

***Construction Contracting & Bidding Transparency (CCBT)
Working Group***

Meeting Minutes

July 29, 2014

1:00 in Room 1D

The meeting was called to order at 1:11 p.m. by Chairman DeFronzo.

The following Working Group members were present:

July, 29th 2014 CCBT Working Group Attendance

| Agency/Association | Appointment(s) Name | Appointing Authority |
|---|---------------------|----------------------------------|
| Office of Policy & Management (OPM) | Patrick O'Brien | Secretary Barnes |
| Department of Labor | Gary Pechie | Commissioner Palmer |
| Department of Labor (DOL) | Sandra Barrachina | Commissioner Palmer |
| Commission On Human Rights & Opportunities (CHRO) | James O'Neill | Executive Director Teresa Hughes |
| Department of Administrative Services (DAS) | Donald DeFronzo | Assigned Chairman |
| Department of Administrative Services (DAS) | Peter Babey | Commissioner DeFronzo |
| Department of Administrative Services (DAS) | Kevin Kopetz | |
| Connecticut Construction Industries Associations (CCIA) | Donald Shubert | Speaker of the House |
| American Institute of Architects (AIA) | Philip Cerrone | Senate Minority Leader |

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| University of Connecticut | Matthew Larson | President Herbst |
| University of Connecticut | Berri Gerjouy | President Herbst |
| Ct Building Trades Association | Dave Roche Cindy Dubuque, FFCCT | Governor Malloy |
| L.K. Sheet Metal | Lynn Kleeberg | Governor Malloy |
| CT Ironworkers | Ed Reilly | House Majority Leader |
| Turnbridge Construction | John Mastriano | House Minority Leader |
| Association of General Contractors (AGC) | John Butts | Governor Malloy |

Alix Simonetti, CHRO Absent

Appointments Not Confirmed

Governor’s Office Minority Business Enterprise appointment

Senate President Pro Tempore Subcontractors Representative

Senate Majority Leader General Contractor

Chairman DeFronzo outlined the safety protocols and made opening remarks.

Working Group member introductions were made since we have some additions since the June meeting.

Chairman DeFronzo summarized for members the information included in their July packets. Provided a brief overview of today’s presentations and agenda. Requested that CCBT members begin to think about questions for presenters. Please think about common threads, common issues, areas of agreement, and areas that need to be reviewed further.

Please think about the “end product” because a reporting deadline is approaching very soon.

Commissioner DeFronzo mentioned the June Meeting Minutes that needed to be approved. Jim O’Neill made a motion to accept the June minutes, seconded by Don Shubert.

Motion approved and minutes adopted.

Gary Pechie and Sandra Barrachina provided DOL presentation on Compliance, Enforcement, and Monitoring.

Complete July agency and industry presentations can be reviewed on the DAS website at <http://das.ct.gov/fp1.aspx?page=452> under Additional Documentation.

Matt Larson asked Mr. Pechie, “when DOL identifies an issue that requires their attention, does DOL have a time-frame on how long the debarment process takes?”

Mr. Pechie responded that “the formal debarment process is tremendously lengthy, they prefer to pursue “voluntary debarment” processes by which violations are identified and restitutions arrangement are worked out with firms where violations remain in place until all restitution (wage violations, etc) are made.

Don Shubert thanked Mr. Pechie and Ms. Barrachina for the excellent work that their Division does. Asked “does DOL keep statistics on the percentage of industry violations i.e. state administered versus municipal projects to identify where the problems are most prevalent?”

Mr. Pechie replied” that they do not have the IT capability for that, but did offer that state project violations are not as prevalent as municipal and private sector projects. However, violations are commonplace on all projects.

Ms. Barrachina added that on average she will find three to four major violations, ten minor violations- on average but again, no projects are ever 100% in compliance on every state and labor laws and requirements.

Mr. Roche thanked DOL for the presentation and stated that this presentation and the lack of information DOL is able to capture on second tier subcontractors confirms that the State needs to improve its reporting on these subcontractors. It would help your staff tremendously on man hours chasing these unknown firms.

Mr. Pechie agreed.

John Butts asked “it was stated that CM/CMR(s) deny responsibility for prevailing wage, etc. I believe that those requirements are outlined in the contract?”

Ms. Barrachina states that she has had CMR’s say directly to her that “they are not responsible for prevailing wage, hourly payroll monitoring, etc”.

Commissioner DeFronzo asked “does the DOL database maintain lower tier subcontractors?”

Mr. Pechie replied only when we have an active violation file with them listed.

Commissioner followed up that “last month it was widely discussed and agreed to that the state does not maintain great records on subcontractor and 2nd tier and lower subcontractors. The challenge moving forward is identifying what is the reasonable level to expect of agencies.”

Mr. Pechie closed that he understands that owners just want a project delivered on time, on budget, but that everyone around the table needs to be a part of the solution, and that all parties should be able to work

together to achieve the needed transparency in contracting. “Please give DOL’s mission some consideration is all that we ask.”

Cindy Dubuque, Jeremy Zeedyk, and David Hunt, Berlin Steel provided a joint presentation on behalf of Foundation For Fair Contracting for CT.

Before questions for the FFCCT presenters, Commissioner welcomes Executive Director Hughes from CHRO who has joined the meeting.

Ms. Barrchina asks Mr. Zeedyk “does he have the list of classifications, as well as the list of their legislative recommendation for the twenty cited classifications.”

Mr. Zeedyk did not have them on hand but would get them to her.

***Mr. Zeedyk has provided their proposal, and also included is the DAS full list of prequalification classifications in CCBT members August materials.**

Matt Larson asked for a summary of the difference between the MA sub-bid filed system and the stated sub-bid listing system.

