to each contractor alleged to  
118 have violated this section that such contractor is subject to  
119 disqualification. The contractor may request a hearing by the  
120 department to contest such disqualification, provided such request is  
121 made in writing not later than twenty days after receipt of such notice.

122       Sec. 3. (NEW) (*Effective October 1, 2018*) (a) No contractor shall  
123 engage in bid shopping on any contract for the construction,  
124 reconstruction, alteration, remodeling, repair or demolition of any  
125 public building or other public work by the state, a municipality or  
126 other political subdivision of the state.

127       (b) The Attorney General, in the case of state projects, or the  
128 municipality or political subdivision, as applicable, may institute a  
129 civil action to recover the difference in value between a higher-price  
130 sub-bid used by a contractor in establishing a bid and the lower-price  
131 subcontract that the contractor subsequently obtained through bid  
132 shopping, as well as reasonable attorneys' fees and costs.

133       (c) Any subcontractor aggrieved by the bid shopping of a general  
134 contractor may institute a civil action against the general contractor  
135 that engaged in bid shopping to recover damages equivalent to ten per  
136 cent of the submitted bid value, as well as reasonable attorneys' fees  
137 and costs. In any such action, the subcontractor shall have the burden  
138 of proving, by a preponderance of the evidence, that the contractor  
139 engaged in bid shopping.

140       (d) In addition to the civil remedies set forth in this section, the  
141 Commissioner of Consumer Protection shall fine a contractor found to  
142 have engaged in bid shopping up to twenty thousand dollars for each  
143 violation and not less than five thousand dollars per violation.

144 (e) Any civil action instituted under this section shall be brought not  
145 more than two years after the alleged bid shopping occurred.

146 Sec. 4. Subsection (b) of section 4b-91 of the general statutes is  
147 repealed and the following is substituted in lieu thereof (*Effective*  
148 *October 1, 2018*):

149 (b) The awarding authority shall determine the manner of  
150 submission and the conditions and requirements of such bids, and the  
151 time within which the bids shall be submitted, consistent with the  
152 provisions of this section, [and] sections 4b-92 to 4b-96, inclusive, and  
153 section 2 of this act. Such award shall be made not later than ninety  
154 days after the opening of such bids. If the general bidder selected as  
155 the general contractor fails to perform the general contractor's  
156 agreement to execute a contract in accordance with the terms of the  
157 general contractor's general bid and furnish a performance bond and  
158 also a labor and materials or payment bond to the amount specified in  
159 the general bid form, an award shall be made to the next lowest  
160 responsible and qualified general bidder, or, in the case of a contract  
161 awarded by the Department of Administrative Services under  
162 subdivision (5) of subsection (a) of this section, to the bidder  
163 determined in accordance with said subdivision if fewer than three  
164 bids are received. No employee of an awarding authority with  
165 decision-making authority concerning the award of a contract and no  
166 public official, as defined in section 1-79, may communicate with any  
167 bidder prior to the award of the contract if the communication results  
168 in the bidder receiving information about the contract that is not  
169 available to other bidders, except that if the lowest responsible and  
170 qualified bidder's price submitted is in excess of funds available to  
171 make an award, the awarding authority may negotiate with such  
172 bidder and award the contract on the basis of the funds available,  
173 without change in the contract specifications, plans and other  
174 requirements. If the award of a contract on such basis is refused by  
175 such bidder, the awarding authority may negotiate with other  
176 contractors who submitted bids in ascending order of bid prices  
177 without change in the contract, specifications, plans and other

178 requirements. In the event of negotiation with general bidders as  
179 provided in this section, the general bidder involved may negotiate  
180 with subcontractors on the same basis, provided such general bidder  
181 shall negotiate only with subcontractors named on such general  
182 bidder's general bid form.

