

2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2233

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2233
1/27/2015
Job Number 22591

- Subcommittee
 Conference Committee

Committee Clerk Signature

Era Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to the public opening of subcontractor bids

Minutes:

Attachment

Chairman Klein: Opened the hearing.

Senator Dever: This bill involves public opening and advertisement of bids and it involves construction managers; two different references, an agency construction manager and a construction manager at risk. There were several major projects in the city and the subcontract bids were not opened publically but in the contractor's office. It seems to me that the public has an interest in knowing that information as well.

Bill Kalanek, National Electrical Contractors Association, Dakota Chapter North Dakota association of Plumbing, Heating & Mechanical Contractors: Written Testimony Attached (1). (2:10-3:24)

Senator Campbell: Asked who determines who gets the bid when the low bid doesn't always get the project.

Bill Kalanek: Said that there are two processes one is design bid build those are all required to be publically bid and advertised and to have public bid letting. On the construction management side this bill serves to create a similar situation where the bids would be opened and in view of the public. Under design bid build you are required to go with the lowest responsible bidder. If you had a bad history with the lowest bidder you wouldn't necessarily have to go with the lowest dollar amount. This change in this process is to simply shed light on it not to put additional requirements on. (4:33-6:13)

Travis Greff, Construction Manager for HA Thompson & Sons: Written Testimony Attached (2). (12:03-14:03)

Chairman Klein: You're a construction manager and your bids would generally be as a subcontractor?

Travis Greff: I would be submitting a bid to the construction manager or the construction manager at risk.

Heather Jones, City Air Mechanical Inc.: In support of the bill. The only other point she wanted to make was the at risk portion of it that there is more than one contractor at risk in this process. As sub bidders they are also exposed to bonding requirements on projects and insurance requirements just as the GC or CM is. (16:25-17:55)

Opposition

Russ Hanson, Associated General Contractors of North Dakota: In opposition to the bill as written. They have no problem with section one. There is a difference between the two delivery systems. (18:25-23:09)

Chairman Klein: If the construction manager at risk has a couple of bids and one of the companies he doesn't want to do business with or doesn't find them performing to the level that they need to, is that the concern here? He chooses the other company because they can get the work done. He is at risk because he has to get the work done at the price he is committed to.

Russ Hanson: You correct the contractor absolutely to work with a subcontractor that get the work done on schedule and within the confines of what they are guaranteeing for the maximum price and that is the concern with the change of section two.

Senator Miller: Asked if there was any benefit or challenge or something of that nature if we required that the bids be held and then disclosed at the end of the project so we know if there is something going on.

Russ Hanson: Said that they view the current statutes as working and working pretty well. (28:55-29:08)

Chairman Klein: We are going to go back to that 2007 rewrite; at that point everyone was on board, that was all part of the main rewrite back then?

Russ Hanson: You are correct.

Senator Murphy: It seems to me that you have three factors going on here, money, time and quality concerns and if we pass this bill as it is then time is certainly going to come into play and that the way you have it now, it is a faster process and that is why universities and some others appreciate that, correct?

Russ Hanson: That is what I am being told and those three factors are critical for whatever aspect of the project you are on. (30:42-30:51)

Senator Murphy: It would seem that money would be favored by the people you are representing because they have a chance to make a little more according to the people that have testified today. Then quality comes into play if you are bid shopping and getting lesser quality that is a complaint as well. If we pass this bill as it is, how do we change your world?

Russ Hanson: You hit on the three important facets and if this bill passes the concern is that there isn't the ability as there is now to work with the subcontractors who meet deadlines. It may slow things down and it may drive prices up. (31:32-32:14)

Tom Todd, General Contractor with Northwest Contracting of Bismarck: Written Testimony Attached (3). (32:31-35:40)

Senator Murphy: Explain to me how opening this for public bids take your control away and I also want you to explain why it would likely lead to higher prices if it is publically bid.

