

Government Administration and Elections Committee

JOINT FAVORABLE REPORT

Bill No.: HB-5270

Title: AN ACT PROHIBITING BID SHOPPING.

Vote Date: 3/23/2018

Vote Action: Joint Favorable

PH Date: 3/5/2018

File No.: 432

***Disclaimer:** The following JOINT FAVORABLE Report is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.*

SPONSORS OF BILL:

Government Administration and Elections Committee

Rep. Craig C. Fishbein, 90th Dist.

REASONS FOR BILL:

Bid shopping is often referred to the practice of revealing a contractor or subcontractor's bid to other contractors or subcontractors to secure a lower bid and is done before a contract is awarded. Proponents of the bill advocate for a ban on bid shopping and argue that bid shopping undermines the integrity of the competitive bidding process by creating a financial incentive to "cut corners"; thereby, leading to inferior work, project shortcuts, and compromised safety. Furthermore, proponents have shared concern for a lack of transparency in the bidding process. The bill defines and prohibits bid shopping for public works projects, and requires the Department of Administrative Services to develop regulations requiring contractors to include information about their proposed subcontractors.

RESPONSE FROM ADMINISTRATION/AGENCY:

Melody Currey, Commissioner, Connecticut Department of Administrative Services

(DAS):

Opposes the bill. This bill will have a substantial staffing and resources impact on the DAS Division of Construction Services as it seeks to require the agency to develop regulations in regards to a contractor's proposed subcontractors. Moreover, the bill creates additional grounds for disqualifying bids, increases the likelihood of bid disputes and construction delays, and may pose legal challenges as it only applies to DAS-administered projects. If the legislature wishes to pursue the matter, a remedy for bid shopping should apply to all state

contracting agencies, and be developed in consultation with such state contracting agencies and the Office of the Attorney General. DAS also included in written testimony, excerpts from the 2014 Construction Contracting and Bidding Transparency Working Group's report, and findings from a 2015 study by the United States Government Accountability Office. Finally, DAS identified that there is currently no centralized system to gather and maintain subcontractor data. However, DAS is currently in the testing phase of an Expenditure Data Collection and Reporting module in BizNet that will require general contractors to enter subcontracts and amounts paid to subcontractors.

NATURE AND SOURCES OF SUPPORT:

Associated Sheet Metal & Roofing Contractors of Connecticut (ASMRCC):

Bid shopping should be banned by the state because it is inconsistent with public policy. This practice amounts to a financial incentive for prime contractors to cut corners on publicly funded construction. In turn, this often forces subcontractors to take shortcuts, resulting in inferior work and compromised safety, or inflate their original bid prices to make up for post award negotiations.

Foundation for Fair Contracting of Connecticut:

Foundation for Fair Contracting of Connecticut does not condemn contracting companies for taking advantage of bid shopping. It's a common practice. But it's time to reign it in. The bid process needs more transparency as the current bid shopping system is harmful.

Connecticut Ironworker Employers Association (CIEA):

Bid shopping is an abhorrent practice and disgraceful because it damages those who play fairly. Bid shopping can undermine the process and the quality of the work in order to achieve the lower cost. The substandard work may lessen the value of the project or could pose a risk to the public.

Minority Construction Council (MCC):

Prohibiting Bid Shopping would be beneficial to for the following reasons:

(1) Give transparency to the subcontractor's bidding process. (2) Protects the integrity of the bidding process (3) Make subcontractor's more competitive (4) Encourages more MBE subcontractors to participate in the bid process because the MBE subcontractor knows their bid will all be disclosure publicly.

International Brotherhood of Electrical Workers (IBEW):

IBEW supports HB 5270 and it should be a standard practice as it protects our contractors from being shopped around for a better price after the project has been awarded; it also protects Connecticut and its taxpayers from being over charged for work done.

National Electrical Contractors Association:

Support of HB 5270 provides support for government and industry by reducing the possibility of bid shopping which result in (1) Government agencies get the actual low bid (2) Subcontractors assured protection from being shopped by general contractors (3) Subcontractors competition would be incentivized to bid, leading to more competition (4) Errors in the bidding process and disputes over cost and scope of work reduced resulting in more projects being completed on time and under budget.