183 Sec. 5. Subsection (a) of section 4b-93 of the 2018 supplement to the  
184 general statutes is repealed and the following is substituted in lieu  
185 thereof (*Effective October 1, 2018*):

186 (a) Every contract subject to this chapter shall include plans and  
187 specifications detailing all labor and materials to be furnished  
188 thereunder. Such specifications shall have a separate section for each of  
189 the following classes of work if, in the estimate of the awarding  
190 authority, the class of work will exceed one hundred thousand dollars:  
191 (1) Masonry work; (2) electrical work; (3) plumbing; and (4) heating,  
192 ventilating and air conditioning work. Such specifications shall include  
193 a table of contents, chart or other means of identifying the portion of  
194 work, if any, comprising each class of work identified in the  
195 Department of Administrative Service's prequalification classifications  
196 determined in accordance with section 4a-100, that are expected to  
197 exceed the threshold value, as defined in section 2 of this act, in the  
198 estimate of the awarding authority. Such specifications shall also have  
199 a separate section for [each] any other class of work for which the  
200 awarding authority deems it necessary or convenient.

201 Sec. 6. Section 4b-94 of the general statutes is repealed and the  
202 following is substituted in lieu thereof (*Effective October 1, 2018*):

203 In inviting bids, the awarding authority shall reserve the right to  
204 reject any or all such general bids, if (1) the awarding authority  
205 determines that the general bidder or bidders involved are not  
206 competent to perform the work as specified, based on objective criteria  
207 established for making such determinations, including past  
208 performance and financial responsibility, (2) the low bid price exceeds  
209 the amount of money available for the project, (3) the awarding  
210 authority determines that the project shall not go forward, (4) the

211 general bidder fails to comply with the requirements of section 2 of  
212 this act, or [(4)] (5) the awarding authority finds cause to reject such  
213 bids. If the awarding authority rejects any or all bids pursuant to this  
214 section, it shall notify each affected bidder, in writing, of the reasons  
215 for such rejection.

216 Sec. 7. Section 4b-95 of the general statutes is repealed and the  
217 following is substituted in lieu thereof (*Effective October 1, 2018*):

218 (a) The awarding authority shall furnish to every person applying  
219 therefor a form for general bid.

220 (b) Every general bid submitted for a contract subject to this chapter  
221 shall be submitted on a form furnished by the awarding authority. The  
222 form provided by the awarding authority shall provide a place for  
223 listing the names and prices of subcontractors (1) for the four classes of  
224 work specified in subsection (a) of section 4b-93, as amended by this  
225 act, [and] (2) for [each] any other class of work included by the  
226 awarding authority pursuant to said subsection, and (3) in accordance  
227 with section 2 of this act, and state that: [(1)] (A) The undersigned  
228 agrees that if selected as general contractor, [he] such bidder shall,  
229 within five days, Saturdays, Sundays and legal holidays excluded,  
230 after presentation thereof by the awarding authority, execute a contract  
231 in accordance with the terms of the general bid; [(2)] (B) the  
232 undersigned agrees and warrants that [he] such bidder has made good  
233 faith efforts to employ minority business enterprises as subcontractors  
234 and suppliers of materials under such contract and shall provide the  
235 Commission on Human Rights and Opportunities with such  
236 information as is requested by the commission concerning [his] such  
237 bidder's employment practices and procedures as they relate to the  
238 provisions of the general statutes governing contract requirements;  
239 and [(3)] (C) the undersigned agrees that each of the subcontractors  
240 listed on the bid form will be used for the work indicated at the  
241 amount stated, unless a substitution is permitted by the awarding  
242 authority. The awarding authority may require in the bid form that the  
243 general contractor agree to perform a stated, minimum percentage of



244 work with [his] the bidder's own forces.