Tom Todd: During the process we submit a guaranteed maximum price prior to receiving the bids. Once we receive the bids we open all the bids up with the owner, with architect and the engineers so there is absolutely no possible way to shop prices. If we have to hire somebody that we feel can perform the project or complete the project on time then we have to increase our price so that at the end of the project if we aren't on schedule we can be prepared to pay liquidated damages. (36:07-36:53)

Chairman Klein: What I am hearing is it is kind of public but not really? When you open the bids how many people are in the room?

Tom Todd: There would be us, the owner, the owner's representatives, the architect and the engineers. Tom continued to answer questions about how the process works. (37:40-42:12)

Darin Scherr, Business and Operations Manager for Bismarck Public Schools: Written Testimony Attached (4). (43:10-46:32)

Senator Campbell: Asked if he feels he is paid more for some of these projects because they had to bid it higher?

Darin Scherr: Since construction management is so new in our community the construction manager agency is still in its infancy and we may have paid more just based on the number of bids we opened for construction management agency. (47:10-48:44)

Senator Burckhard: If you negotiate schedule and price and you get the project done six months early, do the taxpayers save some money on that?

Darin Scherr: Essentially what happens with any savings you realize in a project we get 90% of those savings as a school district and the contractor gets 10%. (49:18-50:02)

Bonnie Staiger, American Council of Engineering Companies and the AIA of North Dakota: She is here to suggest that the bill be referred to an interim study. (50:28-52:10)

Chairman Klein: We will take it all into consideration. Closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2233
2/3/2015
Job Number 23110

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Lutelt

Explanation or reason for introduction of bill/resolution:

Relating to the public opening of subcontractor bids

Minutes:

Amendment Attached

Chairman Klein: Opened the meeting and handed out an amendment. Amendment Attached (1).

Senator Miller: Moved to adopt the amendment.

Senator Poolman: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Miller: Moved a do pass as amended.

Senator Poolman: Seconded the amendment.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Campbell will carry the bill.

February 3, 2015

TJ
2/3/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2233**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.0800.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Miller Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2233**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.0800.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Miller Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Campbell

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2233: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2233 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2233

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2233
3/17/2015
25027

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Multiple bids versus single prime bids, bidding thresholds, design services thresholds and indemnification.

Minutes:

Attachments A, 1, 2

Chairman Keiser: Opens the hearing SB 2233.

Senator Dever~District 32: People came to me on this bill because they feel that the process of bidding under construction management, is not necessarily an open process. They want it required that those bids be publically open. There was some disagreement that that was a problem and Senate has turned it into a study.

1:55

Bill Kalanek~North Dakota Chapter of the National Electrical Contractors as well as the North Dakota Association of Plumbing, Heating: (Attachment A-Which is the original bill) 1The previous speaker indicated to return the bill back to its original form. There are some members in the crowd that think it needs to be a studied and had issues with the bill in the original form. From my contractor perspective it was issue of fairness. There seems to be a part in the process that was not subject to public scrutiny because it seemed to be done behind closed doors. Our entire goal was to shed some light on the subcontractor bidding process with regard to construction management. If you restore the bill, that would be fine with me, if not and you pursue the study, the study is on a couple of other bills that are still alive, you could vote that up or down.

Representative Hanson: What was the opposition in the Senate?

Kalanek: It somehow added cost to the process. My group's contention, if you are having a meeting to decide who gets the bids, what does it take to open the door and let us come in and watch, publically.

Representative Beadle: Do they currently, publically open bids from the general contractors on larger improvement projects?

Kalanek: The open bids for the general contractor are conducted publically, but the subcontractor, typically those selections are made behind closed doors.

Representative Beadle: The bill has been studied repeatedly?

Kalanek: A true study started in 2005, worked on it for two years and introduced a complete rewrite of chapter 48 in 2007. Since that time, we've held fast how chapter 48 is currently written and with the number of bills that popped up this session, the study idea came back.

Mark Dougherty~Associated General Contractors of North Dakota: We are in support of the study with the amendments. Maybe it's time to look at this again. I don't know if it would cost more.

Chairman Keiser: Even at risk where just the construction manager approach, do the subs that get involved in that project carry bonds?

