



## **A PROPOSAL TO PROMOTE EFFICIENCY IN PUBLIC CONSTRUCTION**

The Associated Builders and Contractors of NH/VT represents a broad cross section of nearly 300 contractors and subcontractors with deep experience in state contracting. This proposal identifies key areas of improvement for New Hampshire’s public construction contracting process.

Contractors consistently report that delays in issuing Notices to Proceed and responding to change orders and payment applications disrupt project schedules and burden business operations. These inefficiencies create an adversarial environment that not only increases costs but also discourages participation. Streamlining these processes—by adopting practices similar to those in neighboring states—can foster a more predictable, cooperative, and competitive contracting environment.

### **1. Issue a Notice to Proceed on All Construction Projects Within 30 Days of Bid Opening.**

In many other states such as Massachusetts, Maine, and Vermont, contracts are executed within two weeks of bid opening, followed promptly by a Notice to Proceed (NTP). In New Hampshire, this process often takes several months. These delays place an undue burden on contractors, exposing them to downstream price expirations, price escalations, employee downtime expenses, and scheduling challenges. This uncertainty disproportionately impacts smaller contractors and subcontractors, who are less equipped to absorb such risks. The significance of this challenge is particularly acute in New Hampshire, as it is uncommon in other states.

To streamline this process, we recommend that the Governor instruct the Attorney General’s Office to prioritize the review of construction contracts (as defined in NH RSA 447), so that these contracts can go through the G&C approval process on an expedited basis as needed to enable an issuance of an NTP within 30 days of Bid Opening. Additionally, all RFPs should include the anticipated bid opening date, award date, and NTP Date to provide greater transparency, enable contractors to better manage their bid price and internal resources, and establish a framework for seeking change orders if the State delays the project beyond the anticipated timeline. This is consistent with the approach adopted by other states.

### **2. Avoid Rebidding Procurements Unless Absolutely Necessary.**

Rebidding procurements should be avoided unless absolutely necessary, as it disrupts the efficiency, fairness, and integrity of the process. Preparing bids requires significant time and resources for both the State, Prime Contractors, and Subcontractors. Unnecessary rebidding results in duplicated costs and delays that can hinder critical projects, while also placing bidders at a competitive disadvantage with one another. Frequent rebidding may also deter reputable contractors and subcontractors from participating in future projects, ultimately reducing competition and driving up costs. To maintain public confidence in the process, rebidding should be avoided unless absolutely necessary.

### **3. Substantively Respond to Change Order Requests and Payment Applications Within 7 Days.**

Contractors working on State projects frequently experience substantial delays in receiving responses to change orders and payment applications. These delays disrupt cash flow, hinder project progress, and create uncertainty that undermines the stability contractors should expect when working with the State. Prompt responses are critical for contractors to manage their obligations, including subcontractor payments and resource allocation. The State should commit to providing substantive responses to change order requests and payment applications within 7 days to ensure contractors can operate with confidence and stability.

### **4. Delegated Design, Inferred Scope, and Unforeseen Conditions.**

The State should not require that contractors be responsible for delegated design or inferred scope beyond what is expressly defined in the bid documents. In order for a contractor to quantify and price these risks without proper bid documentation, contractors are forced to make scope and cost assumptions that may conflict with the State's expectations, and result in tremendous inconsistencies in the scope of work assumed by the contractors in their bid price. Clear bid documentation is crucial to ensuring all parties understand their respective roles and obligations, reducing the risk of disputes, delays, and costly rework.<sup>1</sup>

### **5. Foster a More Collaborative Approach**

We recommend that the State and industry make a concerted effort to foster collaboration by engaging in regular, open dialogue with contractors, providing clearer communication channels, and actively soliciting feedback on processes and document requirements. Even small changes in tone and approach can signal a genuine desire to partner with contractors, which may ultimately lead to improved project outcomes and a more efficient contracting environment. We would be pleased to participate in a standing meeting with the appropriate

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<sup>1</sup> An alternative is to instruct contractors on what to carry for allowance values in their bid price to keep the process fair and “apples to apples”.

State personnel to monitor the procurement and contracting process, identify bottlenecks or challenges as they arise, and work swiftly to address them for the mutual benefit of both the State and the contracting community.

**Conclusion:**

We are grateful to live and work in a State that has such a uniquely collaborative political process. On behalf of the thousands of employees who work in the building and contracting space, we appreciate the opportunity to address this important concern. New Hampshire contractors frequently express frustration that the state's contracting process fails to adequately address the business impacts on the construction community. Contractors consistently report a perception that their concerns are secondary to rigid administrative requirements, ultimately eroding trust and stifling productive engagement in the public contracting process.

Addressing these concerns will create a more predictable, stable environment that encourages greater participation from a broader range of contractors. Specifically by:

- **Issuing a Notice to Proceed on All Construction Projects Within 30 Days of Bid Opening**
- **Avoid Rebidding Procurements Unless Absolutely Necessary.**
- **Substantively Respond to Change Order Requests and Payment Applications Within 7 Days.**
- **Dealing with Delegated Design, Inferred Scope, and Unforeseen Conditions.**
- **Fostering a More Collaborative Approach**

the State can increase competition and reduce the burden on taxpayers, ultimately improving public construction outcomes.

We stand ready to partner on achieving these goals, and at helping to further develop any additional ideas others may have to achieve a more efficient and effective state public construction procurement process.