245 (c) General bids shall be for the complete work as specified and shall  
246 include the names of any subcontractors required to be listed under  
247 section 2 of this act for the four classes of work specified in subsection  
248 (a) of section 4b-93, as amended by this act, and for [each] any other  
249 class of work for which the awarding authority has required a separate  
250 section pursuant to said subsection and the dollar amounts of their  
251 subcontracts, and the general contractor shall be selected on the basis  
252 of such general bids. [It shall be presumed that the general bidder  
253 intends to perform with its own employees all work in such four  
254 classes and such other classes, for which no subcontractor is named.  
255 The] Where a general bidder indicates that he or she proposes to  
256 perform any portion of work with his or her own forces, the general  
257 bidder's qualifications for performing such work shall be subject to  
258 review under section 4b-92. Every general bid which is conditional or  
259 obscure, or which contains any addition not called for, shall be invalid;  
260 and the awarding authority shall reject every such general bid. The  
261 awarding authority shall be authorized to waive minor irregularities  
262 which [he] the awarding authority considers in the best interest of the  
263 state, provided the reasons for any such waiver are stated in writing by  
264 the awarding authority and made a part of the contract file. No such  
265 general bid shall be rejected because of the failure to submit prices for,  
266 or information relating to, any item or items for which no specific  
267 space is provided in the general bid form furnished by the awarding  
268 authority, but this sentence shall not be applicable to any failure to  
269 furnish prices or information required by this section or section 2 of  
270 this act to be furnished in the form provided by the awarding  
271 authority. General bids shall be publicly opened and read by the  
272 awarding authority forthwith. The awarding authority shall not permit  
273 substitution of a subcontractor for one named in accordance with the  
274 provisions of this section or substitution of a subcontractor for any  
275 designated subtrade work bid to be performed by the general  
276 contractor's own forces, except for good cause or pursuant to  
277 subsection (e) of section 2 of this act. The term "good cause" includes,  
278 but is not limited to, a subcontractor's or, where appropriate, a general

279 contractor's: (1) Death or physical disability, if the listed subcontractor  
280 is an individual; (2) dissolution, if a corporation or partnership; (3)  
281 bankruptcy; (4) inability to furnish any performance and payment  
282 bond shown on the bid form; (5) inability to obtain, or loss of, a license  
283 necessary for the performance of the particular category of work; (6)  
284 failure or inability to comply with a requirement of law applicable to  
285 contractors, subcontractors, or construction, alteration, or repair  
286 projects; (7) failure to perform his or her agreement to execute a  
287 subcontract under section 4b-96, as amended by this act.

288 (d) The general bid price shall be the price set forth in the space  
289 provided on the general bid form. No general bid shall be rejected (1)  
290 because of error in setting forth the name of a subcontractor as long as  
291 the subcontractor or subcontractors designated are clearly identifiable,  
292 or (2) because the plans and specifications do not accompany the bid or  
293 are not submitted with the bid. Failure to correctly state a  
294 subcontractor's price shall be cause for rejection of the general bidder's  
295 bid.

296 (e) Any general contractor who violates any provision of this section  
297 shall be disqualified from bidding on other contracts that are subject to  
298 the provisions of this chapter for a period not to exceed twenty-four  
299 months, commencing from the date on which the violation is  
300 discovered, for each violation. The awarding authority shall  
301 periodically review the general contractor's subcontracts to insure  
302 compliance with such provisions, and shall after each such review  
303 prepare a written report setting forth its findings and conclusions.

304 Sec. 8. Section 4b-95a of the general statutes is repealed and the  
305 following is substituted in lieu thereof (*Effective October 1, 2018*):

306 If a general bidder customarily performs any class of work valued  
307 in excess of the threshold value, as defined in section 2 of this act, any  
308 of the four classes of work specified in subsection (a) of section 4b-93,  
309 as amended by this act, or any other class of work included by the  
310 awarding authority pursuant to said subsection, the general bidder  
311 may list himself or herself as a subcontractor together with his or her

312 price in the space provided in the bid form. A listed sub-bid so  
313 submitted by the general bidder shall be considered on a par with  
314 other listed sub-bids, and no such sub-bid by a general bidder shall be  
315 considered unless the general bidder can show to the satisfaction of the  
316 awarding authority, based on objective criteria established for such  
317 purpose, that he customarily performs such subtrade work and is  
318 qualified to do the character of work required by the applicable section  
319 of the specifications.

