

2017 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2190

2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2190
1/25/2017
Job Number 27347

- Subcommittee
 Conference Committee

Committee Clerk Signature

Era Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to bid requirements for public improvements

Minutes:

Attachments 1-7

Chairman Klein: Opened the hearing.

Senator Laffen: (:54-8:49) Introduced the bill. This bill does one thing, there are four approved delivery methods for building public buildings in North Dakota. The original one was single prime general contract, three prime general contract, construction manager as agency and agency construction manager and fourth, construction manager at risk. Three of those a public agency can choose which best fits the need for that particular project. Two of them are tied to each other. You can only use single prime general contractor if it is the low between that and multiple prime. What this bill would do is simply uncouple those and give the public agency the choose of using any one of the four. Senator Laffen handed out 2 amendments and explained the changes, see attachments #1 and #2.

Senator Campbell: Asked about bid shopping and if they weren't just micro-managing.

Senator Laffen: We are trying to do less micro-managing. We are saying let them use all four and let the public agency decide which method best suits their needs. The idea of bid shopping is the original reason why this bill came into place, mechanical and electrical subcontractors always gave their bids to a general contractor. They were tired of not getting the contract after the bid was open. If they were low, they wanted to be awarded the contract and that is why three prime came into being. The other reason they wanted to have their own contract was they stated that sometimes they didn't get paid on time by the general when they were under the general contractor. There is always a reason for that, it's the general contractors leverage to get them to get their work done.

Senator Roers: Wouldn't you also say when we put the multiple prime process as an option, you took away the ability for anyone to control the schedule. This puts the control of the schedule back where it belongs to a single source. Regarding bid shopping, it's an integrity thing.

Senator Laffen: I would agree with both of those and add one more reason why it would make sense to allow us to use single prime general construction. This is what large general contractors do and there are a lot of them in North Dakota and we still need someone to run the job.

Chairman Klein: Is it a good thing for the tax payers, we are dealing with state money generally are we going to see any savings on a project or just make the process work better.

Senator Laffen: It's definitely going to make the process work better but it is hard to say whether there would be any cost savings.

Tom Todd, Northwest Contracting, Inc. of Bismarck, ND: (15:20-19:00) Written testimony, see attachment #3.

Rick Tonder, Director of Facility Planning: (20:50-24:36) Written testimony, see attachment #4.

Russ Hanson, Associated General Contractors of ND: (25:45-26:33) He wanted to point out some testimony that was distributed. Glen Moen of Structures Inc. of Grand Forks, see attachment #5. Glen Moen is a past president of their board of directors and he examined the bill and wanted to lend his thoughts to it. It was felt that the original language was troublesome but the amendments so address the concern. With the amendment they are in support.

Bonnie Staiger, American Institute of Architects of North Dakota: In support of the bill with the amendment.

Chairman Klein: Called for opposition.

Bill Kalanek, National Electrical Contractors Association, Dakota Chapter, ND Association of Plumbing, Heating & Mechanical Contractors: Written testimony, see attachment #6. Even with the amendments we still stand in opposition to the bill. For the reasons you heard described earlier the issue of bid shopping, when you consider you are authorizing spending of money unnecessarily in a time when we are strapped for cash as a state. In opposition, Do Not Pass recommendation. (28:15-31:03)

Chairman Klein: Where is the conflict, won't this make it better and won't there be less bid shopping under this proposal?

Bill Kalanek: The point is understood that there may be less likelihood of it but I don't think the language in the bill completely prevent that from happening. (31:55-32:52)

Chairman Klein: What I heard was that we probably won't save any money on the project for the governing body but I also heard in conversation that we have integrity as the bids come in. Obviously some people feel they are getting dinged but if we propose this particular method they do find a way to take a lower bid just because.

Bill Kalanek: I am assuming that every contractor represented in this room is of the highest integrity, I am not saying otherwise but we often legislate to the lowest common denominator so there is always potential for something.

Chairman Klein: Didn't we try to address that a few sessions ago.

Bill Kalanek: I can tell you that it was 735 days since a bill like this was heard.

Chairman Klein: You have worked in the past on this issue with the contractors and try to resolve these issues.

Bill Kalanek: We have established a great relationship working with the design professionals, the AGC. We have spent a lot of time over the years working out different issues.

Senator Roers: How do you feel about the control ability of the job and the schedule under a single prime versus multi-prime, do you think it is the same?

Bill Kalanek: I would admit there is a level of control when you have single prime. I think in many instances the large university systems have people who can manage the projects. If the smaller contracts and smaller projects are the issue, this opens it up to everything.

Senator Roers: It's all about control and who is responsible for the end product, multi-prime doesn't give you that.

Bill Kalanek: There is a different level of control. I guess it depends on who you are assigning the control to.

Travis Greff, Commercial Estimator for HA Thompson & Sons: In opposition. Written testimony, see attachment #7.

Chairman Klein: Closed the hearing.

2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2190
1/25/2017
Job Number 27350

- Subcommittee
 Conference Committee

Committee Clerk Signature

Era Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to bid requirements for public improvements

Minutes:

Attachments 1-2

Chairman Klein: Called the meeting back to order. We had some good discussion on 2190. It would seem to me if I recall the gentlemen who showed opposition was here seven hundred and some days ago saying the same thing because there is always a feeling amongst the other groups that they are getting the short end and he represents those contractors. For discussion purposes should we put the amendment on and then go from there. I am up for discussion on that. Amendments, see attachments #1 and #2.

Senator Roers: I would like to make a couple of comments. They have some valid concerns but I don't know that those concerns are a course of daily business. Competition does require a certain behavior and if you behave in a bad actor type atmosphere eventually people won't get to you. If you look at the four bidding processes that we have obviously the single prime hasn't been used because of the multi-prime thing. It would appear to be the cheapest way to deliver a project. After you take a look at the delays and schedule and timing and the conflict that exist around the job site, I certainly doubt there is an economic savings. As a matter of fact, it cost more to do it that way because of inefficiencies and litigation that follows those inefficiencies. It is extremely stressful in that type of environment. If you also take a look at the forth contracting method, the construction manager at risk, when you hire a person to be your central point that is coming back to what the single general contractor was twenty years ago. Minnesota is back to a single prime today because they have gone through all of these different styles of contracting.

Chairman Klein: Committee do you have any feelings?

Senator Casper moved to adopt the amendments.

Senator Roers seconded the motion.

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

Senator Roers moved a do pass as amended.

Senator Casper seconded the motion.

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

Senator Roers will carry the bill.

January 26, 2017

EN
1/26/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2190

Page 1, line 7, overstrike "Multiple prime bids for the general, electrical, and mechanical portions of a project" and insert immediately thereafter "Bids"

Page 1, line 9, after the period insert "A governing body may allow submission of multiple prime bids for the general, electrical, and mechanical portions of a project."

Page 1, line 14, remove "Multiple"

Page 1, remove line 15

Page 1, line 16, replace "project" with "Single prime bids must list the mechanical and electrical contractors in the base bid, then evaluate and determine the lowest responsible bidder"

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2190**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: Senator Laffen's amendment and 17.0800.01001

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 Casper Seconded By Senator Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais		x
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: See attachment's 1 and 2

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2190**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.0800.01002

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 Roers Seconded By Senator Casper

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais		x
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Roers

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

REPORT OF STANDING COMMITTEE

SB 2190: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2190 was placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "Multiple prime bids for the general, electrical, and mechanical portions of a project" and insert immediately thereafter "Bids"

Page 1, line 9, after the period insert "A governing body may allow submission of multiple prime bids for the general, electrical, and mechanical portions of a project."

Page 1, line 14, remove "Multiple"

Page 1, remove line 15

Page 1, line 16, replace "project" with "Single prime bids must list the mechanical and electrical contractors in the base bid, then evaluate and determine the lowest responsible bidder"

Renumber accordingly

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2190

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee

Peace Garden Room, State Capitol

SB 2190

3/13/2017

29124

Subcommittee

Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Bid requirements for public improvements.

Minutes:

Attachment 1, 2, 3, 4, 5, 6, 7, 8

Chairman Keiser: Opens the hearing of SB 2190.

Senator Laffen ~ District 43: Introduces SB 2190. There are 4 different methods that can be used to build public buildings in our state. They are single prime, multiply prime-general, electrical & mechanical, CM as Agent & CM at Risk. You can use any 3 but the current law has 2 of them tied together. If you want to bid as a single prime general contractor, it has to be the lower of multiple prime or single prime on bid day. All four of these methods are unique & different.

