SB-454

AN ACT INCREASING THE TRANSPARENCY OF GENERAL BIDS FOR STATE CONTRACTS.

OFA Fiscal Note

State Impact:

<table>
<thead>
<tr>
<th>Agency Affected</th>
<th>Fund-Effect</th>
<th>FY 15 $</th>
<th>FY 16 $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dept. of Administrative Services</td>
<td>GF - Cost</td>
<td>575,000</td>
<td>300,000</td>
</tr>
<tr>
<td>State Comptroller - Fringe Benefits</td>
<td>GF - Cost</td>
<td>82,485</td>
<td>109,980</td>
</tr>
</tbody>
</table>

Municipal Impact: None

Explanation

The bill makes several changes concerning the awarding of subcontracts for public works projects that are subject to the state's competitive bidding laws. The Department of Administrative Services (DAS) would need to hire a consultant at up to $100,000 in FY 15 to re-design bidding systems, revise templates, bid forms, manuals, and reporting systems.

To implement the revised bid award requirements, DAS would need to make improvements to their IT systems that track subcontractors and second tier contracting data as their current IT system is not capable of tracking this data. It is anticipated that improvements to this system would cost $250,000 in FY 15.

In addition, it is estimated that DAS would require four positions at a cost of $307,485 ($225,000 in salary and $82,485 in fringe benefits) in FY 15 to operate with the expanded requirements. The new positions would collect and review listed subcontracts and lower tier subcontracts, handle increased bid protests, scope reviews of bid packages, and manage requests from contractors or subcontractors for substitutions of subcontractor or lower tier subcontractors who are unable to perform their duties.

The Out Years
The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

1 The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.66% of

OFFICE OF FISCAL ANALYSIS

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April 17, 2014

ADDENDUM

To Fiscal Note on

SB-454, File No. 522

AN ACT INCREASING THE TRANSPARENCY OF GENERAL BIDS FOR STATE CONTRACTS.

In addition to the cost to the Department of Administrative Services, it is estimated that the University of Connecticut would require two positions at a cost of $191,324 ($140,000 in salary and $51,324 in fringe benefits) in FY 15 to operate with the expanded requirements. The new positions would collect and review listed subcontracts and lower tier subcontracts, handle increased bid protests, scope reviews of bid packages, and manage requests from contractors or subcontractors for substitutions of subcontractor or lower tier subcontractors who are unable to perform their duties.

Department of Administrative Services submitted impacts of Senate Bill 454

Good afternoon,

Wanted to get you our estimated agency impacts for SB 454 “AA Increasing Transparency of General Bids for State Contracts”. This bill, which seeks a systemic change to our construction
contracting processes, would be very costly for DAS to implement; specifically, we would need a number of new staff, would need to implement IT improvements, and anticipate significant delays in projects, adding capital costs.

To date, DAS has not been provided by the proponents with quantifiable data or analysis regarding the **cost benefits** or **improved efficiencies** in this dramatic change to the State’s administering and processing of capital projects. It would be unwise to proceed with a systemic change of this magnitude without verifiable cost benefits. DAS would reasonably expect to incur additional costs on its bonded capital projects as a result of the provisions of the bill. This “sub bid” methodology is to be applied to our **design-bid-build**, and **Construction manager at risk project** delivery methods.

I’ve outlined the agency impacts in (4) areas where we envision fiscal impacts:

- Systemic revision of bid forms, guidance documents, and realignment of prequalification classifications
- IT improvements
- current and pipeline capital project delays
- Division of Construction Services and Process management staffing needs

**Documentation Changes**

Section 2 of the bill proposes to remove the four listed major classification components outlined in C.G.S. § 4b-93 (masonry, electrical, mechanical, and HVAC) and substitute the over 30+ DAS contractor prequalification classifications [DAS Contractor Classifications](#) in their place. In addition, section 2 requires the contractor to obtain from the subcontractors—any lower tier subcontractor who will perform work for each subcontractor, and list those companies on the bid form as well. As stated above, this dramatically changes the way DAS administers projects on behalf of the State.