Dougherty: It varies.

Chairman Keiser: They can come to their subs and say you have to provide your own bond?

Dougherty: The construction manager has to bond the part of the project that covers his cost. Every subcontractor in separate contracts, they have to bond their own parts. The construction manager at risk, the only thing that statute requires that the at risk manager bonds them.

Chairman Keiser: They can if they wish.

Bonnie Staiger~Representing both the ACEC and AIA North Dakota: (Attachment 2).

13:10

Representative Becker: Are you able to explain why you are opposed to this bill on the original form?

Staiger: Taking on all the bills were more than we could successfully manage, given all the desperate attempts to make modifications. We decided to come together and support an interim study.

Representative Becker: Are you able to explain on this bill why you are opposed to what is contained within the original form?

Staiger: We didn't specifically oppose the original language. What we wanted to do was offer the interim study as an alternative.

Chairman Keiser: These are two separate concepts entirely. The original bill just says open the bidding. I agree with you that every session, we will have bills coming forward. Is there anything wrong with saying, we can amend this bill so that, number one, that it's done in public and everybody that supported that can support it. Number two, we would have a study in the interim. Would you support that?

Staiger: That was not our position but we recognize that could certainly be the choice that you would chose to pursue.

Chairman Keiser: Anyone else here to testify in support of SB 2233, opposition, neutral? Closes the hearing on SB 2233, what are the wishes of the committee?

Representative Becker: I'm going to move to include all the language originally submitted and with the amendment that was send to us appended on the original bill.

Chairman Keiser: As I understand it, we are going to combine the two bills into one bill?

Representative Becker: Yes.

Representative Boschee: Second.

Chairman Keiser: Further discussion?

Voice vote-motion carried.

Representative Beadle: Move further amend to strike the word "consider".

Motion failed for lack of a second.

Representative Becker: Moves a Do Pass as Amended

Vice Chairman Sukut: Seconded.

Chairman Keiser: I do agree with Representative Beadle but the last time we did that last session, resulted on a 30 minute debate on the floor and almost lost the bill.

Representative M Nelson: I could certainly understand what the agency construction manager, why that should be publically be open bids. I do have a problem taking a construction manager at risk and they have to open their bid up. They are the ones at risk, going to have those bids in place before they affectively place their own bid. If they have to do those things publically, then everyone else would know where their bids are at. That would put them at a disadvantage. I'm going to oppose the bill as a whole.

Roll call was taken on SB 2233, for a Do Pass as Amended with 10 yes, 4 no, 1 absent and Representative Beadle will carry the bill.

March 17, 2015

SL
3/18/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2233

Page 1, line 1, after "to" insert "amend and reenact section 48-01.2-22 of the North Dakota Century Code, relating to the public opening of subcontractor bids; and to"

Page 1, line 1, remove "of public improvement issues"

Page 1, remove line 2

Page 1, line 3, remove "thresholds, and indemnification"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 48-01.2-22 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-22. Subcontractor bids.

1. An agency construction manager selected for a public improvement shall publicly advertise ~~publicly and receive~~open bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall publicly advertise ~~publicly and receive~~open bids from subcontractors for the work items the construction manager at-risk chooses not to perform. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor."

Renumber accordingly

Date: Mar 17, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2233

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Becker Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
include all the language originally submitted
& with the amendment that was sent to us
appended on the original bill.
voice vote - motion carried

Date: Mar 17, 2015

Roll Call Vote: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2233

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rick Rep Becker Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser		X
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman		X
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson	X	
Representative Kasper		X	Representative M Nelson		X
Representative Laning	X				

Total (Yes) 10 No 4

Absent 1

Floor Assignment Rep Beadle

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2233, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2233 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "amend and reenact section 48-01.2-22 of the North Dakota Century Code, relating to the public opening of subcontractor bids; and to"

Page 1, line 1, remove "of public improvement issues"

Page 1, remove line 2

Page 1, line 3, remove "thresholds, and indemnification"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 48-01.2-22 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-22. Subcontractor bids.