What this bill does is to uncouple single prime general construction contract from multiple prime & let you choose. Currently we can't do that. We can't use single prime unless it comes low on bid day.

13:08

Rep Kasper: The CM at Risk selected in advance of the project before the bids are let. The CM is in control of everything. Which means CM at Risk do not have competing bids from another single prime. Do we really know if we are getting the lowest bids? CM might know, but does anyone else know?

Sen Laffen: The way the CM at Risk process would work is the CM at Risk would be hired from qualifications. But you can also ask for the fee proposal when you do that. They collect at the end of the job all the bids, subcontract prices & then mark it up a percentage. When they are selected up front, their percentage of markup is in the selection process.

There is also a pre-construction service, which is usually a fixed dollar amount. We ask them to provide that as well.

Rep Kasper: On the CM at Risk, what the CM signs would be with the employer, are there duplicate fees? Can the CM take an override on the contractor's subcontractor's bids? Is that ever disclosed, not disclosed or is it buried so you don't know?

Sen Laffen: the CM at Risk gets paid 2 ways. Usually a fixed fee on the predesigned work & yes, after they switch over, leaving the state's agent & they become an independent private company. Their contract switches to a single fixed construction bid.

Rep Kasper: When we are getting the bids, who makes the final decision on who will be the builders & the contractors?

Sen Laffen: The state agency or public subdivision will see all the subcontracts contract & how they will add up.

Rep Kasper: If there is a change order, it would be with the approval with the employer because it might cost more money & does the CM get an add-on fee then if there is a change order. More change orders, more add on fees, is that the way it works?

Sen Laffen: Generally, the CM at Risk, will have a little contingency built into his price. He will fix a lot that would normally be change orders. Owners will generally also carry a contingency on their own, just in case they change the scope of work.

Rep Kasper: The CM at Risk, hired in advanced by the employer, whereas a single prime is hired after the bids come in. The parallel of the 2, you are getting 5 or 6 CM at Risk bids from the single prime opposed to hiring a CM at Risk, you only have one.

Sen Laffen: That's not quite right. You are right on the single prime bid but when you are hiring the CM at Risk, there is still 6, 7 or 10, they are at the front end with their fees.

Chairman Keiser: This bill only deals with the 2 of them. It doesn't deal with the CM at Risk or CM as Agent?

Sen Laffen: That's correct.

Chairman Keiser: This bill simply says that rather than having the option of a single or multiple prime, we are giving authority to go with the single prime & we are giving that authority to the political subdivisions.

Sen Laffen: Right now the single & multiple are tied at the hip & this will uncouple them & gives all 4 to our state agencies to use as they see fit.

Sen Laffen: Can I add one more thing, we are not allowed for our architect to be CM's.

21:00

Senator Bekkedahl ~ District 1-Williston: We are in favor of the bill. We had a couple of projects in Williston in the last 6 years that were small enough projects under the 3 million dollars' category that we used the multiple prime & the prime bid concept. What they will tell

you that the cost of value engineering, where you get the CM at Risk at the start of this that has all the costs put into the added design & engineering that goes forward. You need about a 3-million-dollar threshold for that to make sense.

There was a 1 & 3 million dollar projects. I can tell you in both of those cases the general contractor bid was not the lowest. The multiple primes were the lowest. We were forced by law to take those multiple primes.

Both of those projects that we had, we felt that our city building inspector could act as our agent for meeting all the activities in keeping everything on schedule. We are not like the state where we have facility's managers that do that. We attempted to do it with our in house staff. What happened to us is the prime contractor had no control over the mechanical & electrical. Both of those contractors were from out of state, low bid & had to be accepted. Both of those ended up being over cost, not on time & the quality suffered because they were not coordinated well.

I welcome this bill & it would give smaller subdivisions the opportunity to do that.

24:40

Chairman Keiser: I always hear, the project didn't get done on time, we ran into delay, change orders. All that means to me is the original request for bid was not properly submitted. If you don't put time limits & penalties, if you don't have those in your bid spec, shame on you, not the contractors that are performing. Would you agree or disagree?

Sen Bekkedahl: You could be right. What I will say that our projects we have, I've often been critical our public works staff in the engineering department not having sufficient penalties when they do it. They tell me that all you do is just inflate the cost up front.

Chairman Keiser: Single primes cost more in the beginning because you do transfer the risk. If you don't do an adequate job, you will do change work.

Sen Bekkedahl: It's easy to see why the 3 prime system is cheaper than the general because everybody is going to percentage in their case. I appreciate the opportunity for the smaller subdivisions to maybe have the option, which they don't have right now. I agree with your concept & CM at risk as well.

Glenn Moen ~ Structures Inc-A small commercial general contractor: Attachment 1.

33:30

Mike Kremwiede ~ American Institute of Architects ND: Introduces James Devine.

James Devine ~ Owner of J2 Studio Architecture + Design located in Bismarck: Attachment 2.

39:15

Chairman Keiser: This bill attempts to decouple the two, so without any reservations, a political subdivision, who is using tax dollars can go to a single prime. What would be your reaction if we amended this to say you have to do both, a single prime & multiple prime? Then you could choose to go to a single prime, even if it costs more on the bases of the bid, publish that information in the paper the breakdown of the bid & the total cost? This way we do have transparency.

Devine: I don't think I would have an issue about that but I don't know how the others would feel. This will give the option.

Chairman Keiser: Anyone else here to testify in support, opposition of SB 2190?

Bill Kalanek ~ Behalf of the Dakotas Chapter of the National Electrical Contractors Association & the ND Association of Plumbing, Heating & Mechanical Contractors:
Attachment 3.

42:45

Rep Becker: I don't think you're worried about saving the taxpayer's money. What are the real reasons that you don't like this bill? I like the ideas of saving the taxpayer's money.

Kalanek: They are a number of reasons. My group feels that the more transparency there is in the process, the better that is for the public. When it comes to public project, they want to put out there the best bid they can. Under what is being proposed, they don't feel the public will get the best deal for their money.

Rep Kasper: Why not?

Kalanek: The feeling from our association is that when you lump all the contracts into one, the only one person that benefits is that person at the top. You end up in a situation where those subcontracts have to be adjusted to account for that person at the top wrung in the project & making accommodations for their costs & their profits. Whereas if they were bid separately as 3, you are going to get something perspective of the true costs of the electrical, mechanical & general of the project, without any buffers build in.

Rep Kasper: You are telling me that you are going to have a single prime system, multiple prime system & CM at risk? One of the subcontractors is going to submit a bid to those 3 entities. Their bids will be different if specs are the same?

Kalanek: There is that potential.

Rep Kasper: Why?

Kalanek: Because you have to build in the risk associated with working with the other entities.

Rep Kasper: What if all 3 are good?

Kalanek: Then maybe you get the same, maybe.

Rep Laning: How do you feel this bill is getting the advantage to the single prime?

Kalanek: Simply by the language change made on the senate, whereas it was permissive previously to allow for a single prime in the process. If it were less than aggregate of the multiple prime, now it stipulates that the single prime is primary & the political subdivisions, may allow for multiple prime bids as opposed to always allowing for them.

The language that was previously presented on the Senate side, we're more comfortable with because it still gave the option of both. We feel now, the way it's worded, it gives priority to single prime & potentially, you won't see an opportunity for multiple prime bids with the way it's worded. You will have one or the other but not both.

Rep Kasper: How does a multiply prime bidding system change how the clients will bid? What's the difference?

Kalanek: If this law passes, it won't change anything.

Rep Kasper: If this law passes, how would it change?

Kalanek: We will run into a situation where there will be fewer opportunities for those major subcontractors to bid their portion of the project. They are going to be subject to relationships with general contractors that might benefit them & not give every opportunity to a subcontractor bid work that is taxpayer funded.

Chairman Keiser: The single prime may go to many subcontractors & get bids, but they are not required to work with a preferred subcontractor. They have a relationship.

Kalanek: Correct.

Chairman Keiser: But they could go to all of them.

Kalanek: Correct.

Chairman Keiser: But they don't need to, they can just go with their preferred one. If we go that direction, it's conceivable that there would be one electrical, one plumbing contractor, but there might be multiple.

Whereas the current law says they can go out & talk to one or more subcontractors, build it into their bids. From the mechanical & electrical, those general contractors can look at it & say, I wanted to bid on this but I wasn't invited so I could submit a bid my own. When it's packaged by the political subdivisions, if it comes in lower, they have to take my bid, is that correct?