320 Sec. 9. Section 4b-96 of the general statutes is repealed and the  
321 following is substituted in lieu thereof (*Effective October 1, 2018*):

322 (a) Within five days after being notified of the award of a general  
323 contract by the awarding authority, or, in the case of an approval of a  
324 substitute subcontractor by the awarding authority, within five  
325 business days after being notified of such approval, the general bidder  
326 shall present to each listed or substitute subcontractor responsible for  
327 the four classes of work specified in subsection (a) of section 4b-93, as  
328 amended by this act, or any other separate section identified by the  
329 awarding authority: (1) [a] A subcontract in the form set forth in this  
330 section, and (2) a notice of the time limit under this section for  
331 executing a subcontract. If a listed subcontractor fails within five  
332 business days, [Saturdays, Sundays and legal holidays excluded,] after  
333 presentation of a subcontract by the general bidder selected as a  
334 general contractor, to perform his or her agreement to execute a  
335 subcontract in the form [hereinafter] set forth in this section with such  
336 general bidder, contingent upon the execution of the general contract,  
337 the general contractor shall select another subcontractor, with the  
338 approval of the awarding authority and in accordance with the  
339 requirements of section 2 of this act. When seeking approval for a  
340 substitute subcontractor, the general bidder shall provide the  
341 awarding authority with all documents showing (A) the general  
342 bidder's proper presentation of a subcontract to the listed  
343 subcontractor, and (B) communications to or from such subcontractor  
344 after such presentation. The awarding authority shall adjust the  
345 contract price to reflect the difference between the amount of the price

346 of the new subcontractor and the amount of the price of the listed  
 347 subcontractor if the new subcontractor's price is lower and may adjust  
 348 such contract price if the new subcontractor's price is higher, consistent  
 349 with the general contractor's obligations under section 2 of this act to  
 350 pay any savings to the state. The general bidder shall, with respect to  
 351 each listed subcontractor or approved substitute subcontractor, file  
 352 with the awarding authority a copy of each executed subcontract  
 353 within ten days, Saturdays, Sundays and legal holidays excluded, of  
 354 presentation of a subcontract to such subcontractor.

355 (b) The subcontract shall be in the following form:

356 SUBCONTRACT

357 THIS AGREEMENT made this .... of 20., by and between .... a  
 358 corporation organized and existing under the laws of .... a partnership  
 359 consisting of .... an individual doing business as .... hereinafter called  
 360 the "Contractor" and .... a corporation organized and existing under the  
 361 laws of .... a partnership consisting of .... an individual doing business  
 362 as .... hereinafter called the "Subcontractor",

363 WITNESSETH that the Contractor and the Subcontractor for the  
 364 considerations hereafter named, agree as follows:

365 1. The Subcontractor agrees to furnish all labor and materials  
 366 required for the completion of all work specified in Section No. .... of  
 367 the specifications for .... (Name of Subtrade) .... and the plans referred  
 368 to therein and addenda No. ...., and .... for the (Complete title of project  
 369 and the project number taken from the title page of the specifications)  
 370 .... all as prepared by .... (Name of Architect or Engineer) .... for the sum  
 371 of .... (\$....) and the Contractor agrees to pay the Subcontractor said  
 372 sum for said work. This price includes the following alternates:

373 Supplemental No. (s) ....., ....., ....., ....., ....., ....., ....., .....

374 (a) The Subcontractor agrees to be bound to the Contractor by the  
 375 terms of the hereinbefore described plans, specifications (including all  
 376 general conditions stated therein which apply to his trade) and

377 addenda No. ...., ...., ...., and ...., and ...., and to assume to the  
378 Contractor all the obligations and responsibilities that the Contractor  
379 by those documents assumes to the ... (Awarding Authority) ....,  
380 hereinafter called the "Awarding Authority", except to the extent that  
381 provisions contained therein are by their terms or by law applicable  
382 only to the Contractor.

