

TO: The Honorable Mark Hutton, Chair
House Commerce, Labor and Economic Development Committee

FROM: William W. Sneed, Legislative Counsel
J.E. Dunn Construction

SUBJECT: H.B. 2267

DATE: February 18, 2015

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I act as legislative counsel for J.E. Dunn Construction. J.E. Dunn Construction is a privately-owned construction company with its headquarters in Kansas City and offices throughout the United States, including Kansas. Today we are appearing neutral on H.B. 2267, but wanted to make some observations and recommendations regarding the bill.

1. New notification requirement. Throughout this bill, the proposal would create an additional requirement to directly notify AGC-KS or "all active general contractor associations in the state," if Alternate Project Delivery is being pursued. As noted in current law, notice requirements are already prescribed. However, if additional notice requirements are warranted to allow greater visibility of information, we would suggest that notices and opportunities could be placed on DFM's Plan Room where other planning and bid opportunities are already placed. (<https://kansasdfm.contractorsplanroom.com>.)

My client is also concerned that the notice language is vague and sets up an opportunity for a bid protest in every case where some GC organization (not defined) is not notified by an innocent school board, university, or state agency. This could provide grounds for lawsuits against all levels of government by a contractor that believes proper notice was not given under this vague standard. The defendant in a bid protest case is the government entity that solicited proposals.

2. Fee proposals. The bill would require that the fee portion of proposals be submitted only to the Secretary of Administration, who shall evaluate and send recommendation to the selection committee. We understand that this section may need more objectivity. Fee evaluation should be apparent and not require another layer within the delivery system. If General Requirements/General Condition cost evaluation requires more clarity and definition, we suggest that additional time be allotted to define what the general requirement structure would be to allow a highly objective evaluation to be possible by a party not intimately familiar with the project schedule and specific project requirements that heavily influence General Requirement cost.

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Additionally, this evaluation may be extraordinarily difficult for a party that is not involved in the project in any manner to provide a useful evaluation. Given DOA's potential disconnect from local projects, there is significant risk of DOA being accused of bias in making recommendations because DOA will not have the necessary information to make a well-informed decision on the facts of the project and interviews of the proposed project teams.

3. Timing of CM proposals. The bill would require that if proposing on trade package work, the CM is to provide its proposal before other bids are due. We contend that the CM should be allowed to pursue trade package work on the same terms as other contractors or subcontractors. Requiring an early submission of bid disadvantages the CM with any last-minute supplier or manufacturers' quotes that occur with lump sum bidding.

Additionally, for Scopes of Work for which the CM is submitting a Lump Sum trade package proposal, those bids can be submitted in sealed envelopes for opening by the Owner or Architect to assure an "above board" process. The Owner or Architect can log bid results, then allow the CM to complete evaluation of bid proposals and provide owner information for their final determination of the most responsive bid.

Mr. Chairman, we appreciate your giving us this opportunity to comment on H.B. 2267. We stand ready to answer any questions and provide any technical assistance you may need.

Respectfully submitted,



William W. Sneed

WWS:kjb