



4/28/2023

To: House Committee on Government Ops

RE: S.9 authority of the State Auditor to examine the books and records of State contractors

Associated General Contractors of Vermont (AGC/VT) is the trade organization for contractors and construction workers in Vermont. We provide industry specific training, Occupational and Safety Health Administration (OSHA) and Mine Safety and Health Administration (MSHA) certifications and are home to nationally recognized safety instruction. Our members employ 15,000-20,000 in Vermont annually with careers offering wages and benefits well above Vermont's livable wage. Our members perform contracts directly with state agencies including the Vermont's Agency of Transportation (VTRANS), Buildings and General Services (BGS) and Agency of Natural Resources (ANR).

Most State contracts are awarded through a low bidder process which begins with the release of a "Request for Proposal" which has strict rules and requirements for respondents. The respondents are required to demonstrate the financial, mechanical, specialization and processes to win preapproval to bid on the contract. The awards are clear and advertised to the public to provide transparency in appropriation of funds. When VTRANS awards a bid not only are the bottom-line numbers advertised but each pay item is referenced side by side with the three best bids (see attached "Bid Result Detail Report"). This is a fair process which allows the state to provide oversight and stewardship for state funds. In addition to the specific agencies oversight prior to contracts being awarded they are screened by the Attorney General's Office.

In addition to the bid prequalification and advertising state contracts also impact the minimum pay standards Federally through the Davis Bacon Wage Act and Vermont's Prevailing Wage (see attached). These programs run through Vermont's agencies and civil rights divisions monitor and audit pay standards for contracts. This not only guarantees workers a fair rate of pay, it also by intention of the program increases those payrolls by surveys and former awarded bids.

Not only are wages regulated but so are the processes by which the contracts are fulfilled. Each department releases requirements of performance on the contract whether they be prescriptive in the contract or through tools like Vermont's Standards and Specifications manual provided by VTRANS. Throughout the projects individual processes are often validated by on sight engineers or inspectors following completion of the project. These requirements and standards of performance are clearly outlined in Vermont's bulletin 3.5 which holds contractors to a strict performance review.

The Associated General Contractors and its members agree that a strict performance standard should be part of any contract awarded by the state and the process is clear and precise. The association does not object to the State Auditor being recognized as an agent of the state as outlined in the bill "*including contractors as it relates to performance under State contracts*" in subsection "C" and adding "performance of the contract" the 13<sup>th</sup> duty under 32 VSA §163 and subsequent change to 32 VSA §167

as it was originally introduced. **AGC/VT and its members sincerely appreciate the addition of the standard of “performance of contract” to duties proposed and the protections offered to the information by adding an exemption to the Public Records Act.**

After testifying in the Senate some questions have come to light that AGC/VT believes should be considered prior to passage of this bill and language can be created to avoid complications.

First, VTRANS and BGS have strategic policies in place for contracting that include clear evidence of performance of the contract. We do not know that these same clearly defined deliverables are available in other businesses such as healthcare or ongoing contracts like OneCare which could lead to litigation about what indeed is “performance”.

Second, we have since learned through articles in VTDigger and other sources that the original trigger for the OneCare audit was the result of a multi-year grievance from an employee terminated from OneCare (per VTDigger). This is of concern. Despite the workforce shortage AGC/VT members terminate employees for things like safety or non-compliance in their employment. Safeguards should be added to the bill to prevent aggrieved employees from falsely alleging malpractice simply in retaliation for being terminated. “Trigger Language” would make sense to prevent abuses from employees seeking warrantless retribution against former employers. For example: a standard of “probably cause” to commence audit would make sense. That standard is applied to police action, employer/employee relations and other policies in Vermont.

Last, there is a concern that the awarding agency and the Auditor at the same time may choose to pursue an audit. This would result in two separate investigations with potentially two separate results complicating the process and leading to litigation. Language added to either prohibit dual investigations or require the agency to cooperate with the Auditors office during an investigation should be added to the bill. Similar policy was passed and a memorandum of understanding was created between Vermonts Department of Labor and the Attorney Generals office regarding employee misclassifications in 2019 under bill S.108 to avoid duplicative investigations/results.

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