383 (b) The Contractor agrees to be bound to the Subcontractor by the  
384 terms of the hereinbefore described documents and to assume to the  
385 Subcontractor all the obligations and responsibilities that the  
386 Awarding Authority by the terms of the hereinbefore described  
387 documents assumes to the Contractor, except to the extent that  
388 provisions contained therein are by their terms or by law applicable  
389 only to the Awarding Authority.

390 2. The Contractor agrees to begin, prosecute and complete the entire  
391 work specified by the Awarding Authority in an orderly manner so  
392 that the Subcontractor will be able to begin, prosecute and complete  
393 the work described in this subcontract; and, in consideration thereof,  
394 upon notice from the Contractor, either oral or in writing, the  
395 Subcontractor agrees to begin, prosecute and complete the work  
396 described in this Subcontract in an orderly manner in accordance with  
397 completion schedules prescribed by the general contractor for each  
398 subcontract work item, based on consideration to the date or time  
399 specified by the Awarding Authority for the completion of the entire  
400 work.

401 3. The Subcontractor agrees to furnish to the Contractor, within a  
402 reasonable time after the execution of this subcontract, evidence of  
403 workers' compensation insurance as required by law and evidence of  
404 public liability and property damage insurance of the type and in  
405 limits required to be furnished to the Awarding Authority by the  
406 Contractor.

407 4. The Contractor agrees that no claim for services rendered or  
408 materials furnished by the Contractor to the Subcontractor shall be  
409 valid unless written notice thereof is given by the Contractor to the

410 Subcontractor during the first forty (40) days following the calendar  
411 month in which the claim originated.

412 5. This agreement is contingent upon the execution of a general  
413 contract between the Contractor and the Awarding Authority for the  
414 complete work.

415 IN WITNESS WHEREOF, the parties hereto have executed this  
416 agreement the day and year first above-written.

T1 SEAL

T2 ATTEST

T3 .... .... (Name of Subcontractor) ....

T4 By: ....

T5 SEAL

T6 ATTEST

T7 .... .... (Name of Subcontractor) ....

T8 By: ....

417 Sec. 10. Subsection (b) of section 4b-103 of the general statutes is  
418 repealed and the following is substituted in lieu thereof (*Effective*  
419 *October 1, 2018*):

420 (b) Except as provided in subsections (c) and (d) of this section, the  
421 Commissioner of Administrative Services shall not enter into a  
422 construction manager at-risk project delivery contract that does not  
423 provide for a maximum guaranteed price for the cost of construction  
424 that shall be determined not later than the time of the receipt and  
425 approval by the commissioner of the trade contractor bids. Each  
426 construction manager at-risk shall invite bids and give notice of  
427 opportunities to bid on project elements on the State Contracting  
428 Portal. Such invitation to bid shall also include a table of contents,  
429 chart or other means of identifying the portion of work identified in  
430 the Department of Administrative Services' prequalification  
431 classifications determined in accordance with section 4a-100, that the  
432 construction manager at-risk estimates will exceed the threshold value,