Kalanek: That was the point I was getting to because if you limit it to the large general contractors who might bundle their bids, typically with those same subcontractors, you are going to exclude some quality contractors.

Rep Kasper: I see the bill differently than what you just said. On line 16, the amendment implies that it has to be more than one, does it not?

Kalanek: It implies more than one, yes.

Rep Kasper: It says bids; it doesn't say contractors.

Chairman Keiser: Rep Kasper, in the beginning of the sentence, says single prime. So there may be only one but there may be many single primes.

Rep Kasper: The single prime has to have

Chairman Keiser: They have to identify their sub that they are working with but they don't need more than one.

Rep Kasper: I believe the language says that they do.

Chairman Keiser: No, this refers to the single primes, if there are more than one.

Rep Kasper: I hate to argue, but it says that they must list mechanical & electrical contractors on the base bid.

Kalanek: I understand that they are required to list those contractors. It doesn't mean that they can't change their mind & opt for a different contractor after bid day.

Heather Jones ~ Owner of City Air Mechanical Bismarck & Mowbray & Son Plumbing & Heating-Minot: Attachment 4

1:01:15

Jeff Klemetsrud ~ President of a small mechanical construction firm-Klemetsrud Plumbing & Heating Co, Inc: Attachment 5.

1:06:00

Rep Kasper: Were you here for the hearing of SB 2142 this morning?

Klemetsrud: I was not, I was traveling.

Rep Kasper: This talks about publicly opening bids for agency CM as agent & CM at Risk. It doesn't talk about the prime opening up bids. I don't know but maybe it needs to be amended to deal with opening of all bids by the single & multiple primes. If all bids were required to be open regardless of who was asking for the bids, the public would know all the bids. Would that solve some of your heartache?

Klemetsrud: It would solve it a little bit but I would like to see the transparency & the feedback of what I did in this regard?

Rep Kasper: Is that entirely with the single primes or is that in any bids?

Klemetsrud: Both.

Rep Kasper: Is the same secrecy right now with CM as Agent & CM at Risk. Do they keep it secret too? Is that the same process?

Klemetsrud: My experience, general contractors keep it close to the chest.

Travis Greff ~ Commercial Estimator for HA Thompson & Sons also, President of the ND Association of Plumbing, Heating & Mechanical Contractors: Attachment 6.

1:11:45

Rep Kasper: In a multiply prime situation, who is responsible to get the subcontractors there on time to do their job?

Greff: Each contractor is responsible for their subs to get their workers there on time.

Rep Kasper: You are busy, is there a penalty if you are late?

Greff: It depends on how the contract reads.

Rep Kasper: Are there penalty clauses not meeting a timeline in a multiply prime contract?

Greff: There can be.

Rep Kasper: Is there a penalty?

Greff: It's a hit & miss, some do, some don't.

Rep Kasper: The answer, maybe not.

Chairman Keiser: For a general contractor, are there always timelines, if there is a single prime, is there always a time requirement penalty in all those bids?

Greff: Not always.

Chairman Keiser: Single prime versus multiple?

Greff: Yes.

Chairman Keiser: Is there always a timeline & penalty clause in the single prime contract?

Greff: No, not always.

Chairman Keiser: Is it more often there than in the multiple prime?

Greff: As the law is currently written, they are bidding simultaneously, so for the penalties, that's just in the specifications. Then the job is bid as both, then those penalties are assessed usually at the end of the job. The single prime, the general contractor wants to be able to do & that's how they do this. They hold contractor's money to try to get them to preform, whether it's their fault or not.

That is one of the big concerns we as mechanical & electrical contractors have. If the job gets behind & their way of making it up is withholding our due money because we are trying to make up lost time on the project that was lost on the front.

Rep Kasper: Isn't it logical that the reason it's behind is because some of the contractors weren't performing on time?

Greff: Yes.

Rep Becker: The added cost on your testimony goes with a single prime compared to the multiple prime, varies from 1.1% more to 22% more. If we were to pass this bill, wouldn't the person requesting bids be able to look at that & say, the 1.1% higher for single prime. That's definitely worth it. The 22% higher is crazy, let's go with multiple prime.

Greff: No, the way this is written, the architect or design firm will steer the state agency towards either bidding it as single prime or multiple prime. That's our big concern with this bill, is they won't see the multiple prime bids anymore.

Rep Kasper: Why wouldn't your bid be the same under any method. You have the specs in front of you, the timeline, it's the same job, why would your bid be different?

Greff: When we are under the thumb of a general contractor, our contracts are so large in size. If we have to turn around & wait for that pay request to go through the state then back, we are now financing that money we've spent in order to build this project. We don't get paid until that work installed. So for us to cover the costs of additional & not knowing when we are going to get paid, our prices tend to go up because we know we are going to have to deal with that extra step. We are going to price our bids accordingly.

Rep Kasper: You are saying on a single prime; the single prime contractor can hold your money for no reason?

Greff: Yes, they hold our money & force us to work overtime even if it's a delay caused on the front end.

Rep Kasper: You are operating under the assumption because there are not many single primes anymore?

Greff: Single prime is used a lot under private projects & we understand what we are dealing with it on that.

Chairman Keiser: Your argument is, if you are the subcontractor that's selected by the single prime contractor, you might mark up your bid because of those internal things. Isn't

the real argument, on the single prime bid, that if we give the option, you can use the single prime bid for the political subdivision, you want to use it, you can use it. They don't even have to get a bid from you, they can go to whatever subcontractor they want, get a price, build it into their price & submit it.

Greff: That's correct.

Chairman Keiser: So there is no competition. It's not that your bid would necessarily change that much, you just wouldn't be potentially bid or the same for other subcontractor?

Greff: That is correct. When we submit our bids on a multiply prime but ultimately, as a single prime, there's a lot of contractors that have their guys that they like & they can still shop numbers well before the bids are read, then use their guy.

James Ruud ~ President & project manager for Edling Electric: Attachment 7.

1:27:00

Rep Kasper: You have a project that had 2 methods, single & multiple primes. Would you automatically give the single prime a higher bid for your services than if you were a multiple prime?

Ruud: Not necessarily, but if there is a proven history where we've had problems with the guy, then we might add a few percent because we know they will hold our money.

Rep Kasper: So the assumption is this guy might be a bad contractor, might hold our money, therefore our bid is going to be higher.

Ruud: Yes.

Rep Kasper: Now I can see why single prime will never win because the subcontractor will always give them a higher bidder than if you are the prime contractor yourself. Therefore, they never come in with a lower bid unless they can negotiate with someone they have a relationship with. Isn't that the catch 22 of what's going on here.

Ruud: I don't believe so, in this world you get comfortable with people who you work with every day. You work together on private work & then a public project comes up, you are funneling work their way.

Rep Kasper: If the bid comes in from the buddy, the prime & buddy have a relationship & the bid comes in lower than yours because you don't have a relationship. Whose problem is that?

Ruud: Right now, since they have the ability to bid as a single combined option, we get to realize any saving shown in the bid method.

Tom Wolf ~ President of Skeels Electric Company: Attachment 8.

1:33:10

Chairman Keiser: Are you familiar with the governor's project?

Wolf: Yes.

Chairman Keiser: What was the bid, the specs stayed the same, what was the bid with the single prime versus the multiple prime? What was the difference & why? Were there change orders, delays, what's the deal?

Wolf: What I believed happened was the CM at Risk contract with the general contractor, there was a budget they were supposed to build the project in. The contractor took sub-bids & came in over budget.

Chairman Keiser: How much?

Wolf: Over \$600,000.

Chairman Keiser: It came in over \$600,000 & then it was the same project was rebid with multiple prime.

Wolf: Yes, they didn't change the plans or specs. They just put it out as multiple prime bids.

Chairman Keiser: What was that?

Wolf: I believe it was \$4.8 million, about \$200,000 under budget.

Chairman Keiser: So, \$800,000 differential?

Wolf: Yes.

Rep Kasper: Did you bid both ways on the governor's residence?

Wolf: We bid the project 1st time. We did get some feedback concerning where the electrical bids were. At the time it was rebid, we were working on some projects so we didn't bid the 2nd time.

Chairman Keiser: You were in the original bid of the prime but you were too high?

Wolf: Yes.

Chairman Keiser: On a major public project, how many general primes, from your industry would bid on a big project?