1. An agency construction manager selected for a public improvement shall publicly advertise ~~publicly~~ and receive open bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall publicly advertise ~~publicly~~ and receive open bids from subcontractors for the work items the construction manager at-risk chooses not to perform. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor."

Renumber accordingly

2015 CONFERENCE COMMITTEE

SB 2233

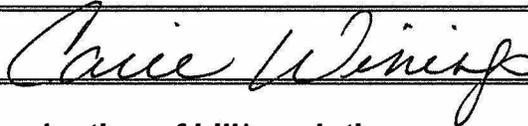
2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2233
4/6/2015
Job # 25817

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 48-01.2-22 of the North Dakota Century Code, relating to the public opening of subcontractor bids; and to provide for a legislative management study.

Minutes:

Attachments 1

Chairman Campbell: Opened the conference committee on SB 2233. See Attachment #1 for the changes proposed. I believe everyone is in agreement. The Senate hog housed it and made it into a study and the House took out Section 1 part 2 - keeping Section 1 and I think we are ok with that. Does anyone have any comments?

Representative Beadle: Moved for the House to Recede from the House Amendments and to further amend to strike subsection 2 of section 1.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Campbell and Representative Beadle will carry the bill.

April 6, 2015

TD
4/6/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2233

That the House recede from its amendments as printed on pages 965 and 966 of the Senate Journal and page 1114 of the House Journal and that Engrossed Senate Bill No. 2233 be amended as follows:

Page 1, line 1, after "to" insert "amend and reenact subsection 1 of section 48-01.2-22 of the North Dakota Century Code, relating to the public opening of subcontractor bids; and to"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 1 of section 48-01.2-22 of the North Dakota Century Code is amended and reenacted as follows:

1. An agency construction manager selected for a public improvement shall publicly advertise ~~publicly~~ and receive open bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor."

Renumber accordingly

**2015 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2233 as (re) engrossed

Senate "Enter committee name" Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
- Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Beadle Seconded by: Senator Poolman

Senators	4/6	Yes	No	Representatives	4/6	Yes	No
Campbell	✓	✓		Beadle	✓	✓	
Poolman	✓	✓		Louser	✓	✓	
Murphy	✓	✓		Boschee	✓	✓	
Total Senate Vote				Total Rep. Vote			

Vote Count Yes: 6 No: 0 Absent: _____

Senate Carrier Campbell House Carrier Beadle

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2233, as engrossed: Your conference committee (Sens. Campbell, Poolman, Murphy and Reps. Beadle, Louser, Boschee) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 965-966, adopt amendments as follows, and place SB 2233 on the Seventh order:

That the House recede from its amendments as printed on pages 965 and 966 of the Senate Journal and page 1114 of the House Journal and that Engrossed Senate Bill No. 2233 be amended as follows:

Page 1, line 1, after "to" insert "amend and reenact subsection 1 of section 48-01.2-22 of the North Dakota Century Code, relating to the public opening of subcontractor bids; and to"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 1 of section 48-01.2-22 of the North Dakota Century Code is amended and reenacted as follows:

1. An agency construction manager selected for a public improvement shall publicly advertise ~~publicly~~ and receive open bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor."

Renumber accordingly

Engrossed SB 2233 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2233

Testimony on SB 2233
Bill Kalanek
National Electrical Contractors Association, Dakotas Chapter
ND Association of Plumbing, Heating & Mechanical Contractors
Senate Industry, Business & Labor Committee
January 27, 2015

Good Morning Chairman Klein and members of the Senate Industry Business & Labor Committee, my name is Bill Kalanek, here today representing the members of the Dakotas Chapter of the National Electrical Contractors Association and the ND Association of Plumbing, Heating & Mechanical Contractors.

On behalf of our contractor members I'd like to voice our support for Senate Bill 2233 which establishes a revised bidding requirement within the Construction Management section of Chapter 48. The proposed change as suggested by the bill would shed light on how contracts are being bid and awarded within the Construction manager at risk process.

