

**DRAFT**

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

Meeting Minutes

November 19<sup>th</sup> Legislative Office Building Room 1D

The meeting was called to order at 1:12 p.m. by Chairman DeFronzo.

The following Working Group members were present:

***November 19, 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)	Alix Simonetti	Executive Director Tanya Hughes
Commission On Human Rights & Opportunities (CHRO)	James O'Neill	Executive Director Tanya Hughes
Department of Administrative Services (DAS)	Donald DeFronzo	Assigned Chairman
Department of Administrative Services (DAS)	Peter Babey	Commissioner DeFronzo
University of Connecticut	Matthew Larson	President Herbst
CT Construction		



and leave items open for future discussion and study. Also, these administrative changes do not create additional, burdensome requirements for the stakeholders. He requested that members try to view the recommendations as a package.

The Chairman asked the Working Group members to introduce themselves for CT-N recording purposes.

The Chairman mentioned the need to adopt the October Minutes. A motion was made by Jim O'Neill and seconded by Pat Delany, who offered an amendment to the Minutes on page six, to strike "and sheet metal" and replace with "and steel erection."

The motion was made to adopt the minutes as amended and were approved.

The Chairman thanked the Working Group members who have already provided comments on the Report. He is going to go through the Report section by section and entertain comments.

Chairman summarizes Page 3 Cover Letter.

Dave Roche asked if the Cover Letter would look like this or can individuals provide separate comment.

Chairman replied that it would look like this, but he is willing to entertain individual comments.

Legislative background---no CCBT comments.

CT Background—no CCBT comments.

Chairman states that Section 6, "State Government Practice",--contains the Working Group definitions of bid shopping or bid chiseling that the Group accepted.

The Chairman requested any changes members have to those narratives.

Section 7 outlines DAS current bid listing process.

The Chairman indicated that Section 8 is an attempt at defining the issue of bid shopping as presented to the Working Group. This was done in an effort to capture concerns expressed by the advocates for these changes. The Chair asked Cindy Dubuque if that was a fair representation.

Cindy Dubuque thought that for the most part, it was a fair representation, but did notice that in the report as written, there are numerous times where FFCCT's inability to quantify the bid shopping issue is stated. She feels that those comments demean the message, i.e. since we can't quantify it, bid-shopping is not as important. The importance of bid shopping by this Working Group needs to be honored.

The Chairman responded that it does make a difference in regards to the scope of the response. He acknowledged that bid shopping does exist. Without concrete quantification of what the problem is, the Working Group must be careful not to overreact and create unintended problems and additional burdens for stakeholders while not knowing the magnitude of the problem that the Working Group is trying to address. He stated that the Working Group has given members ample opportunity to quantify the extent of bid shopping, and to date have not received any. That being said, the Working Group heard you and have acknowledged the issue.

Pat Delany asked where the footnotes are in the document.

Chairman responded that he had them removed from the body of the report and there are three or four references in the entire report which can be found in the back on page 40.

Presentations were summarized by the Chairman—no changes requested. The Chairman identified a few typos that DAS will clean up.

The Chairman asked if there are any questions/concerns on the DCAMM (MA) section.

The Chairman noted that in Section 10 the FFCCT Proposal includes a couple of long sentences to be cleaned up; otherwise it looks okay. The proposal is broken down by 1) transparency issue, 2) bid-shopping issue, 3) agency impact statements,

Matt Larson asked that the UConn supplement sent to Terrence be incorporated into the next version and summarized that UConn would need three positions rather than two. Absent an effective IT system, UConn would rely on manual entry at an estimated cost of \$360,000 based on current rates.

Dave Roche asked whether UConn could perform an analysis on the costs of past failures.

Matt Larson acknowledged this was a reasonable question but that there will be fiscal impacts to UConn similar to what is outlined in DAS fiscal impacts.

The Chairman mentioned the “Alternatives to the FFCCT proposal” that serve as the foundation for the recommendations that follow.

Don Shubert asked about alternatives on page 28. His members have read that indented paragraph on expanded subcontract filings differently.

The Chairman said that we’ll discuss that at the Recommendations portion.

The Chairman provided a Findings summation.

Jim O’Neill recommended replacing the word “justify” with the word “enforce” in findings 2 on Subcontractor Transparency.

Don Shubert understands Jim's comment but wants it understood that the same information is needed to better prepare agencies for future supplier diversity analysis.

