

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

Meeting Minutes

September 16th Legislative Office Building Room 1D

The meeting was called to order at 1:08 p.m. by Chairman DeFronzo.

The following Working Group members were present:

September 16th 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
Department of Administrative Services (DAS)	Kevin Kopetz	
Connecticut Construction Industries Associations (CCIA)	Donald Shubert	Speaker of the House
American Institute of	Philip Cerrone	Senate Minority

Architects (AIA)		Leader
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
O & G Construction	Gregory Oneglia	Senator Looney
DH Bolton LLC	Dwight Bolton	Governor Malloy
Turnbridge Construction	John Mastriano	House Minority Leader
Association of General Contractors (AGC)	John Butts	Governor Malloy
Gilbane	Pat Delany	Governor Malloy

Lynn Kleeberg, L.K. Sheet Metal Absent

Ed Reilly, CT Ironworkers Absent

Chairman DeFronzo outlined the safety protocols and made opening remarks. For CT-N purposes, he asked members to introduce themselves and make a brief statement.

Chairman DeFronzo mentioned the August Meeting Minutes that needed to be approved. Jim O'Neill made the motion for adoption of the minutes, seconded by Pat Delany. Motion approved and minutes adopted.

Chairman personally welcomes two newest members Gregory Oneglia and Dwight Bolton.

Chairman introduced Deputy Counsel, George Matthews and Michael Lambert, Director of Capital Planning for Division of Capital Asset Management & Maintenance (DCAMM).

Counsel Matthews provided a detailed overview of DCAMM processes and yielded the floor to Mr. Lambert to close with a summation of the CCBT legislation discussion points.

Full presentation on DAS website at

http://das.ct.gov/images/1090/Mass_CCBT_presentation_09_16_2014.pdf

Chairman thanks them both for the presentation and asks for an explanation of the prequalification of sub bidders, how long, who makes the determination, what is the internal process?

Counsel Matthews states that “it is a project by project basis.”

Chairman asks “is there a fee attached to prequalification?”

Counsel Matthews responds there is no fee.

Mr. Delany asks what the difference between certification and prequalification?

Counsel Matthews responds that with certification there is an Office within DCAMM delegated to certifying contractors and subcontractors, the application background, financials, book of work, largest projects done, number of projects done—minimum of five---all projects over \$100,000 GC or subs must be certified by DCAMM valid for one year. Prequalification is on a project by project basis where the certificate gets you in the prequalification pool.

Chairman, “for each project do you have a selection Committee”

Mr. Lambert responded that “an office of ten does all the selections, CM, an architect and someone from my office on the Committee on prequalification—on design bid build—we typically just accept the bids.”

Chairman asked “do you look at their volume of work in considering eligibility?”

Mr. Lambert responded, “yes we look at it in concern with overworked--- there is a boom of construction in Boston currently.”

Chairman asked for “pros and cons regarding coordination of work with so many listed classifications, or do GC’s manage around it?”

Mr. Lambert, “it is an issue, not necessarily with subs but sometimes with the design team. The designer and CM aren’t financed for missed scope so it is a problem.”

Chairman DeFronzo asked have they noticed a “fluctuation in claims rates?”

Mr. Lambert responded “less on CM projects since we work with them at pre-construction and throughout- I believe it is more attributed to lack of coordination—we have change orders—not solely due to sub bid system.”

Chairman DeFronzo asked for clarification on the reference to MBE sub bidding not being an acceptable practice.

Counsel Matthews explained that in filed sub bid process, when subcontractor is working on a project, it is expected to be self-performed, recently there was a challenge to that and trades must perform the work, an MBE can be awarded as a direct subcontractor

Chairman asked for comments on bid shopping, we know it exists and the processes you have in place—do they control, or limit bid shopping?

Counsel Matthews replied that in his time at DCAMM he has always been under sub-bid law; have not seen any other scenario where GC can shop bids.

Chairman asked “when bids are public and filed and GC submits-- bid shopping ceases. Does the same apply for the sub-sub bids”?

Counsel Matthews responded--Yes

Mr. Lambert added that with respect to bid shopping, “I have not seen it—no, I hear about and depending on who you speak with. Depends on definition, de-scoping some, negotiation is allowed and needed and we’re party to it.”

Chairman asks “why is there a specific sub-bid provision re: categories in HVAC?”

Mr. Lambert responded that they are statutorily required to sub categories over \$10K, mechanical—ductwork—integral to their work, if prime sub doesn’t customarily perform that work---they must provide sub and price of trade performing.”

Mr. Roche asked “why do they do that with HVAC --is it coordination, or because it is a bigger piece?”

Counsel Matthews replied that “if there is sub trade to sub trade where work isn’t performed by that specialty—they need to list a sub trade. More prevalent in HVAC and electrical then in other areas.

