



2/14/2023

To: Senate Committee on Government Operations

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).

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 7 under State contracts*" in subsection "C". However, the association and members highly objects to adding the 13th duty under 32 VSA §163 and subsequent change to 32 VSA §167. These changes represent a significant change to state law that would allow the Auditor unbridled power to pursue records they perceive to be related to the contract, but not limited by any guardrails. The 12 duties currently afforded to the Auditor are specific to state agencies and should remain so.

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 (see attached) 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 validated often times 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.

This major shift in policy would create challenges to the sealed bid system. An Auditor could ask for any detail they deem connected to the contract including actual costs of materials, financing mechanisms, organizational information, profit margins and other proprietary information which would become public records. These records could then be summoned through a Public Records Act request by anyone which could expose this proprietary information. Once the data enters the public it would allow for indirect collusion between bidders which would be at the expense of taxpayers.

It has been stated that proprietary information is protected under the Public Records Act but this is not clearly defined. It would be up to interpretation what indeed is considered proprietary which would lead to litigation. This litigation would come at great cost to both the contractor and the State.

In addition to the challenges above we must all realize that the State Auditors office is a political position whereas state agencies are directed by specific laws and standards. Giving a political position such discretion to launch significant investigations with no guardrails such as a "performance standard" that could be initiated by simple curiosity, request from a constituent/competitor or no reason at all is not just and would impact contractors decisions whether or not to participate.

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