The Chairman stated that he understands the need for enforcement, but the proposed change also helps shape future policy on the disparity study. The Chairman will add a sentence to reflect that matter.

Findings discussions concludes.

John Butts raised questions concerning the Clerk of The Works, principally whether there is a plan to address those concerns, or whether the designation can be removed and replaced with integrity monitoring.

The Chairman replied that this is best discussed under the applicable recommendation. The Working Group may want to develop a hybrid, not traditional Clerk of Works, or Integrity Monitor. He said the Working Group can have a full discussion on the issue, as no other item drew more discussion in the responses.

Recommendations.

The Chairman stated that as an alternative to the nineteen listed classes of work, establishing a more comprehensive reporting of 2<sup>nd</sup> tier subcontractors is proposed.

Don Shubert had a couple of questions concerning prime subcontractors.

Kevin Kopetz answered that the intent is to obtain information for the contracts held by the general contractor, including the named and SBE/MBE subcontractors. With the CMR project delivery method, we get the contracts bid to CMR, but for 2<sup>nd</sup> tier subcontractors the intent is to also capture the trades' subcontracts within twenty one days.

Don Shubert referring to Recommendation #1 suggested clarifying the intent by removing “its” from the second paragraph. If that is the case what you are creating at award or GMP is a series of contingent relationships—signing of lower tier contracts that may not be completed in twenty one days. Any thought on how DAS will deal with that?

Kevin Kopetz responds that we’ve discussed what would be a reasonable period of time. We realize that lower tier contractors would be identified at mobilization, but 2<sup>nd</sup> tier contractors in twenty one days appeared to be a workable date. In most cases, twenty one days appears reasonable for achieving the immediate goal of identifying all second tier contractors.

Don Shubert followed up on the 2<sup>nd</sup> tier level of subcontracts and inquired whether the time period would be adjusted under the CMR model.

Kevin Kopetz stated that the prime subcontractors, that is, those holding a direct contract with a General Contractor must be disclosed within twenty one days of the contract execution and approval, while for a CMR project, prime subcontractors must be disclosed within twenty one days of the approval of the GMP Amendment. Prime subcontractors must, within the same twenty one day period disclose their second tier subcontractor information.

John Butts added that some of his members have concerns with the timing twenty one days may not provide sufficient time for a prime subcontractor to complete scoping and pricing of 2<sup>nd</sup> tier subcontractors and to be in a position to disclose that 2<sup>nd</sup> tier information.

Don Shubert offers a scenario where the GC in award of contract doesn’t enter into a contract with prime subcontractors for twenty days. The prime subcontractor has only one day to obtain pricing and execute a 2<sup>nd</sup> tier subcontracts.....will they get the pricing in a day.

Kevin Kopetz expressed the concern that without a definite time-frame people will use the time and potentially undermine the anti-bid shopping intent of this proposal. We should discuss and identify what sequence or time period makes sense. This should be a part of today's discussion.

The Chairman interjected that there should be an established clear line. If there are legitimate situations, there could be a provision for an extension of time, provided there are valid reasons that can be considered that would justify a later date for compliance. The time period does not need to be iron clad if conditions warrant an extension. Pat Delany offers the option of a staggered approach twenty one days for primes twenty one days of receipt for the 2<sup>nd</sup> tiers as this gives lower tiers more time to get their ducks in a row.

Chairman responds that he likes the waiver provisions better.

Dwight Bolton states that from time of award, the GC would have twenty one days for their prime subcontractors to identify 2<sup>nd</sup> tiered contractors and their prices. He supports this approach, as MBE firms struggle to maintain the proper relationships to be in play 30-60 days. He supports the 21 days as the quicker to contract the better and supports a timeline that makes sense for all.

Greg Oneglia had a problem as to the definition of a prime contractor. With the CMR project delivery method, the definition is fine and makes sense. On a GC basis, where a GC gets numbers the day of bid it is unrealistic to list thirty one subcontractors, do scope reviews.....award them a contract and get their 2<sup>nd</sup> tier subcontractors all within twenty one days—unless there is a more limited definition of prime contractor.

The Chairman advised that nothing in the recommendation would lead to the large scale expansion of named subcontractors in the d-b-b scenario so the situation described by Mr. Oneglia is not anticipated.

Kevin Kopetz suggested that the twenty one days from execution of contract is actually sixty to ninety days out from bid day. We're happy to clarify the definition but we want to identify the subcontractors being employed by the named contractors or primes within twenty one days.