Wolf: Locally, there are probable 3 big ones from Bismarck.

Chairman Keiser: There could be big ones from outside of Bismarck?

Wolf: Yes.

Chairman Keiser: If you were to bid a single prime, would there be all 3 that would be invited to bid?

Wolf: If there was a single prime bid, we would contact to find out who the general contractors are & see if they would solicit a bid from us.

Chairman Keiser: You couldn't submit one to them?

Wolf: We possibly could, whether they would want us or not, I don't know.

Dan Schonert ~ Western Edge Electric: In this bill, arguing back & forth about the cost, you hit it on the head. We are talking where & what is costing more when things aren't set in stone with the penalties. Why did it go over budget & time? Part of it was it was not put in place what needed to get done.

Is it going to change doing this from a multiple prime to a single prime? I don't think so. If you don't set precedence of this job needs to get done by the owner, going to a single prime isn't going to change that. Single prime would benefit me when I started a business. Multiple Primes, we have to be bonded for this job. The governor's residence, if this was on a single prime, I doubt I would have got to do this job. I worked hard to build a bond up.

If it's a multiple prime, I'm responsible to that bond. If I can't carry that bond, I can't get the bid & I'm not a 50-person contractor. We will have better relationships when we are a multiple prime because we are able work with the owner. The general knows what the owner wants but the prime does not.

1:41:20

John Boyle ~ OMB-Facility Manager for the State of ND: I was in favor of the bill, but as I learned more, I became less favorable.

Would it make my job easier if it were single prime, yes it would? Would I use single prime all the time, yes I would? It's a lot easier however because I'm part of OMB but, I'm responsible for the money I receive from the legislature to do projects. It's my fiduciary responsibility to those projects in the least costly way.

In every instance, it will cost more. Why not leave it the way it is & let the agency determine which way to go. At first I thought that maybe we should experiment with that for a biennium & see what additional costs are.

The one reason we went with CM at Risk at first on the governor's residence is because it was a high end project & we wanted a contractor with experience. The other reason agencies use CM at Risk is because you know you have project before you bid the project. The CM at Risk gives you guaranteed maximum price.

With single or multiple prime, you are dependent on the architect & engineers to give you an estimate. Your only hope is that that's a good estimate so when you go out to bid, you can open bids & you don't have to have a bid boss. That the number 1 advantage of using CM at Risk.

Our CM at risk, they couldn't get down to the number of \$4 million & they kept coming in at \$4.7. When we opened the bids it was \$4,030,000, so it's about a \$660,000 savings going multiple prime.

If we would have done a single prime, it would have been more expensive & probably another 5% less. We still would have been \$500,000 over what our price was & then we would have to go back & redesign again.

We had an architect that said that it's not going to cost more than \$4,050,000. We have a CM at Risk that says, no one can do it for less than \$4.7 million. The only opportunity was to do the design bid build which is the multiple prime.

In the beginning there is a hope & prayer that it doesn't. We have to do multiple prime because it allows for competition. The reason this bill came up is because of the political sub, which they don't need to use chapter 48 anyway. It's only state agencies that have to follow chapter 48 & we are here also to provide construction help to any state agency.

I don't think you throw away 35 years of legislative history for a few projects that have occurred during a tremendous boom time in our economy.

1:48:15

Rep Kasper: You chose the CM at Risk, how many did you get?

Boyle: We got about 200.

Rep Kasper: Why were there so many less?

Boyle: They didn't want to work for the CM at Risk & they were an out of state CM.

Rep Kasper: You made the mistake on the front end by selecting the wrong CM at Risk & it didn't go the way we had hoped, then you rebid. I was under the impression that there were some single prime bids received or were there not?

Boyle: We went with multiple prime but we received 1 single prime because today you can't ask for a single prime.

Rep Kasper: Couldn't you solve the problem of lack of transparency by requiring that all the bids that are received be fully disclosed & transparent?

Boyle: There is no transparency for the owner in single or multiple prime until after we sign the contract & they give us the schedule values. That's why you use a CM at Risk because it is very transparent. All you receive is a bid.

Rep Kasper: Could you not require to see them all in your RFP to set the terms to what you want to see?

Boyle: We could if we wanted to but I don't know what the benefit is to the owner to know who the subcontractors are. I don't have a relationship as an owner.

Rep Kasper: I asked if you have an RFP to see what the bids were.

Boyle: I would say that we could ask for that but the law does not allow us to do that.

Chairman Keiser: Your department makes a bid a project & it's multiple prime, is there not a public bid opening?

Boyle: Yes there is.

Chairman Keiser: At which point?

Boyle: All that I know is sum total but I don't see all those subs under them.

Chairman Keiser: Should you know them.

Boyle: It shouldn't be a difference to me because my relationship is with the mechanical, electrical or the general.

Chairman Keiser: Have there been any change orders to the governor's residence?

Boyle: Plenty.

Chairman Keiser: Any change orders denied?

Boyle: There have been a couple denies but change orders come in both forms, additions & deductions. Right now, the change order that the sum total of the change orders is still in the deduct category.

Chairman Keiser: Anyone here to testify in opposition, neutral position to SB 2190? What are your wishes?

Rep Laning: I like the bill the way it was originally submitted. I think it's unfair to a single prime bidder that you must lower overall because that's almost impossible to do. I would like to keep that struck language there.

Chairman Keiser: We can continue this discussion.

2017 HOUSE STANDING COMMITTEE MINUTES

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

SB 2190
3/20/2017
2950 2

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Requirements for public improvements.

Minutes:

Attachment 1, 2, 3

Chairman Keiser: Opens the hearing of SB 2190.

Rick Tonder ~ Director of Facility Planning-NDSU: Attachment 1.

4:15

Rep Kasper: How many projects at NDSU have you supervised?

Tonder: I been with the university, I can't recall all the jobs, there's hundreds.

Rep Kasper: Of all those years of experience, did you receive many prime contract bids?

Tonder: I only recall two.

Rep Kasper: Do you have an opinion why single prime; the single prime bids will always have higher bids than multiple primes. I asked them why & they might hold your money back in single prime, therefore the bid is higher. Is that your experience?

Tonder: I'm not privy to those contractors,

Chairman Keiser: Anyone else here to testify in support, opposition to SB 2190?

Blake Wrigley ~ President/ CEO of Wrigley Mechanical, Inc-Fargo: Attachment 2.

Chairman Keiser: Closes the hearing on SB 2190.

Lunseth Plumbing & Heating ~ Testimony turned in but did not testify: Attachment 3

2017 HOUSE STANDING COMMITTEE MINUTES

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

SB 2190
3/21/2017
29503

- Subcommittee
 Conference Committee

Ellen Litang

Explanation or reason for introduction of bill/resolution:

Requirements for public improvements.

Minutes:

Attachment 1

Chairman Keiser: Reopens the hearing of SB 2190.

Rep Laning: Attachment 1. The amendment. Allow for single language change. I worked with them for a compromise. Reads the amendment & it's changes.

Rep Laning: Moves the amendment.

Vice Chairman Sukut: Second

Chairman Keiser: Further discussion.

Rep Louser: I'm wondering if the sponsor is aware of what the comments might have been?

Rep Laning: He was aware I was working on something but not exactly what came up with.

Rep Dobervich: The amendment, page 1, line 7, removes bids. Is this moving down to the next line, otherwise it doesn't state what is required.

Chairman Keiser: Removing the overstrike.

Rep C Johnson: We are going to allow both the submission of multiple & single primes for consideration in any bid project?

Chairman Keiser: Yes, that's the difference.

Rep Beadle: Currently the language as it reads, is multiple prime bids are required for the first area. By overstriking may with shall on line 13, it required for the single primes to come in.

Roll call on proposed amendment with 4 yes, 7 no, 3 absent, motion fails.

Chairman Keiser: What are the wishes of the committee?

Rep Bosch: Moves a Do Not Pass.

Rep O'Brien: Second.

Chairman Keiser: Further discussion? We already allow it. The political subdivisions can make their decisions. There is no question they will take the lowest of the 2 options because they have to report to their constituencies like we do.

The problems we have heard can be addressed in the contract, the RFP. You can put in all sorts of penalties.

The system that is not perfect but it does work, it's transparent & this maintains it. I support the motion for a Do Not Pass.

Rep Laning: What I see the objectionable language is the governing body may not accept the single prime unless it's lower.

Chairman Keiser: That's why they report to their constituencies.

Rep Kasper: If this bill fails, what will happen as far as bids. Will there ever be a single prime bids?