433 as defined in section 2 of this act. Each bid shall be kept sealed until  
 434 opened publicly at the time and place as set forth in the notice  
 435 soliciting such bid. The construction manager at-risk shall, after  
 436 consultation with and approval by the commissioner, award any  
 437 related contracts for project elements to the responsible qualified  
 438 contractor submitting the lowest bid in compliance with the bid  
 439 requirements, provided (1) the construction manager at-risk shall not  
 440 be eligible to submit a bid for any such project element, and (2)  
 441 construction shall not begin prior to the determination of the  
 442 maximum guaranteed price, except for the project elements of site  
 443 preparation and demolition that have been previously put out to bid  
 444 and awarded.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2018	New section
Sec. 2	October 1, 2018	New section
Sec. 3	October 1, 2018	New section
Sec. 4	October 1, 2018	4b-91(b)
Sec. 5	October 1, 2018	4b-93(a)
Sec. 6	October 1, 2018	4b-94
Sec. 7	October 1, 2018	4b-95
Sec. 8	October 1, 2018	4b-95a
Sec. 9	October 1, 2018	4b-96
Sec. 10	October 1, 2018	4b-103(b)

**Statement of Legislative Commissioners:**

In Section 1(1) "submitting" was changed to "that submits" for consistency, in Section 2(a) the definition was reworded for clarity, in Section 2(e)(2)(B) "of a" was added after "one-half" for accuracy, in Section 2(e)(3) "defined" was changed to "described" for accuracy and references were changed throughout the bill for gender neutrality.

**GAE**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 19 \$</b>	<b>FY 20 \$</b>
Dept. of Administrative Services	GF - Cost	215,000	225,000
Consumer Protection, Dept.	GF - Cost	136,000	136,000
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	127,500	131,500
Consumer Protection, Dept.	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill requires the Department of Administrative Services (DAS) to develop new procedures and contract documents revolving around prohibiting bid shopping, or contractor auctioning subcontractor work, after a construction contract has been awarded. Under the bill, DAS will need to revise prequalification classifications, bid forms, and various procedure manuals.

DAS would need to hire three positions (an Architect, a Staff Attorney, and a Paralegal Specialist) at a cost of \$215,000 in FY 19 and \$225,000 in FY 20 (plus fringe benefits of \$78,000 in FY 19 and \$82,000 in FY 20) to handle the requirements.

The Architect position will review and confirm that there are

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<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.33% of payroll in FY 19 and FY 20.



separate plans and specifications for each of the listed subcontractors and identify the scope of work within each classification. The Staff Attorney and a Paralegal Specialist would be dedicated to drafting regulations, developing new procedures, revising contract documents and reviewing bids to determine if the prospective contractor meets the revised criteria.

Current computer or software systems will need to be upgraded to develop and maintain a centralized structure to gather and maintain subcontractor data. Consultant costs may be necessary to assist in upgrading systems to improve on the reporting requirements necessary due to the revisions in the contract award process.

The bill requires the Department of Consumer Protection (DCP) to investigate allegations of bid shopping and results in a cost to the state and a potential revenue gain. DCP does not currently oversee these violations and would need to hire a Lead Special Investigator (\$63,215 salary and \$22,966 fringe benefits) and a Staff Attorney I (\$72,786 salary and \$26,443 fringe benefits) to investigate violations and prosecute cases. To the extent that bid shopping occurs, this bill results in a potential revenue gain to the state from fines of between \$5,000 and \$20,000.

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

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 5270*****AN ACT PROHIBITING BID SHOPPING.*****SUMMARY**

With certain exceptions, this bill prohibits general contractors from post-award auctioning subcontract work (i.e., bid shopping) for state construction, reconstruction, alteration, remodeling, repair, or demolition contracts (i.e., public works projects). In doing so, it requires the Department of Administrative Services (DAS) to develop regulations requiring construction contractors to include in their bid responses additional information about their proposed subcontractors, regardless of whether such subcontractor will be self-performing the work or subcontracting with lower-tier subcontractors (i.e., sub-bids).

Under the bill, "bid shopping" means any effort a general contractor makes after submitting a bid, to obtain a lower price from a subcontractor from whom the general contractor previously solicited bids with respect to the project that was put out to bid by the awarding authority (this, generally refers to DAS, and in some cases, Legislative Management, a constituent unit of higher education, or the Military Department). Bid shopping includes using one subcontractor's bid to coerce lower bids from other subcontractors, but does not include the substitution of a contractor for good cause.