Greg Oneglia responded that he understands Kevin's point but we have experienced on state projects that have been bid, and been delayed in contract award. We have had times where we're spending time and energy on scope reviews, and there wasn't a job---or funding is removed.

Kevin Kopetz responds that is the reason why some discretion should be left up to the agency; we're just trying to establish the general rule.

Dave Roche suggests that by expanding the number of categories we could satisfy everybody.

Greg Oneglia—the four categories were done to prevent bid shopping and rightfully so. On bid day we get calls half hour before the bid is due and though some scope review is necessary, the subs wait until the end. Doing that with nineteen subs will be impossible. Smaller companies couldn't bid state jobs.

Dave Roche said that's why I think expanding it makes sense allowing those subs to direct bid.

The Chairman interjected that we are entering a difference in fundamental views discussion.

The Chairman clarified that we're not unilaterally expanding anything today. He said you can be reasonably secure that there will be no expansion of d-b-b classes of work in January; though there may be some experimental expansion later next year.

The recommendation is looking to create a general rule, with some exception built in.

The Chairman mentioned that there is one question that he's asked Kevin to cover—mobilization to site---do we need to define it better.

Kevin Kopetz explained that mobilization consists of the activities for the movement of personnel equipment, supplies and incidentals to the project site; the establishment of office and facilities at the site; provision of bonds and insurance for the construction work; and other operations before commencement of the work.

The Chairman recommended a footnote of that definition.

The Chairman moved on to Subcontractor Transparency and noted that the data management system recommendation not written out in the recommendations section. He asked would members prefer we write that out for the recommendations.

Don Shubert responded that it would be appropriate because of the good use that system can provide.

Matt Larson cautioned that implementing a contract data management system would create cross agency integration issues and are significant. The costs are significant also, and the proposed time-line and integration plan should be identified.

Jim O'Neill requests clarification on Number 1, the references to 2<sup>nd</sup> tier, and lower tier reference are confusing or inconsistent.

The Chairman stated it wasn't intended to be and suggests including "all lower tiered" and removing references to second tier. That change will be reflected in the revised draft.

Ed Riley commented that the recommendation on interagency exchange of information is a good step for CT contractors who are losing out to firms from other states with bad history. Sharing information can help prevent that and he likes it.

The Chairman moved on to—Clerk of The Works. He cited that there seems to be wide consensus on some type of on-site presence/monitor. Integrity Monitoring appears to be more comprehensive in nature than the traditional Clerk of the Works. Personally, he does not care what it is called, but agreed with the need for a model.

Dave Roche offered that the Clerk of the Works is simple to understand and it sends a message that is familiar to the construction industry. We don't know who integrity monitor are, when compared to "CoW."

John Butts expressed concerns with confusion on the job description—Clerk of Works is known to be employed by the architect to look at design and specs. The function is well known in the industry but if we add functions of an Integrity Monitor, now you have something different.

The Chairman stated what he envisions. He suggested that what we call it be a task of an inter-agency working group. He also suggested—this entity should be responsible to the owner, certified/qualified in particular ways as determined by DAS, maintain certain credentials, and that there is an explicit scope of work to perform. We can call it whatever—MA has resident engineers—we can come up with a term that works. Recommending a working group to identify what these folks do, their scope of authority, or what we call them should be resolved in that group.

Dwight Bolton asked is there a conflict or overlap with Construction Administrator.

Kevin Kopetz stated that CA duties would encompass a portion of what a Clerk of the Works does. CA duties are typically more expansive for us i.e. reviews of budgets, schedules, documentation. There are certain duties in a CA contract that may overlap. We can review the extent the CA requirements have been utilized and determine what the responsibilities should be and make clear delineation of duties.

Pat Delany suggests that we check statute and regulation for Clerk of Works definition.

Cindy Dubuque—we agree on CoW—can it be applied to municipalities?

The Chair stated that is good question. He would have to look at that. If state money is involved we usually have greater latitude but I think municipalities have exemption from set-aside, etc.

Kevin Kopetz offered that under statutes we're looking at they are not applicable to municipalities.

Gary Pechie stated don't get caught up in title...come up with scope of duties and see if the agency can assimilate those duties to a contract, and can carve out a few dollars to pay for this. If we're going to do a pilot program, UConn should participate.