Chairman Keiser: We had the University person in & all the bids, there were only 2 times where the single prime was less expensive.

Roll call was taken on SB 2190 for a Do Not Pass with 7 yes, 4 no, 3 absent & Rep Ruby is the carrier.

17.0800.02001
Title.

Prepared by the Legislative Council staff for
Representative Laning
March 15, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2190

Page 1, line 7, remove the overstrike over "~~Multiple prime bids for the general, electrical, and mechanical portions of a project~~"

Page 1, line 7, remove "Bids"

Page 1, line 9, remove "A"

Page 1, remove line 10

Page 1, line 11, remove "mechanical portions of a project."

Page 1, line 13, overstrike "may" and insert immediately thereafter "shall"

Renumber accordingly

Date: Mar 21, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2190

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 17.0800.02001

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 _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle		X	Rep Louser		X
Rep R Becker	No		Rep O'Brien		X
Rep Bosch		X	Rep Ruby	Ab	
Rep C Johnson	X		Rep Boschee	Ab	
Rep Kasper		X	Rep Dobervich		X

Total (Yes) 4 No 7

Absent 3

Floor Assignment _____

Motion failed

Date: Mar 21, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2190

House Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

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 Rep Bosch

Seconded By Rep O'Brien

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning		X
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle		X	Rep Louser		X
Rep R Becker	<u>Ab</u>		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	<u>Ab</u>	
Rep C Johnson	X		Rep Boschee	<u>Ab</u>	
Rep Kasper		X	Rep Dobervich	X	

Total (Yes) 7 No 4

Absent 3

Floor Assignment Rep Ruby

REPORT OF STANDING COMMITTEE

SB 2190, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO NOT PASS (7 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2190 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2190

January 25, 2017

SB 2190 – Proposed Amendment.

Section 1, line 14 delete the word “Multiple”

Section 1, Line 15 delete the all the verbiage on this line

Section 1, line 16 delete the word “project” and replace it with “Single prime bids must list the mechanical and electrical contractors in the base bid, then will evaluate and determine the most responsible, which would be subject to change depending on the alternates chosen.”

Renumber accordingly

17.0800.01001
Title.

Prepared by the Legislative Council staff for
Senator Laffen

January 12, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2190

Page 1, line 7, overstrike "Multiple prime bids for the general, electrical, and mechanical portions of a project" and insert immediately thereafter "Bids"

Page 1, line 9, after the period insert "A governing body may allow submission of multiple prime bids for the general, electrical, and mechanical portions of a project."

Renumber accordingly

January 25, 2017

Senate Industry, Business, & Labor Committee

SB 2190

Mr. Chairman and members of the Senate Industry, Business & Labor Committee - my name is Tom Todd of Northwest Contracting, Inc. of Bismarck, ND. We are a vertical building contractor and I serve as the Senior Vice President on the Associated General Contractors of North Dakota Board of Directors.

The AGC of North Dakota has been a supporter of single prime bid delivery method. SB 2190 offers that option and we support the concept.

We have a concern how the law would be implemented as drafted on line 15 of the bill. The language "must include a list of the subcontractors to be used for the project" is quite generic. A general contractor will have many subcontracts on a job in addition to the electrical and mechanical subcontracts. A couple examples of such individual subcontracts are: roofing, bleachers, playground equipment, lockers, tiling, bathroom accessories, doors and hardware, specialty flooring. If all subcontracts need to included, this process would be quite an additional effort.

The main concern is similar to our comments on SB 2142 (Construction Management at Risk bill) in that the general contractor needs to evaluate each subcontractor to ensure it is qualified and able to complete the work they are bidding and eliminate the non-qualified ones. The language on line 15 doesn't specifically state this process would be allowed.

We support the bills intent to provide single prime bidding as an additional option to NDCC 48. We relayed these concerns to the prime sponsor of SB 2190 and the amendments he previously offered would address them. We encourage you to adopt the amendment.

Thank you for the opportunity to testify today. I'd attempt to address any questions the committee may have.

SB 2190

Senate IBL Committee

January 25, 2017

Rick Tonder, Director of Facility Planning

701.777.4270 | rick.tonder@ndus.edu

Chair and Committee Members: My name is Rick Tonder, Director of Facility Planning for the NDUS, and I'm here today in support of SB 2190. The bill amends NDCC 48-01.2-06 to allow a governing body to specify a single prime bid for a complete construction project in lieu of both single prime and multiple prime bids.

One of the single greatest challenges for many of the NDUS institutions while undertaking a construction project is the successful management and coordination of all contracted services. Although NDCC 48-01.2 currently allows the governing body to assign project coordination responsibilities to the general contractor, doing so may not be effective if there is no contractual relationship between all parties. Such is the case where multiple prime bids are awarded to various contractors who may not have a positive working relationship with each other, yet the general contractor is being required to coordinate and schedule their activities.

Given the option to solicit only single prime bids would help prevent coordination and scheduling missteps which often result in additional costs, delays in schedules, or both. The language addition contained in the bill requires bids to include a list of subcontractors. This addition would ensure that the subcontractors providing bids to the single prime would not be substituted after award by other subcontractors who would agree to do the work for less compensation.

I recommend a "do-pass" vote on SB 2190. This concludes my testimony, and I am available for any questions you may have.

January 25, 2017

Senate Industry, Business, & Labor Committee

Senate Bill 2190

Mr. Chairman and members of the Senate Industry, Business, & Labor Committee, I am Glenn Moen from Grand Forks, I work for Structures Inc, a commercial general contractor. I am a past president of the associated General Contractors of North Dakota (AGC).

My work schedule prevents me from testifying in person so I have asked Mr. Hanson of AGC to speak for me.

I support the concept of SB 2190, but would like to see an amendment made to tweak it to make it more workable.

When we are putting a bid together it gets very hectic in last few hours before a the typical 2:00 PM bid time. It's not uncommon to be getting faxed, emailed and phoned bids from subcontractors right up to 2:00. When you are trying to compare bids to make sure you are getting the lowest and best sub bid in your bid you don't have time to now try and list out all the sub-contractors. The other issue that needs to be addresses is alternates.

A sub may be low and listed on the bid form but if an alternate is accepted that sub is now not low.

I was informed Senator Laffen will offer an amendment outlining the subcontractors to be listed would be the electrical and mechanical contractors. If that verbiage is amended onto the bill instead of the current language on line 15 – I'd support the amended bill.

Thank you for your time.

Testimony on SB 2190
Bill Kalanek
National Electrical Contractors Association, Dakotas Chapter
ND Association of Plumbing, Heating & Mechanical Contractors
Senate Industry, Business & Labor Committee
January 25, 2017

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 combined opposition to Senate Bill 2190 which establishes an unnecessary addition to the existing public project delivery system. The proposed change as suggested by the bill would create more inequities and be less transparent than the current accepted methods.

The bill as drafted would allow a governing body to specify a Single Prime bid delivery method for all public projects, something that is already provided for in this same section of law. The current bid process already allows a governing body the option of selecting a Single Prime contract or Multiple Prime bid contracts depending on which method produces the lower cost option. The proposed change if enacted would be less transparent as the governing body would not be able clearly identify the cost of each portion of the project and assess the true cost to taxpayers. The current Multiple Prime bid process provides for an exact accounting of the costs for the general, electrical and mechanical construction costs associated with a project. If a governing body receives a Single Prime bid on the project they have the option to select that bid if the total bid is less than the combined total of the Multiple Prime bids.

For these reasons I would ask the committee in its wisdom give SB 2190 a "Do Not Pass" recommendation and leave the current, fair and open process unchanged as we look to prudently spend taxpayer dollars.

Thank you.

SB 2190

Chairman Klein

Senator Campbell

Senator Burckhard

Senator Casper

Senator Marcellais

Senator Poolman

Senator Roers

My name is Travis Greff. I am the Commercial Estimator for HA Thompson & Sons: a plumbing, heating and mechanical firm located here in Bismarck. I also serve as the president of the North Dakota Association of Plumbing, Heating and Mechanical Contractors. I am speaking here today to ask you to oppose proposed Senate Bill 2190.

The multiple prime bid process was passed into law around 30 years ago. The single prime method was the primary method of bidding public projects before that time. It was brought up as a method to help lessen the bonding requirements for the general contractor in order to allow a larger group of general contractors to bid on public projects giving the tax payers more competitive bids. Even with that change, the single prime bid method was still allowed as an option if a contractor wanted to bid it that way.

