



00-555
144.52
19

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

APR 7 1971

B-109181



LM095595

Dear Mr. Chairman:

By letter dated February 20, 1970, our Office replied to your letter dated February 6, 1970, wherein you advised us that a hearing would be held on March 11, 1970, relative to H.R. 3345 and H.R. 11245, 91st Congress. These identical bills would require that certain subcontractors be identified on bids for public works contracts. An identical bill, H.R. 10, has been introduced in the 92nd Congress. In our letter of February 20, 1970, we advised you that our Office had no audit experience in the area and that we had no recommendations to make regarding the merits of the proposed legislation.

Subsequently, we have made a review of this matter. In this review, we were unable to obtain any significant new information not already received by your Committee in the testimony over the years. Since we noted, however, a lack of uniformity in agency procedures related to this area, we are sending a copy of this letter to the Commission on Government Procurement.

As stated in the subject bills requiring the naming of subcontractors in bids on certain Government construction work, the intent of such a requirement would be to promote fair competition among prime contractors and subcontractors and to curb a practice referred to as bid shopping, i.e., efforts of a prime contractor, after award of a contract, to secure lower subcontract prices.

The proposed legislation defines a subcontractor as an individual or firm with whom the prime contractor proposes to enter into a subcontract for manufacturing, fabricating, installing, or otherwise performing work pursuant to the specifications. The categories of subcontractors to be listed (named) by the bidders would include "plumbing, heating, air conditioning and ventilation, electrical, elevators, painting, masonry, tile and terrazzo, granite, lathing and plastering, roofing, and all other categories comprising more than 3 1/2 percent of the total estimated cost of the contract". Other categories could be included at

the discretion of the contracting officer. Only the name of the subcontractor and the type of work to be performed would be required to be specified on the bid documents.

Because of your Committee's interest, we inquired into the current procedures of Federal agencies as related to specifying subcontractors in prime contractors' bids and attempted to obtain information bearing on the merits of the proposed legislation, including information on the extent of any problem areas that would indicate the need for a closer control of subcontractor selection.

In connection with this examination, we studied the history of previously proposed subcontractor listing legislation and applicable position papers of various Government construction agencies. We also reviewed the listing regulations of the General Services Administration and the Department of the Interior and examined some of their contract files.

Further, we studied the statutes governing subcontractor listing in the States of California and Massachusetts and also secured and considered the opinions of about 110 individuals in Washington, D. C., and the States of California and Massachusetts. These individuals represented Government and State construction agencies, prime contractors, subcontractors, trade associations, and legal, financial, and surety organizations and firms.

Although there is no Federal legislation requiring that names of subcontractors be submitted by prime contractors with their bids, two agencies--the General Services Administration and the Department of the Interior--have administrative regulations requiring such information for certain construction contracts. In addition, some States, notably California and Massachusetts, have had such requirements by State law for many years.

We found that the Federal agencies having listing requirements were generally following their stated procedures. We noted that these procedures permit the requirements to be waived pursuant to administrative determination, and we found instances wherein such waivers were made.

The Department of Defense, which awards more construction work by far than any other Federal agency and does not require subcontractor listing, has received, according to Defense officials, very few complaints of bid shopping.

We were given the following assertions, pro and con, regarding the desirability of requiring bidders on Government construction work to list the names of their subcontractors.

Pro:

- The subcontractors would be protected because their bids to the prime contractor could not be lowered unilaterally,
- More subcontractors would submit bids and the increased competition would result in lower subcontractor bids and in turn lower prices,
- Better workmanship would result because the subcontractors would not have to "cut corners" to make reasonable profits,
- Subcontractors would not be forced into financial distresses caused by price squeezes from the prime contractor,
- The practice of bid shopping would be curbed and more ethical conduct in the bidding process would result, and
- The awarding authority would have more control in the selection of subcontractors.

Con:


- Competition would be reduced because of the complexity of a listing procedure, thereby presumably increasing construction costs,
- The time required for preparation of bids would be extended because bid shopping would take place before rather than after award of the contract,
- Some otherwise valid low prime contract bids would be rejected,
- As the proposed law would permit subsequent substitution of subcontractors, with cause, the Government would be interjected into disputes between the prime contractor and subcontractors,
- Subcontractors could make it difficult for a particular prime contractor to bid by collusively withholding all of their bids, and

--Higher prices would result because of the prime contractor's exposure to more risk and more complicated procedures and also because the prime contractor would not be able to anticipate getting lower subcontract costs through bid shopping in determining the bid price.

We were unable to document or prove any of the assertions pro or con regarding the effect of having a subcontractor listing requirement for construction contracting. Our Office has, however, received complaints of bidders whose bids were rejected because of failure to comply with listing requirements. During this current review, although bid shopping was generally acknowledged by Government contracting personnel and by State officials and responsible individuals in the construction industry to be a prevalent practice, we were not furnished evidence of any specific case of bid shopping having occurred.

We conclude, therefore, that our review disclosed insufficient evidence to support a position for or against legislation requiring subcontractor listing in bids under construction contracts. We believe, however, that the lack of uniformity among the Federal agencies as indicated by the diametrically opposed procedures--some agencies with and others without listing requirements--may warrant consideration.

Sincerely yours,


Assistant Comptroller General
of the United States

The Honorable Emanuel Celler
Chairman, Committee on the Judiciary
House of Representatives