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Testimony by Catherine Flaherty, Executive Director
Connecticut Subcontractors Association
March 6, 2023
For Government Administration and Elections Committee

Regarding: Raised Bill No. 6826, An Act Concerning Liability for False And Fraudulent Claims

Position: Opposed

The Connecticut Subcontractors Association (CSA) is a Connecticut trade association that represents over 40 local businesses that employ thousands of workers in Connecticut. Our member companies provide a complete range of building services for the construction industry in our state. Our members are both union and open shop companies, and regularly perform work on public, industrial and commercial construction projects throughout Connecticut. CSA represents the trade contractors who actually build the construction projects in our state.

CSA has been engaged in public contracting reform and ensuring fairness in the construction industry for decades. CSA always has supported reasonable and realistic efforts to eliminate fraud and abuse in public contracting.

CSA strongly opposes this bill because applying the Connecticut State False Claims Act to public construction contracts will do nothing to promote fair or efficient contracting. Instead, it would expose all contractors—hardworking firms that are dedicated to enhancing our state—to unnecessary, and unjustified, penalties and harassment by state officials. In recent years, the General Assembly has reviewed different versions of the State False Claims Act pertaining to the construction industry. Thankfully, all provisions relating to construction have been rejected.

There are many problems that have occurred in other states that have extended false claims acts to construction related matters. These include: encouraging public officials to unfairly leverage “good contractors” to abandon legitimate claims; unfounded accusations against reputable firms that damage their business reputations; increasing the cost of public procurement by discouraging qualified firms from engaging in public work, and encouraging firms to include unnecessary contingency funds in their bids.

Also, and importantly, expansion of a false claims act to construction would not achieve the stated goal of “cleaning up corruption” in public construction. First, there is no widespread corruption emanating from “false claims” by contractors in public construction, and second, a false claims act does nothing to address improper influence or procurement practices that do occasionally arise involving improper acts by public officials.

False Claims Acts are overbroad. They do not provide adequate safeguards for targeted firms, and are extremely punitive by design. They provide unbridled power to public officials to wield against contractors they simply “may not like,” and targets contractors who assert good faith, valid claims against public agencies. Simply by asserting a valid claim and procuring a result that is anything less than 100% recovery will subject a contractor to a charge of asserting “false claims.”

In reality, no contractor asserts claims on a public project that an agency rejects, and then pursues these rejected claims through the legal process simply to “shake down” the public agency. The legal process is too expensive, and too unpredictable, for contractors to fully pursue rejected claims unless they are committed to the validity of such claims. Under the present system of public contracting, the odds are stacked against the contractors who must resort to the legal process (i.e., litigation or arbitration) to pursue rejected claims. There is a tremendous incentive for contractors to settle even the strongest, most valid claims. Injecting a false claims act into the mix would only stack this deck even further.

There is nothing in the raised bill to protect the vast majority of good-faith contractors, as well as government officials, from the act’s incentive for abuse of its provisions. If the State FCA were extended to construction, upon filing of a complaint, even where no false claim was committed, a contractor faces an array of punitive measures—which could include losing its prequalification status or being suspended, debarred, or deemed a non-responsible bidder by a state contracting agency or the Contracting Standards Board. It could also lead to existing contracts being terminated. This equates to a death sentence for the contractor that engages in public construction.

Connecticut’s current public contracting laws and contract provisions already protect against fraudulent claims. State law provides sufficient remedies, including actions for fraud or misrepresentation, rigorous, ongoing, contractual measures, and most important, mandatory prequalification laws and regulations, all of which can be used effectively by state agencies, the Attorney General, the Department of Administrative Services, and the Office of State Ethics to address issues related to the administration and performance of contracts.

The incentives for abuse in this False Claims Act must be addressed before the Legislature considers if it would be an effective and worthwhile deterrent for a very small subset of problems in state contracting. Moreover, in these challenging economic times, lawmakers must remain mindful that this law places a large number of innocent organizations and hard-working people in jeopardy.

Please contact Catherine Flaherty, at 860-995-3919, or cflaherty@connecticutsubcontractors.org for more information.

Respectfully submitted

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