

Government Administration and Elections Committee
JOINT FAVORABLE REPORT

Bill No.: SB-251

AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM, ADVERTISING FOR STATE SPACE NEEDS, STATE CONSTRUCTION PROJECTS AND

Title: STATE INFORMATION AND TELECOMMUNICATION SYSTEMS.

Vote Date: 3/28/2018

Vote Action: Joint Favorable Substitute

PH Date: 3/5/2018

File No.: 515

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SPONSORS OF BILL:

Government Administration and Elections Committee

REASONS FOR BILL:

This bill addresses several items related to procurement in state contracts: (1) redefines “small contractor” for purposes of the state set-aside program under the federal Small Business Administration , (2) to permit notice of state office space needs to be posted on the State Contracting Portal, (3) to permit certain bid documents to be submitted after the bid, (4) to permit construction managers at-risk to self-perform portions of a contract and (5) to remove the requirement that the executive steering committee approve or disapprove of agencies' requests for variances from state-wide information technology standards.

Substitute Language: Strike Sections 1,2,3, 4, 5 and 9 from the raised bill.

RESPONSE FROM ADMINISTRATION/AGENCY:

Melody A. Currey, Commissioner, Department of Administrative Services (DAS):

SB251 Sections 1 to 3 amends the statutory definition of “small business” to a Connecticut-based business that is certified as a small business by the federal Small Business Administration. DAS does not have the resources of expertise to develop such standards. The federal Small Business Administration (SBA), on the other, is an entire agency devoted to assisting small businesses, and has a robust program to establish valid size standards. Following the definitions of the SBA for a small business reduces the fiscal and process overhead for certifying small businesses.

SB251 Sections 4 and 5 amend C.G.S. § 4b-34 to eliminate unnecessary and obsolete requirements and repeal subsection (b) of C.G.S. § 4b-34. SB251 repeals the obligation (1) to post leasing-related notices in local newspapers and requires posting of these contract opportunities on the State Contracting Portal. This modification will (1) save agency time and state money, (2) ensure 24/7/365 statewide access to information about the State's leasing needs, and (3) streamline agency processing of these notifications.

SB251 Sections 6 to 9 amends the statutory definition from the term "update bid statement" to "update statement.". The "update bid statement" does not include information specific to the actual bid, but instead allows the bidder to update the information it submitted when it applied for a prequalification certificate Existing law requires the disqualification of a bid if the "update bid statement" is missing. This draconian reaction to what may be simply a clerical oversight has, on multiple occasions, forced the State to award contracts to companies that were not the lowest, most qualified bidders, thus imposing higher costs on the State.

SB251 Sections 7 and 8 re simply conforming changes to reflect the changes contemplated in section 6.

SB251 Section 9 amends C.G.S. § 4b-103(b) to allow the State to receive the full benefits of the Construction Manager-At-Risk (CMR) project delivery method. The Construction Manager at Risk (CMR) is a delivery method that entails a commitment by the Construction Manager to deliver the project within a Guaranteed Maximum Price, thereby transferring the risk of bid overages from the project owner (the State) to the CMR. The CMR method benefits the Project Owner by creating a higher level of cost control and by reducing the burden on the Owner in managing the project. DAS's proposal seeks to give the State the ability to capture the true benefits of the CMR method by allowing DAS and the CMR greater control over the selection of subcontractors and by allowing CMRs, with DAS approval, to self-perform some of the work.

SB251 Section 10 amends C.G.S § 4d-12(b) to remove the requirement that the Information and Telecommunication Systems executive steering committee approve or disapprove requests for variances from statewide IT standards and report on those requests. Rapid advancements in technology combined with additional agency controls have made " same size fits all" standards unworkable and inefficient.

NATURE AND SOURCES OF SUPPORT:

Joyce A. Woyitas, Lobbyist, Mechanical Contractors Association of Connecticut (MCACT):

Section 1(a)(1) the small contractor definition is changed to include only those certified by the U.S. Small Business Administration - This is a good change, however, since SBA references the North American Industrial Classification System as a source to establish gross revenues for each classification of contractor to certified as a "small business", it appears that the gross revenue threshold will be difference for each different class code. In addition, requiring that the principal place of business "must be located in the state" (in Sec. 1 and Sec. 2) may be in conflict with the Commerce Code of the U.S. Constitution.

Section 9.Changes to Construction Manager at Risk provisions to allow self-performance of a portion of work with reasonable and in line with industry practice

John Butts, AGC/CT Executive Director, The Associated General Contractors of Connecticut, Inc; Mr. Butts supports this bill, with reservations. On page9, lines 256-259 the bill gives discretion to the Department of Administrative Services (DAS) to allow bidders two days after bid opening to submit a copy of the prequalification certificate and update statement. This provision is a reasonable solution to situations in which construction firms which are otherwise duly registered as a prequalified contractor neglect to include in their prequalification certificate or any updates to that certificate with their bid.

Mr. Butts has concerns that the bill as written would create an unbalanced situation when the department considers proposals between construction managers that don't typically self-perform portions of the work versus those that do. The bill should also contain certain protections for the state from those firms that might sell their self-performance capabilities to the state but have no intention of self-performing the element of work in question. Further, Mr. Butts is concerned about the bill's deletion of the entire current CM-at risk statute which contains a reasonable process for selecting subcontractors. The following proposed amendment would allow a CM at-risk firm to self-perform under the following conditions:

That the project element is one that the CM at risk typically performs;
That the CM at risk identifies the project element early to the owner;;
That the self-performing CM at risk submit his bid in a sealed bid; just like all other contractors are required to do;
That the CM at risk be prohibited from using any of the project contingency to assist in the performance of that project element;
That the CM at risk performs the work with employees on its payroll

NATURE AND SOURCES OF OPPOSITION:

Kimberly Glassman, Director, Foundation for Fair Contracting of Connecticut, Inc.; Ms. Glassman expressed concerns with Section 9, Section 4b-103(b) which eliminates the open competitive bidding process for Construction Managers (CMRs) and instead offered a substitute : reference substitute language in testimony. Further, Ms. Glassman expressed concern with Sec. 9 Section 4b-103(c) and argues that the language proposed indicates that subcontractors will be awarded through a process "approved by the commissioner", but the language fails to describe in any way what that process would be. In light of the above, the committee is urged to strike the new language in Sec. 9(b) and (c).

Zachary L. Rubin, Staff Counsel/Organizer, International Association of Sheet Metal, Air, Rail and Transportation Workers(SMART): SMART Local 40 opposes this bill in its current form and has serious concerns about the proposed change to the DAS construction manager at risk statute. Mr. Rubin argues that the primary change to the statute concerns subsection (b) which provides the process by which a Construction Manager at Risk (CMR) must publicly and competitively bid the projected elements. The proposed change is both dramatic and somewhat perplexing

Mr. Rubin sites an excerpt from Section 9: reference his testimony. Mr. Rubin states “.The public procurement process may very well be eroded or turned upside down if this language becomes law.” The proposed statutory language raises unanswered questions and concerns:

If proponents wish to reconsider the current requirement that CMRs must always choose the lowest responsible bidder, why not have that discussion in an open and transparent manner?

How will the public and state officials know whether the awarding authority is getting the best or even a fair deal? Under the proposed language, it is not clear whether the CMR could solicit bids privately and then selectively disclose subcontractor bids to DAS. The components of the project should be publicly and competitively bid.

Public contracting statutes, particularly concerning the type of large contracts that may be subject to the CMR method, should clearly spell out the procurement method to ensure fairness and ideally, a substantial degree of transparency.

Reported by: Maureen O'Reilly

Date: 4/16/18