Currently when a project is proposed using the CMAR method, the public entity and the construction manager are required to get bids for any subcontractor work within the scope of the project. Those bids are then opened by the CM and the public entity, the selection of the subcontractors is then made without the public's knowledge. Simply put, the subcontractors I represent believe it's best for the taxpayer and all interested bidders that these bids are taken and selections are made in full view of the public to ensure the best result for the taxpayer.

For these reasons I would ask the committee in its wisdom give SB 2233 a "Do Pass" recommendation and ensure a fair and open process as we look to prudently spend taxpayer dollars.

Thank you.

SB 2233

Chairman Klein

Senator Campbell

Senator Burckhard

Senator Miller

Senator Murphy

Senator Poolman

Senator Sinner

My name is Travis Greff. I am the Construction Manager for HA Thompson & Sons: a plumbing, heating and mechanical firm located here in Bismarck. I am speaking here today to ask you to support the proposed amendment to Senate Bill 2233.

The Construction Management and Construction Management at Risk method of bidding work allows the public entity to choose a company to manage the construction aspects of the project based on an interview process. This aspect for choosing a managing firm is already held behind closed doors and the public does not have any input in how the firms are chosen.

After this is complete, the managing firm proceeds to solicit bids from subcontractors based on how the CM has decided to break the project up. Currently the code can be interpreted to read that once they have received the bids from all subcontractors that they can be opened in private. We feel that there are just too many aspects of this bid process that are not open to public review and we cannot see a reason why the bids should not be a part of public record. The bill still does state that the governing body could choose not to use the low bid due to past experiences or current legal disputes.

One of the more concerning aspects of Construction Management at Risk is that the contractor managing the project can self perform any aspects of the work they want. Private opening of the bids could allow them to review bids and then choose which portions they want to perform based on potential profits instead of competitively bidding them.

With CM and CM at Risk the construction managing firm has told the owner that they can complete the project for a set amount which opens the door for the firm to find ways of cutting costs in order to make a larger profit on the project. We have found on some public projects that after the bids are received that the Construction Manager then starts calling around asking for lower prices from the subcontractors often times by asking them to lessen the quality of the work. Public projects are still designed by Architects and Engineers who have designed the system to make sure the owner receives the highest quality project within budget. We feel that once a reputable company has given an honest price and are the low responsive bidder, they should be rewarded with the project. This bill is only asking that the bids are opened publicly so no games can be played behind closed doors after the bid date.

Thank you for your time.

Testimony SB 2233
Senate Industry, Business, & Labor Committee
January 27, 2015

Mr. Chairman and members of the Senate Industry, Business, & Labor Committee, my name is Tom Todd. I'm a general contractor with Northwest Contracting of Bismarck, North Dakota. I am also currently serving on the Associated General Contractors of North Dakota board of directors as the Vice President of the Building Division.

We are in opposition to the change proposed in section two of SB 2233 regarding the proposal to require public opening of subcontractor bids for Construction Management at Risk projects. The proposal to require public opening for Agency Construction Management in section one is not a concern. With this method, the Construction Manager is simply overseeing the project and has neither involvement in the actual construction of it nor any financial risk to guarantee a price.

However, the proposed requirement to publicly open subcontractor bids for Construction Management at Risk (section two) would negatively alter a popular delivery system for constructing public buildings. This system is working very well as the statute currently governs. With Construction Management at Risk, a general contractor is submitting a proposal to a public entity (owner) to construct a project. The general contractor will perform a portion of the project (to varying degrees depending upon the project) and subcontract the portions of the project it will not be involved with.

The key element to Construction Management at Risk delivery system is the requirement for the general contractor to submit a guaranteed maximum price for the project. That is why the term "Risk" is part of this delivery system's title. The general contractor is assuming significant risk in guaranteeing a price for the project and getting it completed on time. In doing so, the general contractor needs to work with subcontractors that can meet the project schedule

(manpower, experience, expertise, etc.) to protect from liquidated damages for finishing the project late. If that control is taken away, costs will likely go higher to cover the uncertainty.