The bill establishes several procedural requirements governing the solicitation of sub-bids on public works projects. The bill requires (1) DAS to adopt regulations to set a threshold value for sub-bids and (2) a contractor responding to an invitation to bid on a public works contract issued by an awarding authority to submit specific additional information with regard to any sub-bids that exceed this threshold value.

The bill requires the awarding authority to reject any bid by a general contractor who fails to list a sub-bid in excess of the threshold value if the authority or construction manager at-risk (CMR – see BACKGROUND) determines that it is unreasonable for such contractor to subcontract for less than the threshold value given the project’s scope and the submitted bid specifications. With certain exceptions, the bill prohibits a general contractor or higher-tier subcontractor from substituting any listed subcontractors after the submission of a bid. The general contractor must pay any savings resulting from a permitted substitution of subcontractor to the state. A general contractor who attempts to circumvent the sub-bid listing requirements may be disqualified from bidding on future DAS projects, subject to civil action, and fined up to \$20,000.

For design-bid-build contracts, the bill requires additional information regarding the portion of work, if any, which the awarding authority expects will exceed the threshold value. Finally, the bill expands the conditions under which the awarding authority can reject bids under competitive bidding.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2018

## **§ 2 — SUB-BID LISTING REQUIREMENTS**

### ***Threshold Value***

The bill requires (1) DAS to adopt regulations to set a threshold value for sub-bids and (2) a general contractor to delineate any sub-bid exceeding such threshold when submitting a bid.

Under the bill, once the required regulations are effective, each invitation to bid on a public works contract, including invitations issued by a CMR, must require bidders to:

1. list the name, location of the place of business, and Connecticut business identification number of all subcontractors that are to perform any work on the project in an amount over the

threshold value;

2. list the dollar amount of each sub-bid;
3. submit the written sub-bids, signed by each subcontractor that is proposing to perform the work in an amount exceeding the threshold value, and if applicable, the subcontractor's prequalification certificate; and
4. list any portion of work in excess of the threshold value that the general contractor will self-perform.

The bill requires each subcontractor to submit all sub-bids to the prospective general contractor before bid submission. This includes any lower-tier subcontractor bids to higher-tier subcontractors (e.g., subcontractors contracting with a general contractor) that exceed the threshold value. All subcontractors submitting sub-bids in excess of the threshold value, including lower-tier subcontractors, must write and sign their bids on a form prescribed by DAS. The bill allows a general contractor who obtains bids from multiple subcontractors for a single project to select from among the various bids, but prohibits the general contractor from unilaterally pairing any higher-tier and lower-tier sub-bids together unless they were originally submitted as a pair.

### ***Subcontract Execution***

The bill requires a general contractor awarded a public works contract to offer the listed higher-tier subcontractors a written subcontract within five business days after the contract's execution, consistent with any other applicable statutory requirements. It requires such subcontractors to, in turn, offer the listed lower-tier subcontractors a subcontract within five business days after executing the subcontract. The bill prohibits any listed subcontractor from performing any project work before executing a subcontract and filing it with either the awarding authority or CMR.

### ***Post-Bid Subcontractor Substitutions***

Under the bill, a general contractor or higher-tier subcontractor is

prohibited from substituting any listed subcontractors after bid submission, unless:

1. the subcontractor refused to execute a written subcontract within five business days after being offered one;
2. the value of the contract with the proposed substitute subcontractor:
  - a. does not differ by more than one-half of a percent than the listed sub-bid, or
  - b. differs by more than one-half of a percent, but is less than the listed sub-bid, in which case the general contractor or higher-tier subcontractor, must agree in writing to pay the savings from the substitute subcontractor to the state treasurer by check within thirty days after the project's completion;
3. the general contractor or higher-tier subcontractor has good cause for requesting a substitute as the law specifies (CGS § 4b-95(c));
4. the general contractor or higher-tier subcontractor receives written permission from the awarding authority or CMR to substitute a listed subcontractor; and
5. the general contractor or higher-tier subcontractor has otherwise met any applicable statutory requirements (CGS § 4b-96).