Berlin Steel:

Subcontractors currently have a reasonable expectation of confidentiality and fairness in bidding practice; however, this is not often the case through the process of bid shopping. The predatory practice of bid shopping should be removed to allow for transparency to deliver value and benefit to the taxpayers of Connecticut.

Sheet Metal, Air, Rail and Transportation Workers (“SMART”) Local 40:

The public construction market, too often public owners (e.g., the state) have failed to create the transparency and accountability necessary to protect taxpayer dollars and promote competition within a vital industry. HB 5270 promotes transparency and competition by “protecting the integrity of the Department of Administrative Services’ (DAS) procurement process”.

NATURE AND SOURCES OF OPPOSITION:

Associated General Contractors of Connecticut, Inc. (AGCCT):

AGCCT opposed a similar bill in 2014 which would have increased the number of classes of work that a general contractor would be required to list on his/her bid. This would have expanded the classes of work from 4 to potentially 45 classes of work. While this bill contains a different way of expanding classes of work, it is a reflection of the bill opposed four years ago.

Connecticut Construction Industries Association, Inc. (CCIA):

The bill will interfere with the flexibility that is needed to efficiently and effectively meet the unique needs of every project. The bill is overbroad and unduly burdensome; affecting a contractor’s ability to maximize workforce, drive up cost of public contracting, and will place a variety of additional administrative burdens on the Department of Administrative Services (DAS). Furthermore, in 2014 the legislature created a working group to study this matter. The workgroup’s conclusion was to conduct pilot projects through DAS. The bill should not proceed further until such pilot projects have been completed and evaluated.

Ronald W. Denny Jr., Vice President, Turner Construction Company:

The bill will interfere with the flexibility that is needed to efficiently and effectively meet the unique needs of every project. The bill is overbroad and unduly burdensome; affecting a contractor’s ability to maximize workforce, drive up cost of public contracting, and will place a variety of additional administrative burdens on the Department of Administrative Services (DAS). Furthermore, in 2014 the legislature created a working group to study this matter. The workgroup’s conclusion was to conduct pilot projects through DAS. The bill should not proceed further until such pilot projects have been completed and evaluated.

Joseph W. Epifano, President and Owner, Epifano Builders, Inc.:

The bill will interfere with the flexibility that is needed to efficiently and effectively meet the unique needs of every project. The bill is overbroad and unduly burdensome; affecting a contractor’s ability to maximize workforce, drive up cost of public contracting, and will place a variety of additional administrative burdens on the Department of Administrative Services (DAS). Furthermore, in 2014 the legislature created a working group to study this matter. The workgroup’s conclusion was to conduct pilot projects through DAS. The bill should not proceed further until such pilot projects have been completed and evaluated.

The Associated Construction Company:

When considering new requirements in state contracting, those requirements must be practical and realistic, not add to the burden; encourage participation, competition and opportunities make economic sense. Public project development and project delivery are already strained in Connecticut. HB 5270 is going to make it worse.

Connecticut Subcontractors Association (CSA):

HB 5270 as drafted is overbroad and burdensome on the entire public bidding process. On the other hand, it does recommend some very important and worthwhile changes that should be made to existing law. HB 5270 Section 2 requires subcontractors to list their sub-bids is a radically new, and extremely troubling provision.

While CSA opposes Section 2, CSA supports Section 1 that expands the existing subcontractor bid listing requirements to construction manager at risk projects. This is the most significant and constructive portion of the bill.

Utility Contractors Association of Connecticut (UCAC):

In practice, it is very challenging for contractors to thoroughly review all of the bids to ensure they are all-inclusive while comparing similar services at the time of bid. Requiring quotes to be reviewed at the time of bidding should be clarified and strengthened. If HB 5270 becomes law, it would complicate the process and bidding environment for contractors to bid on public projects in a very competitive market.

Reported by: Robin Bumpen / Susan Tufts

Date: 4/16/18