Mr. Lambert added “better coordination, in his opinion.”

Mr. Oneglia asked regarding the general contractors PowerPoint slide that outlines the process, there appears to be phases ripe for bid-shopping-- for example a GC chooses to use someone \$100K higher”

Mr. Lambert responded “that would be rare if you don’t take low-bid, the prime contractor would eat that \$100K and have to disclose why they don’t want to take that lowest bidder”.

Mr. Delany requested answers to two question regarding rejection of bid from a bidder. “The slide that states a bidder determined not eligible and responsible—this after prequalification and certification and a bid—how is that possible?

Counsel Matthews clarified that “normally bidders are rejected for a technical matter”, i.e. a signature missing, etc, being found not

responsive by DCAMM why they file update statements in case occurrences happen six months out which is why we require primes to file update statements.

Mr. Delany asked—“substitution of a subcontractor, how and when would that kick in?”

Counsel Matthews offered that “Chapter 149(f) is very complicated goes through the scenarios in which a substitution can occur.”

Ms. Barrachina asked if “under filed bid system, sub-trades are 2nd and 3rd tier subcontractor on projects. Does DCAMM have those contractors and subcontractors?”

Mr. Lambert replied “yes we enforce certified payroll, core work must be performed by the listed subcontractor.”

Counsel Matthews added we are bound by “direct payment claim” laws. Such subcontractor has a right to file and pursue this process.

Ms. Barrachina asked “does DCAMM keep a public database of the contractors and subs on projects or would that have to be gathered by FOI request?”

Counsel Matthews replied that “we don’t maintain a public database that would be addressed by FOI.”

Mr. Butts asked “you don’t use filed bid on CM work?”

Mr. Lambert stated we do—it is prequalification---in d-b-b it is filed sub bid, on CM prequalification it’s a trade contractor—same thing.

Mr. Butts asked “aren’t you using sub-bid system for just about 100% of your projects?”

Counsel Matthews replied that “filed bid is d-b-b, lowest qualified sub bidder, CM at Risk is different in that you are prequalifying on project

by project basis, still done for the 18 listed trades and low bidder, but done on a prequalification system.”

Mr. Butts asked “you have adapted the filed bid system to the CM system?”

Counsel Matthews answered—yes.

Mr. Shubert asked “the CM at Risk model has some subjectivity—correct?”

Mr. Lambert replied “a certain amount but you have to have a cause, special requirements i.e. special painting, and special mechanical needs.”

Mr. Shubert asked “regarding bid protest, subs can bring claims against the State of Massachusetts?”

Counsel Matthews responded “not against the State, they file a protest with the Attorney General’s office that has a Protest Unit, and they make a decision on if the law is being followed—technically a recommendation but awarding authority follows those recommendations. Only an investigatory process.”

Counsel Matthews added “that a subcontractor that doesn’t prevail with the AG can go to the courts.”

Mr. Shubert asked “if during construction phase—scope issues arise, is general contractors allowed to pursue a subcontractor with a liquidating agreement?”

Counsel Matthews stated “that we require the general contractor to bring the claim—they own it and hold the State harmless.”

Mr. Delany asked “if in the named (18) categories, I can only have one electrical package—I can’t have more than one for MBE goals”?

Mr. Lambert correct “no more than one electrical.”

Delany followed up “does MA have a set-aside?”

Mr. Lambert responded “yes we do—we have goals. We work with the CM to meet those goals.”

Mr. Larson asked “if the goals aren’t reached in the 60% of trades--- you’ll address set-aside in the remaining 40%?”

Mr. Lambert responded --yes.

Mr. Larson asked “for bonding—who carries the performance bond? “

Counsel Matthews replied that “the CM is required by statute, sub-trades must have their own, and in d-b-b a GC can require it of subcontractors.”

Mr. O’Neill asked “regarding achieving MBE goals, is it mostly on the (18) listed, or on sub-sub categories?”

Mr. Lambert answers “that it varies but we meet the goals from both.”

Mr. O’Neill asked “is there a problem with a challenge?”

Mr. Lambert replied that “when CM started—the AG ruled against sub-sub agreements to meet MBE goals.”

Mr. O’Neill asked is “the requirement for bonding a barrier to MBEs?”

Mr. Lambert responded “yes, bonding ability and financing the job—cash flow is a problem.”

Mr. O’Neill stated that we, CHRO met with Mass DOT and they have interesting programs—mentoring, financial assistance for MBE—do you mirror any of that?

Mr. Lambert stated we are aware of Mass DOT but I’d have to speak with our people.

Counsel Matthews added that we've talked about a program with lower cap projects with less restrictive requirements, and we do have educational programs.

