



Foundation for Fair Contracting

Construction Contracting & Bidding
Transparency Working Group
Presentation
July 29, 2014

Present System

General Contractor (GC)

- CGS Sec. 4b-93. (Formerly Sec. 4-137c). Contract specifications; subtrades, subcontracts. (a) Every contract subject to this chapter shall include plans and specifications detailing all labor and materials to be furnished thereunder. Such specifications shall have a separate section for each of the following classes of work if, in the estimate of the awarding authority, the class of work will exceed twenty-five thousand dollars: **(1) Masonry work; (2) electrical work; (3) mechanical work other than heating, ventilating and air conditioning work; and (4) heating, ventilating and air conditioning work**. Such specifications shall also have a separate section for each other class of work for which the awarding authority deems it necessary or convenient.

Construction Manager at Risk (CMR)

- Not covered by General Contractor Statutes. (4b-91 – 4b-96)
- Commissioner of Construction Services may enter into a construction manager at-risk project delivery contract.
- Must include a guaranteed maximum price.
- CMR shall invite bids and give notice of opportunities to bid on project elements.
- Does not specify what elements to be bid.

1960-1973

- “Gentleman’s Agreement” between the State and construction industry implementing a pre-filing system similar to Massachusetts’ “filed sub-bid” system.
- Awarding authority invited subcontractor bids and only allowed GC’s to use these for preparing GC bids to the awarding authority.

1973-1982

- Pre-filed sub bidding system instituted by legislature.
- Senator Ciarlone on senate floor – “This bill assures that the owners of the state of Connecticut receive the lowest possible qualified bid at the time of bidding on a construction project, \$500,000 or more. It eliminates the past practice of bid-shopping. It’s a good bill. The state will benefit by this. It will not cost the state any money, but rather, save the state much money ”

1982-1989

- Over the objections of Senator Ciarlone legislation passed shifting from “pre-filing” bids to “bid listing” of up to 19 different sub trades by a general contractor on a general bid form provided by the awarding authority.
- Not suggesting reverting back to “filed sub-bid”, but rather work within the existing statutes to increase transparency and bidding opportunities.

1989-Present

- “Bid Listing” continues but for reasons unknown, project elements have been reduced from 19 to only 4 named subcontractors on general contractors “general bid form”.

Professional Organization Opposition to Bid Shopping

- Associated General Contractors of America (AGC)
- American Society of Professional Estimators (ASPE)
- Associated Specialty Contractors (ASC)

Associated General Contractors of America (1947)

- “The figures of one competitor shall not be made known to another before the award of the subcontract, nor should they be used by the contractor to secure a lower proposal from another bidder.”
- “In no case should the low bidder be led to believe that a lower bid than his has been received.”

The ASA, AGC, and ASC joint guideline opposing bid shopping (1995)

- “Bid shopping or bid peddling are abhorrent business practices that threaten the Integrity of the competitive bidding system...”
- “The bid amount of one competitor should not be divulged to another before the award of the subcontract or order, nor should it be used by the contractor to secure a lower proposal from another bidder on that project (bid shopping).”

The American Society of Professional Estimators

Code of Ethics

2011

- Canon #5 (1)
- “...Bid shopping occurs when a contractor contacts several subcontractors of the same discipline in an effort to reduce the previously quoted prices. **This practice is unethical, unfair and is in direct violation of this code of ethics.**”

JOHNSON ELECTRIC COMPANY, INC.

v.

SALCE CONTRACTING ASSOCIATES, INC.

**Appeal from Superior Court, judicial district of
Fairfield, CT 2002**

- The appellate court upheld the original trial referee's findings, in regards to the plaintiffs' Connecticut Unfair Trade Practices Act claim, whereas the trial referee stated that it was, **“unethical, unfair and inconsistent with normal industry practice for a contractor to engage in ‘bid shopping’ among nonlisted subcontractors.”**

Shortcomings of Present System

- Lack of Transparency in Bidding
- Abundant Opportunity for Bid Shopping
- Confusion about Disclosure of Public Information
- Lack of Accountability for Wage and Other Violations
- Missed Opportunities for Project Cost Savings
- Unequal Playing Field for Small and Minority Owned Business
- State and Municipal Bidding is Not Consistent

Proposed Solutions

- Expand the 4 Classes of Work to Approximately 20 Classes.
- Name Sub-Subcontractors at Time of Bid
- Clarify role of Clerk of the Works and/or Sign-In Sheets for Workers Daily
- GC Bidding Statutes Should Apply to CMR Projects
- Make CMR Act as GC After Acceptance of GMP and Act as Agent of the State

Contact us



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