All DAS contract documents **design bid build, on-call, CMR** would need to be reviewed, revised and updated. Our prequalification classifications and applications would need to be reviewed and revised. DAS would need to determine whether the current Prequalification Contractor Classifications are sufficient and accurately reflect the industry standard specifications —**Construction Specifications Institute Masterformat**. Certain contractor classifications may not conform to these specifications, which are the basis for preparing bid packages on DAS projects. Changes would need to be made to the Prequalification Classifications. Subsequently, DAS would need to revise a significant number of its templates, including but not limited to, the bid forms, Consultant Manual, Agency Administered Project Manual, Construction Manager at Risk RFQ/RFP and contract, and the General Conditions. These revisions **could not be done with the current staffing levels** in process management. Reporting processes would also need to be revised. In order to maintain current work flow, we would need to hire outside consultants to re-design system, forms and reporting systems at an estimated cost of $100,000 to $200,000 (Management analyst services at $80 to $100 per hour over one year = $160,000 to $208,000).
Historically on contracts that require “a fee from the vendor”, or create major administrative burdens to comply with—there is the potential for a 2-5% increase in GC and CM future bids as contractors are going to build the costs for complying with this into their bid submissions. With more than $200,000,000 a year in construction the increased indirect costs to the state can be estimated in the $4-$10 million range.

**IT Improvements**

We have explained to the proponent’s that a lot of the subcontractor and second tier contracting data should be available in the future as there are on-going discussions regarding the State’s need to improve their data management and collection processes around construction contracting. However, those discussions will not yield any immediate IT improvements to DCS and this bill is effective this Fall. DAS would need to evaluate the needed improvements to our existing PM WEB in expeditious fashion—which would require some consultant costs to have the company analyze the needed upgrades for reporting and training process management staff. *This would literally only be a band-aid approach since PM WEB is outdated and likely going to be dramatically improved when the State does purchase a data management system but again Fall effective date would require it now. The capital costs for the BG2NOW data collection system which would be needed to manage the lower tier subcontracting data is $400,000 with $250,000 annually to maintain the system.*

**Project Delays**

DAS cannot implement the changes of SB 454, without stopping work on the substantial number of projects in the queue waiting for selection of consultants and construction managers. Delays to getting projects designed and bid will result in cost escalation to the projects as labor and material prices increase over time. Delays often times exacerbate the existing conditions that would make repairs and renovations more costly. In addition to the delays as result of implementation, the bill will require from GC, CM and Design Professionals that they all would now need to provide separate plans and specifications. This increases the number of “classes of work” for which the General Contractor must solicit subcontractor bids; which in turn increases the time it will take DAS to analyze all of the Bids and additional subcontractor bidding documents, and increases the number Subcontractor Agreement that the General Contractor must execute with potentially thirty-seven (37) Subcontractors. The expansion of classifications bid will increase the number of contracts DAS staff would need to review and monitor. We expect that bid disputes will certainly increase dramatically causing further delays and additional work for our Legal Unit.

To illustrate the potential delays.

Currently Subsection 7.5 of our Bid Proposal Form requires General Contractors to submit the following information for their four (4) Named Subcontractors.

7.5 Subcontractors and their price must be listed for the trades identified in Schedule 7.5.1.
FAILURE TO PROPERLY COMPLETE THIS SECTION ACCORDING TO THE BELOW INSTRUCTIONS SHALL RESULT IN REJECTION OF THE BID.

The GC shall indicate the subcontractor name and contract value for the largest single subcontractor in each named sub trade.