Since the inception of the multiple bid method, I personally have never seen nor have I ever talked to a contractor, architect, or engineer who has seen a single prime bid come in at a lower price than a combination of the multiple prime bids. This method became so effective in cost savings for the government that most of the architects and engineers started steering private projects towards this technique when the project owner was looking for the lowest possible cost.

As the Century Code is currently written the governing body can select a single prime contractor if it is the lowest bid. The amendment as written would mean that a single prime bid would be allowed even if the sum of the multiple prime bids is lower. This would be at a higher price for the tax payers. The multiple prime method has proven itself for many years on thousands of public and private projects which have been built on time and under budget. If we are going to be good stewards of the tax payer funds this bill should not pass. I ask that you give this bill a do not pass vote.

Thank you for your time.

January 25, 2017

SB 2190 – Proposed Amendment.

Section 1, line 14 delete the word “Multiple”

Section 1, Line 15 delete the all the verbiage on this line

Section 1, line 16 delete the word “project” and replace it with “Single prime bids must list the mechanical and electrical contractors in the base bid, then will evaluate and determine the most responsible, which would be subject to change depending on the alternates chosen.”

Renumber accordingly

17.0800.01001
Title.

Prepared by the Legislative Council staff for
Senator Laffen

January 12, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2190

Page 1, line 7, overstrike "Multiple prime bids for the general, electrical, and mechanical portions of a project" and insert immediately thereafter "Bids"

Page 1, line 9, after the period insert "A governing body may allow submission of multiple prime bids for the general, electrical, and mechanical portions of a project."

Renumber accordingly

Mr. Chairman and members of the House Industry, Business & Labor Committee, I am Glenn Moen from Grand Forks, I work for Structures Inc., a small commercial general contractor. I am a past president of the Associated General Contractors of North Dakota (AGC).

There has been ongoing debate regarding the proper policy of having multiple prime bid delivery method versus a single prime bid method. This bill is unique in that it allows the owner to choose whatever method it deems most appropriate. It doesn't eliminate one method in favor of the other.

In my view, here are some of the advantages of offering a single prime delivery method.

1-It puts one contractor in charge of the job with contractual authority over all the sub-contractors on the job. Typically, in the separate prime method - it puts the contractor with the largest contractor in charge of the job to schedule, coordinate and manage the job. In one of my past jobs, I set the schedule to methodically work through the three areas of the building going area A, then B, then C. After area A underground ground pipes were installed, the separate prime would not follow the sequence that had been scheduled (and agreed to) and jumped to area C thus disrupting the schedule for the rest of the job and causing the job to finish after the contractual completion date. Without having the contractual authority, I could not make the separate prime follow the work sequence and schedule. But guess who the owner held responsible? When projects are not finished by the contractual completion date – additional costs are added to the project in addition to what was included in the awarded multiple prime bids.

2-It also offers all contractors choice in who they bid to and who they choose to work with. I had a job where a sub-contractor walked off the job and left it to us to finish his work. Would you ever work on a project again with a contractor like that? In the multiple prime delivery method you don't know who will get awarded the other prime contractors and can't protect yourself. If I think Lenny's contracting is the best contractor ever I am going to request them to bid on all my jobs and if I only have bad results from Squigg's contracting I will not request them to bid or even use a bid of his. Multiple prime delivery method doesn't allow this option.

3-A single prime also removes the finger pointing at the end of the job. I am just finishing a project where this is occurring. The job was completed and ready for the owner to move in, and they did. But the sink in the breakroom had not been installed by the separate prime. They have now been in their new office for two weeks and happy with it except for not being able to use the sink in the breakroom. Even though it's not part of my contract - guess who was deemed responsible? On this same project a separate prime contractor didn't get their cable in above the ceiling before the ceiling tile were installed, even though the work was scheduled well in advance and they were notified. So, after the ceiling tile was in they came in and ran their cable above the ceiling. When they removed the ceiling tile they chipped and scratched the tile and didn't replace it. We had to install the ceiling tile before the owner moved in, and guess who is going to have to replace it and not get reimbursed? I could go on with similar situations, but I believe you get the picture.

Here is a correlation to how this would work in another industry - multiple prime contracts are like telling a farmer he/she had to hire a separate company to seed the crop, then a separate company to

spray the crop, then a separate company to harvest the crop and flip a coin to say which one was responsible to make sure he/she got a crop.

In summary, I believe this is an ideal time to have this type of policy discussion. With the changing economy and drastically reduced funding for construction, I believe the owners are going to look at every available option to find the best value on limited construction appropriations. It makes sense to offer this additional option for their consideration when bidding projects. If the owner believes the current multiple prime delivery method will provide the best value, they will utilize it. If they believe the single prime delivery method will provide the best value, the enactment of SB 2190 will allow it.

Thank you for your time. I will attempt to answer any questions you may have.

Mar 13, 2017

Senate Bill 2190

Good Morning Chairman and Committee Members. My name is James Devine I am the owner of J2 Studio Architecture + Design located in Bismarck. I appear here in favor of Senate Bill 2190.

This bill amends the bid requirements for public improvements in Chapter 48 by modifying the language for a single prime bid, which allows a state agency to use this method of bidding.

The bill requires a single prime contractor list the mechanical and electrical subcontractors on their bid form that are included in their base bid. By doing this, it creates the transparency for both the state agencies receiving the bids, as well as for the subcontractors submitting their bids to the single prime contractor.

Under a Single Prime Bid, the state agency holds one contract for construction with the single prime bidder. The single prime bidder becomes responsible for project coordination, scheduling, and project close-out. In the Multiple Prime format, each subcontractor is responsible for schedule and coordination, which can lead to additional work and resources by the state agency.

State Agencies may still choose to use Multiple Prime bidding method. This bill will help ensure that if a single prime bid is selected, that state agencies get the transparency of bidding that is inherent in the multiple bid platform.

That completes my testimony. I would be glad to answer any questions the committee may have.

James Devine, AIA, NCARB
J2 Studio Architecture + Design, PC
(701) 255-1622

Testimony

Senate Bill 2190

House Industry, Business & Labor Committee

March 13, 2017

Bill Kalanek

National Electrical Contractors Association, Dakotas Chapter
North Dakota Association of Plumbing, Heating & Mechanical Contractors

Good Afternoon Chairman Keiser and members of the committee. My name is Bill Kalanek and I'm here today on behalf the Dakotas Chapter of the National Electrical Contractors Association and the ND Association of Plumbing, Heating & Mechanical Contractors. I'd like to express the both group's combined opposition to Senate Bill 2190.

A number of professionals representing both the Electrical and Mechanical contracting industries will follow me and speak to the specifics of the construction process and our position.

I would like to highlight the amendments that were made in the Senate and express our disappointment with the changes made. The amendment found on lines nine through eleven of the bill was presented as "Housekeeping" by the bill's proponents but drastically changes the effect of the bill from what was introduced. The bill as it now stands allows the owner to eschew the multiple prime bid method in favor of a single prime contract only.

For the past 30 years the State and political subdivisions have utilized a method by which both the multiple prime and single prime methods of bidding were available on every project. This bill takes what has historically been the more economical method and makes it optional. Multiple prime bidding saves taxpayer dollars and should be available on every bid and for every contractor, large or small. By allowing the State and its political subdivisions to bypass the multiple prime method the legislature will ensure that smaller contractors of every specialty will be excluded from publicly bidding these projects and the taxpayer will absorb the higher cost as a result.

This concludes my testimony, I would be happy to attempt to answer any questions you may have.

