



FEDERATION OF WOMEN CONTRACTORS

Statement of the Federation of Women Contractors
to the Illinois State Senate Committee on Procurement
May 10, 2011

Thank you for the opportunity to convey our views on procurements to the General Assembly.

The Federation of Women Contractors is a not-for-profit organization dedicated to the advancement of women-owned businesses in the construction industry. With over 120 members, it is the largest and strongest organization of its type in Illinois.

The state should recognize the relative bargaining positions of prime contractors, vis-à-vis subcontractors. Prime contractors are in a much better position than subcontractors, as subcontractors must rely on the good will of prime contractors for their work. There are relatively few prime contractors and relatively many subcontractors, with the obvious corresponding supply and demand dynamics.

It is in the state's best interest to develop more prime contractors to generate the largest pool of competition possible for bids to drive down the price of public works contracts. Minority- and women-owned firms also tend to hire a more diverse workforce, generating disproportionate benefits for the communities that suffer from relatively higher unemployment. Thus, the development of more minority-owned and women-owned prime contractors further enhances the interests of the state.

We believe procurement lettings should be structured into smaller, more frequent bids rather than larger infrequent bids. The smaller the bid, the more likely a smaller company can handle the work and grow into a larger company. Thus, we support the current law requiring the Capital Development Board to use multiple prime contractors for projects, including a separate prime contractor for electric, heating, ventilation, electric wiring and general contract work. We oppose SB 1352 that would allow single-prime work in larger bids as an exception to the general rule for CDB work. We also believe that IDOT should be required to follow CDB's statutory mandate and bid out separately more of the transportation work.

The new disclosure regarding subcontractor payments is a significant improvement to the procurement system. It allows for more transparent pricing and to the extent it puts downward pressure on costs, taxpayers benefit. As subcontractors are a significant and permanent component of public construction work, taxpayers and public officials should know all components of the cost of a contract in order to root out inefficiencies and provide for more competition.

It is our recommendation that the state create a pilot program for direct pay of subcontractors. Conceptually, once a subcontractor's work has been certified by the state's resident engineer as complete and satisfactory, there is no reason for the subcontractor's payment to be routed through the prime contractor. Despite statutory prohibitions, some prime contractors refuse to pay subcontractors in a timely fashion. The threat of filing a complaint with the state is rather empty compared to the possibility of losing future business from the prime contractor who is holding on to the subcontractor's fee. Creating a pilot program for some direct payment to subcontractors, following the draft language of Amendment 3 of Senate Bill 133, would ensure subcontractors do not become de facto bankers to prime contractors who do not forward subcontractor's fees in a timely fashion. Equally important, is the potential for the state to realize a significant cost savings by paying subcontractors directly. Disclosing the subcontracts allows the state to establish direct payment to subcontractors, and is therefore aware of the price for the subcontractor's products and/or services.

We absolutely are against any attempt to reinstate the seven-day cure period. The seven-day cure period was the source of significant abuse and bid shopping. Before SB 351, prime contractors would win a bid with a subcontractor bid included, and then after winning the bid, have the opportunity to shop the bid around to the subcontractor community in order to lower the bid. Those savings would not flow to the taxpayer, but rather would flow to the prime contractor. Thus, the protections of SB 351 should be retained.

Electronic bidding would be an improvement over the current paper-based bidding system and we strongly support and encourage the state to quickly institute the necessary technology.

The current professional services regime places too much emphasis on past performance, setting up a Catch-22 for new entrants. New businesses can't win any bids because they do not have enough past performance, but they can't build up any performance because they aren't able to win any bids. Additionally, due to the strict interpretation of ex-parte communication by some state agencies, new companies are hamstrung by the inability to effectively communicate and ask questions that are necessary to facilitate their entry into the procurement system. Thus, past performance should be de-emphasized or eliminated entirely as criteria for professional services procurement.