***Risk of Contractor Disqualification***

Any attempt by a general contractor to circumvent the bill's requirements by (1) listing another contractor who will subcontract portions of the contract in excess of the threshold value covered by the contract to an unlisted subcontractor or (2) failing to comply with the bill's requirements, constitutes a violation and may result in the disqualification of the contractor from bidding on public works projects for up to five years after the discovery of the violation.

The bill requires DAS to provide 30 days' written notice of such potential disqualification to each contractor alleged to have violated the requirements. The contractor may request a hearing by the department to contest such disqualification, provided the request is made in writing within 20 days after notice receipt.

### **§ 3 — CIVIL REMEDIES & PENALTIES FOR BID SHOPPING**

The bill prohibits contractors from engaging in bid shopping on any state or municipal public works contract. It permits the attorney general or the municipality to initiate a civil action within two years after the alleged bid shopping to recover the difference in value between a higher-price sub-bid in a contractor's submitted bid and the lower-price subcontract that the contractor subsequently obtained through bid shopping, as well as reasonable attorneys' fees and costs. It also allows any aggrieved subcontractor, who carries the burden of proof, to recover damages equivalent to 10% of the submitted bid value, as well as reasonable attorney's fees and costs.

In addition, the bill requires the commissioner of consumer protection to fine a contractor found guilty of bid shopping \$5,000 to \$20,000 for each violation.

### **§ 5 — DESIGN-BID-BUILD CONTRACTS**

Generally, the awarding authority must award public works contracts estimated to cost over \$500,000 to the lowest responsible, qualified, and prequalified general bidder on the basis of competitive bids. However, the commissioner may require that design-bid-build projects be accomplished on a total cost basis. These contracts are awarded through a single contract with a private developer for acquisition, architectural design, and construction.

Existing law requires that state public works contracts using this design-bid-build delivery method include plans and specifications detailing all labor and materials to be furnished under the contract which must separately list (1) masonry; (2) electrical; (3) plumbing; and (4) heating, ventilating, and air conditioning classes of work if the

awarding authority estimates that such work will exceed \$100,000.

The bill requires such specifications to include a table of contents, chart, or other means of identifying the portion of work, if any, comprising each class of work identified in the DAS prequalification classifications that the awarding authority expects to exceed the threshold value defined by the bill.

## **§ 6 — REJECTION OF BIDS**

The bill expands the conditions under which the awarding authority can reject any or all general bids under competitive bidding. Under current law, it may do so if it determines that:

1. the general bidder or bidders are not competent to perform the specified work, based on established objective criteria;
2. the low bid price exceeds the project's budget;
3. the project is cancelled; or
4. cause exists to reject such bids.

Under the bill, an awarding authority may also reject a bid if it determines that a general bidder has failed to comply with the bill's requirements.

## **BACKGROUND**

### ***Construction Manager At Risk (CMR) Projects***

In a CMR project, the owner (e.g., DAS) hires a firm with construction experience (the construction manager or "CM"), usually during a project's design phase, to manage the entire construction process. The CM provides pre-construction services such as estimating costs, budgeting, reviewing constructability and suggesting construction alternatives, and scheduling. Once the design is finalized, the CM seeks competitive bids from subcontractors for each project element (e.g., electrical, mechanical, carpentry, and roofing).

Once the subcontractors' bids are received and verified for

compliance with project requirements, scope, and specifications, the CM and the project owner negotiate and set a guaranteed maximum price (GMP) for construction including the CM's fee, the cost of the work, and contingency funds for the project. The CM assumes the risk to complete the project within the GMP, excluding any work not included in the final GMP that the owner authorizes through a change order process.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 9      Nay 8      (03/23/2018)