Mar 13, 2017

4

SB2190 Request a Do Not Pass

Heather Jones
Resident District 8
Bismarck ND
Owner of City Air Mechanical Bismarck ND &
Mowbray and Son Plumbing & Heating Minot ND

Education Source Handouts:

JLG Architect Project Specifications for MDU Resources Community Bowl
Change Order Process Flow Chart

Education on the Current System & Process

1. Single & Multiple Prime Bid Options Already Exist today. The State of ND currently has the ability to bid Single Prime Construction on all publically funded projects, but there is a requirement to also bid multiple prime.
2. **RED TABS:** Who's in charge? Who directs the schedule, project coordination, anticipated completion, etc.: Red Tabs are just a sampling that refer to the General Contractor, along with the architect acting as the owners paid representative, being entirely responsible for the overall schedule, job progress meetings, minutes, etc. of the project with the acknowledged that it was coordinate with all trades.
3. **YELLOW TABS:** Can the General effectively manage the project if they are not controlling the money? The yellow tabs offer detailed incite on the pay request process and how it is reviewed with multiple prime construction. The architect is the paid owner representative throughout the construction process. As stated previously, the architect is involved in the schedule development & approval, they attend job progress meetings with selective site walks. They are there to ensure that us as contractors, are installing per their specifications. All pay requests are submitted to the architect for approval or DENIAL if a contractor is not performing.
4. **BLUE TABS:** Who's representing the Owner's Interest during Construction? Those small public institutions lacking facility management staff with construction knowledge? The blue tabs again refer to Architect acting as owner's representative, whether the owner has large facilities managers or not. They are present through construction to verify contractors are performing, that issues are being properly resolved and that we all deliver a successful project to the owner.
5. **GREEN TABS:** How do we control change orders with Multiple Prime Construction? Green tabs illustrate the change request process but I'll pull you back to the very last page of your handout. This is a simplified illustration of the change order process. There are only two ways a change order is generated.

Today under currently law, tax funded projects are allowed to request Single Prime in addition to Multiple Prime. But they also have the *fiduciary responsibility* to select the most cost effective option between the 3 Multiple Prime Bids and Single Prime. This bill, as it's written eliminates that checks and balance process that exists today. Who will benefit the most from the elimination of a cost verification? I would strongly argue, not ND Taxpayers. I urge you to recommend a DO NOT PASS to this bill.

pl

SECTION 00 7300 - SUPPLEMENTARY CONDITIONS

PART 1 - GENERAL

The following supplements modify, change, delete from, or add to the General Conditions of the Contract for Construction, AIA Document A201, 2007. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1 GENERAL PROVISIONS

1.1.3 THE WORK

Add: 1.1.3.1 The term "provide" shall mean furnish and install in place.

1.1.5 After the paragraph, Add: The general character and scope of the Work is shown by the Drawings. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work.

Add: 1.1.5.1 Figured dimensions on the Drawings shall be followed in preference to scaled measurements on the Drawings.

1.1.6 After the paragraph, Add: Where Specifications are abbreviated type, they indicate complete sentences in the same manner as when a note occurs in the Drawings. Omissions of words such as "the Contractor shall" and "as shown on the Drawings" is intentional. The words "shall" or "shall be" are to be supplied by inference.

Add: 1.1.6.1 Where a number is listed in the Specifications (as for gauges, weights, temperatures, amounts of time, etc.), the number shall be interpreted as that or better.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

Add: 1.2.4 In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of Work shall be provided.

1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

Add: 1.5.2.1 The Contractor(s) may retain one record set of Drawings and Project Manual(s).

Add: 1.5.2.2 All copies of Instruments of Service including Addenda, except for the Contractor(s) record set, shall be returned or suitably accounted for to the Architect, on request, upon Final Completion of the Work.

ARTICLE 2 OWNER

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.5 Replace the text with: The Contractor(s) will be furnished as many sets of Drawings and Project Manuals as the Architect has available for distribution, but in no case less than one. If the Contractor(s) require additional sets, they will be furnished to the Contractor(s) at the cost of reproduction, postage and handling to be paid by the Contractor(s).

ARTICLE 3 CONTRACTOR

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 At the end of the sentence add: "and geotechnical report, if any".

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

Add: 3.3.1.1 Where multiple Prime Contracts are in effect the General Construction Contractor's schedule, prepared in accordance with Article 3.10.1 of these Supplementary Conditions, and progress shall govern the work of the other Prime Contractors. Each Contractor shall notify other Prime Contractors, within a reasonable time, of phases or items of the Work requiring incorporation of Work by the other Prime Contractors. The other Prime Contractors shall, after such notification and within a reasonable time, proceed with the furnishing, installation, laying out or incorporation of their Work so as not to delay or impede the progress of the Work.

Add: 3.3.1.2 Each Prime Contractor shall be responsible for the regular and on-going coordination of their Work with the affected Work of other Prime Contractors, and for maintaining and coordinating the progress of the Work in accordance with the construction schedule, prepared in accordance with Article 3.10.1 of these Supplementary Conditions for schedule requirements.

3.4 LABOR AND MATERIALS

Add: 3.4.4 No trade shall commence Work until conditions are satisfactory for carrying out the Work properly, and surfaces to be covered are suitable.

Add: 3.4.5 Manufacturer's printed instructions covering details of installation shall be followed where not in conflict with these Specifications. If there is a conflict, notify the Architect and obtain Architect's approval before proceeding.

Add: 3.4.6 Completed Work shall be left plumb, level, true to line or plane, anchored securely in place, and free from damage.

Add: 3.4.7 Unless otherwise called for, all pieces of material shall be as large a stock size as is in conformity with standard good practice of the trade.

Add: 3.4.8 Except where in conflict with the Specifications, current manufacturer's printed instructions of herein specified proprietary products are made part of the Specifications.

3.5 WARRANTY

Add: 3.5.1 The Contractor further warrants that all products, materials and equipment provided under the Contract are asbestos-free as defined under current EPA Guidelines, and that they do not contain any other materials currently known to be hazardous.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Replace the text with: The General Construction Contractor shall secure and pay for the building permit. The cost of which is figured on the total construction cost, including Mechanical and Electrical Work. In bidding, the General Construction Contractor shall include cost on an amount equal to 100% of his Bid plus all add Alternates, and 80% of this amount for other

Contracts. The Contract amount shall be adjusted for difference between this estimated cost and the actual cost of the permit.

Add: 3.7.2.1 When the Contract Documents require Work better than that required by statute, the Contract Documents shall govern.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 Replace the text with: The General Construction Contractor, promptly after being awarded the Contract, and in cooperation with other Prime Contractors, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work, and shall obtain and submit to the Architect written evidence of the other Prime Contractor's concurrence with that schedule. Submit in accordance with Section 01 3216. The first payment will not be certified by the Architect until the construction schedule has been received by the Architect.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 Replace the text with: See Division 01, Section 01 3000 of the Project Manual.

ARTICLE 4 ARCHITECT

4.1 GENERAL

Add: 4.1.4: The Architect will not be responsible for the acts or omissions of the Owner.

4.2 ADMINISTRATION OF THE CONTRACT

Add: 4.2.4.1 If there are any direct communications between the Owner and the Contractor(s) that affect the performance or Architect's administration of the Contract, a written summary of such communications shall be prepared by the Owner and a copy of said summary submitted to the Architect.

ARTICLE 5 SUBCONTRACTORS

No supplement.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

No supplement.

ARTICLE 7 CHANGES IN THE WORK

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.2.2 Neither the Owner nor the Architect are responsible to give Notice of Change Orders to the surety.

7.3.2 At the end of the sentence, Add: "or as deemed necessary by the Architect".

7.3.3.1 After "lump sum", Add: ", determined in accordance with the provisions of subparagraph 7.3.10,".

7.3.4 Add: "The costs for overhead, profit and commission shall be determined in accordance with the provisions of subparagraph 7.3.7.7."

7.3.7 At the end of the first sentence replace "a reasonable allowance for overhead and profit." with "allowances for overhead and profit as indicated in 7.3.7.7."

Add: 7.3.7.6 At a minimum the detailed breakdown shall include and indicate the terms enumerated below. Items (a) and (b) constitute the cost of labor, and items (a), (b), (c) and (d) constitute the basic costs referred to under this Article 7.

- a. Labor costs, itemized by each trade involved, showing the hourly rates for each, and the hours required for the change. Labor rates shall be the same for extra and credit computations and shall be the actual rate paid the workmen in accordance with established labor management agreements.
- b. Burden on labor, which shall be only the actual costs of mandatory fringe benefits required by established agreements, taxes on labor, worker's or workmen's compensation, insurance on labor as affected by payroll, unemployment taxes and insurance, including FICA and FUTA.
- c. Quantities of materials, equipment and supplies, at their actual cost, with unit costs indicated, plus applicable sales tax.
The cost of subcontracted work, computed in the same way as provided for under this subparagraph.
- d. Overhead, profit or commission added after the above computations are complete. Such overhead, profit or commission shall be computed in accordance with the provisions of subparagraph 7.3.7.7.