Mr. Roche stated CHRO is statutory that we can take a package and break it down.

Counsel Kopetz responded that there is a law in MA that sub-bid must be self performed, we don't have those limits but would need to take further look at that.

Mr. Butts I'd like to ask about general contractors bidding to themselves. "Do you know that they are doing that work?"

Mr. Lambert responded "yes we do man power counts, and we monitor the site, and the GC must justify that they perform such work and they can restrict the job to themselves."

Ms. Dubuque asked "regarding daily man counts, sounds like you have a Clerk of The Works?"

Mr. Lambert stated we call them "resident engineers" but yes, same concept. Required by statute on every job.

Mr. Cerrone asked "you do not do shared savings, but sometimes incentive clauses are possible?"

Mr. Lambert replied yes a bonus to CM of 1% not to exceed \$1 million.

Mr. Bolton stated you seem to have the same issues securing MBE firms that we have in CT. "Where do you see good MBE utilization?"

Mr. Lambert replied I believe CM at risk, we can control it, we can work with the CM, and we can look at packages and manage that process.

Mr. Bolton asked "on your d-b-b system, where are you seeing your MBE utilization?"

Mr. Lambert replied “some electrical, roofing, some mechanical, concrete, it varies”.

Mr. Pechie asked for clarification on the certification process. “Is there a fee? How does it handle out of state contractors differently, is the process lengthy?”

Counsel Matthews replied that we do out-of state contractors, process can take 2-3 months, there is a fee—I don’t have it but I believe it is based on the size of the company. No different fee structure or requirements for out of state contractors. We’ve heard concerns and made some modification on the application. A lot of contractors won’t apply when they see the level of requirements.

Mr. Pechie asked “does it get down to all contractors, subcontractors one and two people shops as well? Five states have contractor registration, is that what this is?”

Counsel Matthews stated that certification means they have performed work at a certain threshold that qualifies them to perform work above \$100K.

Ms. Dubuque offered that as a compliance organization, misclassifications are an issue they deal with. MA had task force that returned almost one million to the State of MA. “Can they elaborate on that effort?”

Counsel Matthews offered that the AG’s Office pursues those areas as well as protests, etc. The Task Force brought together a number of agencies regarding abuses of the process.

Mr. Larson following up on MBE opportunities. “How does that work in MA?”

Mr. Lambert responded that “we work with the compliance office and the CM but we will do outreach and work with the CM specific to the M/WBE community.”

Mr. Larson asked “are you identifying packages and sub packages with the CM?”

Mr. Lambert stated yes we will do both request percentages and identify packages where MBE subs are available and goals are attainable. We try to maintain a level playing field.

Mr. Larson asked “and when is the GMP agreed to?”

Counsel Matthews responded that “we like to get the GMP completed sooner, at least by 20% of construction.”

Chairman DeFronzo asked for a review of the thresholds.

Counsel Matthews states DCAMM has control of capital projects in excess of two million, DCAMM delegates control when less than \$2million and greater than \$250,000. Less than \$250,000 agencies handle on their own. UMASS has their own authority—revenue generating projects managed by them—DCAMM does the non revenue construction. Filed sub bid for d-b-b applies to all construction over \$100,000. Subcontractor trigger of \$20,000.

Chairman asked “if they saw the list of categories in FFCCT/trades counterproposal?”

Mr. Lambert stated yes “I see problem with the steel packages which are owned by the CM with us. On HVAC, our sheet metal work is a sub bid-there is a lot of coordinated work in HVAC with them; otherwise the lists look pretty similar to what we have in MA. Concrete we don’t do, and I’m unsure of what the general trades classification means?”

Mr. Butts offered that Division 6, Division 9, Division 10 type of work i.e. carpentry.

Mr. Lambert stated there is no right or wrong answer. Site work and demolition are also the duties of the GC or CM.

Ms. Dubuque asked does the two million apply to municipality. The laws apply re: \$100,000 and \$20,000 for sub trades, but the management thresholds are for executive branch agencies.

Mr. Bolton asked “are there any penalties for not meeting M/WBE goals?”

Mr. Lambert states yes, 20% of the shop falls.

Mr. Butts asked “do you limit the amount of prequalified bidders?”

Mr. Lambert stated that “if we have 15 CMs, 15 CMs can bid ---same for subs.”

Chairman DeFronzo once again thanked Counsel Matthews and Mr. Lambert for their participation.

Chairman mentioned the remaining dates for CCBT meetings 10/22, 11/19, and 12/17. He will be working on an Outline of the Report and framework for October’s meeting.

Mr. Roche requested that CCBT members take a look at some recommendations which will be circulated.

Meeting adjourned at 3:12 p.m.