We believe the current law provides transparency with the requirement for subcontractor bids to be publicly advertised. Any subcontractor is able to be aware of subcontract bid opportunities and to submit their proposal for a prospective project.

Since Construction Management at Risk delivery system was enacted by the 2007 Legislature, it has quickly become a very popular method for constructing publicly funded vertical construction, particularly schools. We view the proposed change as a step backward for a delivery system that is working well and would likely lead to higher prices for publicly funded projects.

Thank you for the opportunity to testify today. I would be happy to attempt to answer any questions you may have.

Testimony SB 2233
Senate Industry, Business, & Labor Committee
January 27, 2015

Chairman Klein and members of the Senate Industry, Business, & Labor Committee, I am Darin Scherr, Business and Operations Manager for Bismarck Public Schools.

First, I would like to thank the legislature for giving public entities a choice in construction delivery methods. Bismarck Public Schools has used the traditional design, bid, build most recently with Sunrise Elementary and Career Academy, Construction Management Agency with Lincoln and Liberty Elementary and Construction Management at Risk with Legacy High School due mainly to have control in a volatile pricing market.

We analyze each and every project related to construction delivery methods. We use what is in the best interest of both the students and tax payers of our district. Bismarck Public Schools recently passed an \$86.5 million dollar bond and elected to use Construction Management as our delivery method. What we learned with our two elementary schools is that Construction Management drives schedule. We were able to shave almost 6 months from our typical construction schedule.

Bismarck Public Schools does require a public bid opening when it utilizes Construction Manager Agency and does take the lowest responsible bidder. In relation to Construction Management at Risk, the district negotiates a Guaranteed Maximum Price. Part of this process is to also negotiate the schedule. We feel that the way the bill is currently drafted, in Paragraph 2, takes away from the true intent of Construction Management at Risk.

Therefore, from the owner's perspective we are ok with the proposed changes in paragraph 1, but feel that paragraph 2 should be left as it is in current law.

Thank you for the opportunity to testify today. I would be happy to attempt to answer any questions you may have.

A BILL for an Act to provide for a legislative management study of public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. The legislative management shall consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

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Mar 17, 2015

Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2233

Introduced by

Senators Dever, O'Connell

Representatives Rick C. Becker, Dockter, Meier

1 A BILL for an Act to amend and reenact section 48-01.2-22 of the North Dakota Century Code,
2 relating to the public opening of subcontractor bids.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 48-01.2-22 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **48-01.2-22. Subcontractor bids.**

- 7 1. An agency construction manager selected for a public improvement shall publicly
8 advertise ~~publicly~~ and receive open bids from subcontractors for the work items
9 necessary to complete the general construction portions of the improvement. The
10 governing body may influence the selection of the subcontractors, but only insofar as
11 the governing body's past experience with a subcontractor or a current legal dispute
12 with a subcontractor.
- 13 2. A construction manager at-risk selected for a public improvement shall publicly
14 advertise ~~publicly~~ and receive open bids from subcontractors for the work items the
15 construction manager at-risk chooses not to perform. The governing body may
16 influence the selection of the subcontractors, but only insofar as the governing body's
17 past experience with a subcontractor or a current legal dispute with a subcontractor.

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Testimony SB 2233
House Industry, Business, & Labor Committee
March 17, 2015

Mr. Chairman and members of the House Industry, Business, & Labor Committee, my name is Russ Hanson with the Associated General Contractors of North Dakota (AGC of ND). The AGC of ND is a 500 member trade association consisting of general, specialty, and subcontractors who provide all phases of commercial construction in North Dakota. Our membership also consists of equipment and material suppliers of the construction industry. I apologize for being absent today as I'm attending an AGC of America meeting but appreciate the opportunity to submit this written testimony in support of engrossed SB 2233.

We were in opposition to the change proposed in section two of the original version of SB 2233 regarding the proposal to require public opening of subcontractor bids for Construction Management at Risk projects. We, and some owners, didn't believe the original bill was necessary.