**SCHEDULE 7.5.1 – NAMED SUBCONTRACTORS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Name of Subcontractor</th>
<th>Amount Dollars</th>
<th>Labor &amp; Material Payment Bond</th>
<th>Performance Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>Masonry</td>
<td></td>
<td>$</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Electrical</td>
<td></td>
<td>$</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>HVAC</td>
<td></td>
<td>$</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Mechanical*</td>
<td></td>
<td>$</td>
<td>%</td>
<td>%</td>
</tr>
</tbody>
</table>

* (except HVAC)

On and after October 1, 2007, no person whose subcontract exceeds five hundred thousand dollars in value may perform work as a subcontractor on a project estimated to cost more than five hundred thousand dollars, unless the person is prequalified in accordance with section 4a-100, as amended by Public Act 06-134.

7.5.2 List the name and price of each Named Subcontractor that will perform the work of the trades listed in Schedule 7.5.1.

7.5.3 The General Contractor may list itself together with its price (failure to provide both will be cause for rejection), if it customarily performs any of the trades specified. If the General Contractor leaves the spaces for a specific “Trade Description” completely blank, it will be assumed that the General Contractor will perform all the Work for that trade.

7.5.4 If the General Contractor requires a Performance and/or Labor and Material Payment Bond, then the General Contractor must indicate in Schedule 7.5.1 which of the Named Subcontractors are subject to this requirement. The amount (%) shall not exceed the Named Subcontractor’s price listed in Schedule 7.5.1.

7.5.5 The undersigned agrees that each of the Named Subcontractors listed in Schedule 7.5.1 of the Bid Proposal Form will be used for the Work.
indicated at the amount stated, unless a substitution is permitted by the awarding authority as provided for in section 00 21 19 Notice to Bidders.

Under SB 454 this Subsection will be thirty-seven (37) classes of work (instead of 4) that a General contractor will need to submit. Then within 10 Calendar Days After the Bid Opening, that 3 three apparent Low Bidders need to get potentially thirty-seven (37) classes of work (instead of 4) Named Subcontractors to complete & submit the Named Subcontractor Bidder Qualification Statement and have the Project Manager & the DAS Procurement review all of these Bidder Qualification Statements.

Lastly, DAS Procurement will need to get the General Contractor to get potentially thirty-seven (37) classes of work (instead of 4) Named Subcontractors to execute a Subcontractor Agreement as required by statute.

Staffing Needs

These documentation revisions could not be done with the current staffing levels in process management and Legal. In addition, after bids are received, it is thought that there will be increased responsibilities for collecting and reviewing listed subcontracts and lower tier subcontracts for compliance with the bid, as well as an increase in the number and the need for more in depth scope reviews of bid packages to make certain that all items in the plans and specifications are included in the bid in order to avoid change orders in the future for missed scope. We anticipate, further, an increase in the number of bid protests based on incorrect listing of subcontractors and lower tier subcontractors, particularly given the timing for the receipt of bids. Errors in listing subcontractors has been an issue raised on past bid protests. Lastly, there could be more situations where a contractor or subcontractor has to request substitution of subcontractor or lower tier subcontractor, who is unable or unwilling to perform in accordance with the bid. Bid protests and substitution requests suspend the contract award process until the issues are resolved. All of these items will generate the need for more staff.

DCS would need at least four project managers $94,564.00 starting salary, not including benefits, and one associate project managers at a starting salary of $76,897.00 not including benefits. In addition, DCS Legal is understaffed with (1) Lead attorney managing all construction contract reviews, protests, change orders and coordination with the projects management team of documentation needs with large CM firms and subcontractors, as well professional service contracts. The anticipated increased administrative duties of SB 454 will require the addition of at least two Staff Attorney 1 starting salary $128,582.00, one Paralegal Specialist 1 $55,273-$70,024, and one Administrative Assistant $40,000 starting salary-- all positions not including benefits dedicated solely to construction matters.

DAS FISCAL IMPACTS of SB 454

Direct Costs
$200,000  System Modifications and Consulting Services  
$650,000  IT improvements  
$807,590  Staffing needs  

$1.6 million in direct costs

**Indirect Costs**

There is the potential for a 2-5% increase in GC and CM future bids as contractors are going to build the costs for complying with this into their bid submissions. With more than $200,000,000 a year in construction the increased indirect costs to the state can be estimated in the $4-$10 million range.