The Chairman agreed that defining the function is the most important task.

Cindy Dubuque stated there is conflict of interest if the "CoW" function is not performed by a third party. She hoped that subsidiary group will consider that municipalities be included.

Matt Larson expressed Clerk of Works concerns related to non-DOL activities. He hoped there will be some support and guidance for subcontractor as it's dangerous to target and limit scope to any agency duties (solely DOL related). There are additional responsibilities to owner, GC, CM that have costs associated with it. . UConn is willing to participate in the pilot but the concerns are not solely an UConn issue.

Alix Simonetti informed the Working Group that non-discrimination statutes do not include municipalities, though legislative attempts have been made to include municipalities.

The Chairman offered that we'll include industry representatives and UConn on the subcommittee developing the CoW/integrity monitor model job description.

The Chairman continued with an overview. He said on Recommendation Number 4—if there is an expansion of the lower tier subcontractor information, FOIA laws would apply. This doesn't get you everything being requested, but it does go farther than the present.

Cindy Dubuque requested clarification on intent of recommendation 5.

The Chairman answered that it was intended to cite DAS willingness to explore or utilize our existing authority to increase the number of required work classifications in the future. Cindy Dubuque recommends that we move from Further Study section 3 - the last sentence calling for a pilot - be moved to Recommendation 5.

Matt Larson added that UConn is willing to participate in the 4b-93 pilot when discussions begin.

Cindy Dubuque wanted an affirmative statement on pilot program and expansion of participating agencies.

Chairman summarized the remaining elements of recommendations.

John Butts asked if you move the narrative in Future Study to recommendation—do you need legislation to change that.

Peter Babey believes we can utilize our existing authority to create the pilot.

Kevin Kopetz pointed out that #3 of Areas of Further Study was intended to create MBE/SBE opportunities, and questioned whether that will remain.

Chairman moved then to Areas of Further Study and requested any comments or desired additions and received no comments.

Alix Simonetti raised a question regarding retainage on different ratios on contract—is there a way of making that consistent.

Matt Larson offered that UConn is reducing their retainage to 7.5 to conform to DAS percentage. State law sets ceiling—agencies can do a little less than that.

Don Shubert offered that ConnDOT has eliminated retainage.

Don Shubert commended UConn for that measure.

Alix Simonetti requested a recommendation to increase membership of contracting selection panels,

The Chairman stated that he doesn't think he wants to revisit this issue noting that DAS had legislative changes made in 2013—we just reduced staff involvement and that is beyond the scope of this Working Group.

Alix Simonetti references that for some professional design services, CCBT should consider a model from Baltimore for MBE improved participation

The Chairman asked her to please send something specific, and noted that we've done some MBE on call improvements. Since we haven't discussed that here as part of the Working Group, however, he did not want to add new topics and recommendations at this late juncture.

Alix Simonetti suggested that GC/CMR to include last ten private jobs to review who they employed.

The Chairman stated again that we can't just create standards without background for any new items that have not been discussed by the Working Group. He appreciated where she was coming from but we can't endanger the fragile balance and agreement we've maintained to date. He did offer that agencies should look at their RFP processes for improvements as called for in the Recommendations

Alix Simonetti stated that Clerk of the Works includes something on the importance of prompt payment to S/MBE firms and that should be part of the task force Clerk of Works' scope.

The Chairman stated someone from CHRO will be on that group so it will be able to make that recommendation.

Alix Simonetti followed up that CHRO would also want utilization reports.

The Chairman stated that prompt payment and utilization reports--- should not be a problem for interagency discussion, though retainage probably should not be entertained.

Jim O'Neill confirmed that quick research indicates no statutory definition of Clerk of the Works was found.

At this point, Chairman asks if there are any further comments. The Chair then asked if based on today's discussion and agreed upon changes do we have conceptual agreement?

Agreement was expressed by the Working Group.

Jim O'Neill alluded to the four to nineteen and that any policy changes would require additional CHRO staffing.

Chairman acknowledged that comment as recorded. Added that DAS will refine recommendations and revised drafts based on today's discussion. We will send those revisions to members requesting comment on a specific time-frame. We will meet in December to approve the package—no substantive changes are to be made after today.

Chairman thanked the circle and complimented everyone for their participation. The report has some significant improvements for CT and we'll continue the discussion on the other things.

Wished members a Happy Holiday.

Meeting adjourned 2:53 p.m.