However, we do support the hoghouse amendment the Senate IBL committee approved as did the full Senate by passing amended SB 2233 with a unanimous vote. With at least 9 bills affecting NDCC 48 introduced this session, many dealing with design and bid thresholds, we believe the study resolution requested in engrossed SB 2233 makes sense.

The AGC of ND was among the coalition groups who collaborated as a result of a study resolution (HB 1260) passed in the 2005 Legislature. Committee members who've served for a few sessions may recall HB 1033 from the 2007 Legislature. HB 1033 was the result of the coalition's efforts from the 2005-06 study and was a thorough, yet successful, revision of NDCC 48. With all the interest in NDCC 48 this session, it appears it is time to put the coalition back to work and engrossed SB 2233, if selected for study, does exactly that.

Thank you for the opportunity to submit this testimony today. The AGC of ND requests your favorable consideration of SB 2233 and requests a Do Pass Recommendation.

17 Mar 2015
House Industry Business & Labor
Testimony in opposition to any further changes to SB 2233

Chairman Keiser and members of the Committee

My name is Bonnie Staiger (#158) Today I appear representing both the ACEC (American Council of Engineering Companies) and AIA North Dakota (American Institute of Architects).

By now, you are all fairly familiar (or perhaps all too familiar) with the issues regarding bidding, procurement, and thresholds in Chapter 48 and a few similar tweaks to other related chapters . . . a total of 9 bills introduced this session.

For SB 2233 (during the Senate hearing) we requested a “do not pass” recommendation or in the alternative, amend the bill into an interim study so that further collaboration can occur among all stakeholders. The Senate IBL committee was not supportive of the bill as introduced and instead chose to hoghouse – removing all original language and adding our requested interim study amendment. Each organization (ACEC and AIA) is requesting that you do not further amend this bill as sent to you from the Senate.

By way of review if needed, the same history I provided to your committee yesterday on SB 2171 gives an historical overview and rationale for further interim collaboration.

Overview of several bills dealing with this issue this session:

<u>Interim Study Included</u>	<u>Defeated</u>
HB 1182 (Mooney) Hearing 3/13 SPS	HB 1077 (Trottier)
SB 2233 (Dever) Hearing 3/17 HIBL	SB 2203 (Laffen)
SB 2246 (Klein) Hearing 3/13 HPS	SB 2140 (Laffen)

Others currently in committee

- HB 1426 (Steiner) pending action by Senate Education –
Interim study amendment requested
- SB 2149 (Burckhard) On House Calendar
- SB 2171 (Klein) Hearing in House IBL 3/16

Introduced by

Senators Dever, O'Connell

Representatives Rick C. Becker, Dockter, Meier

1 A BILL for an Act to amend and reenact section 48-01.2-22 of the North Dakota Century Code,
2 relating to the public opening of subcontractor bids; and to provide for a legislative management
3 study.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 48-01.2-22 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **48-01.2-22. Subcontractor bids.**

8 1. An agency construction manager selected for a public improvement shall publicly
9 advertise ~~publicly~~ and receive open bids from subcontractors for the work items
10 necessary to complete the general construction portions of the improvement. The
11 governing body may influence the selection of the subcontractors, but only insofar as
12 the governing body's past experience with a subcontractor or a current legal dispute
13 with a subcontractor.

Keep →

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15 2. A construction manager at-risk selected for a public improvement shall publicly
16 advertise ~~publicly~~ and receive open bids from subcontractors for the work items the
17 construction manager at-risk chooses not to perform. The governing body may
18 influence the selection of the subcontractors, but only insofar as the governing body's
19 past experience with a subcontractor or a current legal dispute with a subcontractor.

Remove →

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20 **SECTION 2. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the
21 legislative management shall consider studying public improvement issues relating to use of
22 multiple bids versus single prime bids, bidding thresholds, design services thresholds, and
23 indemnification. The legislative management shall report its findings and recommendations,
24 together with any legislation required to implement the recommendations, to the sixty-fifth
legislative assembly.

Keep

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