Mr. Zeedyk explains that “under the MA system, Division of Capital Asset Management (DCAM) maintains all of the sub-bid trades for all classes. GC(s) interested in bidding a specific project must go the DCAM list for the price and sub trade designations. CT simply has the four required listed sub with prices and nothing more beyond that is required”.

Don Shubert thanked Mr. Zeedyk for using AGC’s national statement denouncing bid shopping. Wanted to ask, under their proposal, who do they imagine managing this bid listing expansion, receiving and reviewing bids, checking project scopes o work for accuracy, etc?”

Mr. Zeedyk stated “he did not envision it being any different from the current process a CM undertakes for gathering sub trade bids”. Did

state he did not imagine the owner i.e. the agency doing this additional work.”

Commissioner DeFronzo emphasized that “absent any differing opinion heard today, we as working group will go with the bid shopping definition being outlined today.”

Don Shubert agreed and followed up that there is a distinction that should also be made. There is a difference between “bid shopping” and “normal negotiations”. “We can all agree that bid shopping is bad, but an owner, contractor, subcontractors, and suppliers often have normal negotiations on prices of packages. Reminder, a bid is nothing more than an offer. In order to be binding there must be acceptance, and the bargain/agreement for exchange. Some necessary give and take is required.”

Commissioner DeFronzo mentioned the 2014 legislative discussions with the proponents, and have they been able to document the extent of this problem here in Connecticut. We all have reviewed research materials which provide general information but does the FFCCT have specific evidence of how prevalent or not the problem is?”

Mr. Zeedyk stated that “it is difficult to quantify beyond the information you have seen. Subcontractors are reluctant to tell on general contractors. Short answer is we have nothing definitive.”

Patrick Delaney asked “his understanding is that all trade packages on state CMR projects must be publicly bid, so are the problems they see on municipal or private sector projects”?

Mr. Hunt disagreed.

Counsel Kopetz did state “all elements of a CMR project must be publicly bid, and all packages necessary to the delivery of the project would be publicly bid.

Mr. Roche counters that “the problem isn’t that you bid out the mechanical, it is that you don’t have who they sub out the sheet metal to.

Mr. Kopetz again stated, “we publicly bid the contracts the State is in contractual obligation to hold with the CMR.”

Mr. Glenn Marshall was next to present.

Emphasized the need for a “responsible contractor ordinance”. Stated that misclassifications are big problem on construction projects. Any thing that lessens competition becomes a cost driver for the end user the agency.

Commissioner DeFronzo thanked Mr. Marshall for the presentation and asked, “does he believe that most of these enforcement measures are already covered in contract, or need to be addresses legislatively?”

Mr. Marshall stated that “clearly AG’s office would have to review, but believes the requirements in his presentation are a good starting point”

Don Shubert, John Butts, and Pat Delaney were the final presentation.

Mr. Shubert “cited that every project is different and asked the circle to remember what a successful project delivery means”.

“Emphasized the administrative pressures of overworked, understaffed agencies, increased bond authorizations—more work, more compliance, this process is tough enough without additional compliance requirements”.

“Encourages the group to consider that with contractors’ right sizing projects they bid on, please be cautious in whatever changes are proposed”.

Mr. Roche thanked Mr. Shubert for the presentation and stated that the state is not losing competent bidders because of additional compliance,

or additional paperwork, it is because of the bid shopping and subcontractors becoming tired of their best price offers being rejected”.

Mr. Roche continued that he “also did not agree that primes are under last minute pressure and decisions on state bid submissions for the listed packages”.

John Butts offered that “he agrees with Mr. Roche on the bid shopping. We are all aboard on the fact that the practice is deplorable. The reason he asked the trades what do you do when you are bid shopped. In polling my members they are saying they won’t bid to that firm again”.

Mr. Butts continued that “the major issues confronting his members is the staffing and resources at the agencies, more stringent compliance, cash flow and retainage matter. Bid shopping was far down the list of issues of concern.”

Commissioner DeFronzo asked Mr. Shubert,” to review the Other States information, many states appear to have limited low impact solutions, i.e. timing of the closing of bids, limits on substitutions, etc. Can you think about some low impact solutions that you would be amendable to?”

Mr. Shubert stated “of course, and hopes whatever is considered is practical and effective”. He did share what the State should not do. “We can’t put pre-filed bidding back in place. Is the agency prepared for being the middle man when the in-fighting starts between subs and contractors? To Dave’s (Roche) point, suppliers do hold their price until the last minute; subs hold their prices as well, so my clients do have to measure these scope reviews of the various bid packages in a matter of minutes. These proposed changes set up a shotgun arrangement for the prime contractor when it comes to his subcontractor selections”.

Commissioner emphasized to Mr. Shubert that we agree that sub-bidder info is lacking. Data management systems discussions would clearly be helpful, but we must respond to the transparency aspects of this study. As an owner, I have the right to know what sub contractors are on our projects. I'm sure CHRO feels the same way."

Don Shubert agreed and stated we just need to continue to discuss the timing of things. "Does DAS need that information at the time of bid"—happy to discuss further. Also mentioned "DAS exiting authority to bid our more than the four major classes of work".

Mr. Roche added "that their intent is not to make the process more difficult than it needs to be---Keep It Simple Stupid; however there have to be existing guidelines and requirements to improve the situation. Everyone is mindful of not making the system too difficult to manage".

Commissioner concluded presentations. Mentioned to members that he would begin sub-group meetings with members of the circle in smaller groups to develop elements of the report.

Reminded members to review the Other States information, and that our next meeting scheduled for August 20th. this will be the public hearing meeting of the group. Did state that CHRO is scheduled to give their agency presentation at the 8/20 meeting.

Commissioner made the motion to adjourn at 3:05 p.m.