Add: 7.3.7.7 Maximum allowances for Subcontractor's/Contractor's overhead and profit shall be as follows, expressed as a percentage of the basic cost of the change:

- 1) For subcontractors: a.) 15% of the net cost of the additional Work.
- 2) For contractors: b.) 5% of the net cost of the additional Work performed by subcontractors.
- 3) c.) 15% of the net cost of the work performed by Contractor's own forces.
- 4) Add 5% to a.) and c.) for all changes of less than \$500.00, deduct 5% from a.) and c.) for all changes over \$10,000.00.
- 5) Overhead and profit shall include all bond premiums (if applicable), and will not be allowed on labor costs if overhead and profit is already included in hourly billing rate.

Add: 7.3.7.8 For proposed changes in the Work on the lump sum or time and material methods, the costs shall be determined as provided in this subparagraph. The Contractor shall submit an itemized list of quantities with the applicable unit costs and extended price for each, in such form and detail as required by the Architect.

ARTICLE 8 TIME

8.1 DEFINITIONS

8.1.3 At the end of the paragraph, Add: "Minor corrective Work and the replacement of defective Work or materials, and the adjustment of control apparatus, will not delay the determination that the Contract is Substantially Complete. See Paragraph 12.2.2."

Add: 8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Paragraph 9.10.2.

8.3 DELAYS AND EXTENSIONS OF TIME

Add: 8.3.1 The following will not be considered justifications for extension of time unless due to one of the causes stated within this Article 8:

- a) Delay caused by Subcontractors or Supplier except if the Supplier goes out of business and another Supplier cannot be found in time to meet the schedule.
- b) Shortage of workmen.

Add: 8.3.1.1 Change Orders for extension of Contract Time shall be considered only under the following conditions or circumstances:

- .1 As indicated in Paragraph 8.3.1. The burden of proof to substantiate the extension of time shall rest with the Contractor, including evidence that the cause was beyond his control. The Contractor shall be deemed to have had control of the supply of labor except in the case of organized labor disputes, materials, equipment, methods, and techniques, and of the Subcontractors.
- .2 A delay in the progress of the Work actually occurred as a result of one of the valid causes for time extension.
- .3 Unusual delay in delivery solely due to a delay in transportation. An extension of time shall not be considered when delay in delivery is due to improperly scheduled delivery, or when an order has not been promptly and properly placed.
- .4 Abnormal weather conditions. The Contractor shall consider the location of the Project, and shall recognize the existence of variations from severe deviations from average climatic conditions. Foul weather in and of itself shall not be a valid cause for a time extension. Time extensions resulting from abnormal weather shall not be considered unless a significant deviation from average seasonal climatic conditions occurred for an extended period of time, and the progress of the Work was delayed to a significant extent. The climatic conditions before and after the period for which the delay is sought shall be evaluated.
- .5 Changes in the Work which significantly affect the progress of the Work. When the anticipated delay can be determined the extension will be made when the Change in Work is authorized by the Owner. When the anticipated delay cannot be determined, the Contractor shall estimate the additional time required, and a mechanism for all parties to determine the allowable delay. In such a case, the Architect will determine the time extension and the Contract Time adjusted accordingly by Change Order. For changes in the Work which affect only a portion or Phase of the entire project, the Owner reserves the right to grant a time extension only for that portion or Phase affected by the Change.
- .6 Labor disputes except for lockouts over which the Contractor has control. The amount of time extension shall not be longer than the actual dispute period plus a reasonable time for mobilization, and such extension may be less than the actual dispute period depending on the effect the dispute had upon the progress of the Work.
- .7 Unavoidable delays such as damage caused by severe weather, fire or other casualty to the Work; remediation of contaminants, pollutants, or hazardous materials or substances discovered after award of the Contract; litigation including without limitation bankruptcy proceedings; the acts of any federal, state or local government unit that directly result in delays; and other delays outside the control of the Party claiming the delay.
- .8 Delays caused by Subcontractors shall be considered only under the conditions noted above.

Add: 8.3.1.2 Time extensions shall not be granted as a result of delays caused by improper scheduling, or by failure of the Contractor to have Shop Drawings or other required submittals submitted in sufficient time for review.

ARTICLE 9 PAYMENTS AND COMPLETION

9.3 APPLICATIONS FOR PAYMENT

9.3.1 In the first sentence replace: "At least ten days before the date established for each progress payment," with: "Not more than once a month,".

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9.3.2 Add: Agreement form included herein and the requirements therein specified shall be submitted and complied with for Contractor to receive payment for materials or equipment stored off-site.

9.3.4 Progress payments shall be made monthly upon application, in the amount of 90% of the Work completed and materials described under 9.3.2. For a Contract of over \$100 thousand, the Architect will authorize the payment of 100% of the amount completed after a total of 5% of the Contract amount has been retained, providing progress on the Work is in accordance with or ahead of the Contractor's construction schedule and is satisfactory to the Architect and if the Contractor has filed a Consent of Surety with the Architect.

9.8 SUBSTANTIAL COMPLETION

9.8.1 At the end of the paragraph Add: In all cases, the date of the Substantial Completion may not be earlier than the Certificate of Occupancy issued by the authority having jurisdiction. Minor corrective Work, the replacement of defective Work or materials, and the adjustment of control apparatus will not delay the determination of Substantial Completion. See paragraph 12.2.2.

9.8.2 At the end of the paragraph Add: Minor punch list items that do not interfere with using the Work as intended may be corrected between Substantial Completion and Final Completion.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.2 After "consent of surety, if any, to final payment" DELETE "and (5)" and REPLACE WITH ",(5) written certification from Contractor in accordance with Final Inspection requirements of Section 01 7800, (6) all Contract Closeout submittals required by Section 00 1780, each submittal having been approved by the Architect, and (7)".

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.3 HAZARDOUS MATERIALS

10.3.1 In the first sentence after: "asbestos", Add: ", lead-containing materials,"

ARTICLE 11 INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1.9 Liability Insurance shall be provided by each Prime Contractor and shall include the following:

Commercial General Liability on an Occurrence Basis, including Premises/Operations, Products/Completed Operations and Personal Injury. There shall be no endorsements deleting XCU coverages where they are applicable.

Automobile Liability: Written on a Business Auto Policy with liability covered auto symbols (1) or (2, 8 and 9). If the carrier does not use the Business Auto Policy, an equivalent form providing liability coverage on a comprehensive basis including all owned, non-owned and hired autos shall be used.

Umbrella Liability or Excess Liability with minimum limits of \$1,000,000 per occurrence and \$5,000,000 yearly aggregate amount. The self-insured retention, shall not exceed \$500,000. The policy shall provide a minimum of following form liability over the previous specified general liability and automobile liability.

The Architect and Owner assume no responsibility in the event that the limits set above are not adequate.

The Owner and Architect shall be listed as additional insured on each Contractor's General Liability and Automobile Liability policies.

The Owner and the State of North Dakota, and its agencies, officers and Architect shall be listed as additional insured on each Contractor's General Liability and Automobile Liability policies.

Contractor(s) shall furnish certificates of insurance and copies of the additional insured endorsements prior to execution of the Contract. Endorsements shall contain a "Waiver of Subrogation", waiving any right of recovery the insurance companies may have against the State as well as provisions that the policies and/or endorsements may not be canceled or modified without a thirty (30) day written notice to the Owner, and that any attorney who represents the State under the policy must first qualify and be appointed by the North Dakota Attorney General as required under NDCC Section 54-12-08.

The Contractor(s) will receive an Exhibit "E" Waiver of Subrogation Form at the time the contract(s) are sent out, and they shall complete and return said form with the Contract(s) and insurance certificate(s).

11.1.2 Replace the first sentence with: The insurance required by Section 11.1.1 shall be written for not less than the limits of liability specified in Section 11.1.2.1 or required by law, whichever coverage is greater.

Add: 11.1.2.1 Limits of liability shall be as follows:

Comprehensive General Liability:

- 1) Bodily Injury:
 - (a) Each Occurrence: \$500,000
 - (b) Annual Aggregate: \$1,000,000
- 2) Property Damage:
 - (a) Each Occurrence: \$500,000
 - (b) Annual Aggregate: \$1,000,000

Products and Completed Operations to be maintained for one year after final payment. Property Damage Liability Insurance will provide X (explosion), C (collapse), or U (underground) coverage as applicable.

Contractual Liability:

- 1) Bodily Injury:
 - (a) Each Occurrence: \$500,000
 - (b) Annual Aggregate: \$1,000,000
- 2) Property Damage:
 - (a) Each Occurrence: \$500,000
 - (b) Annual Aggregate: \$1,000,000

Personal Injury:

- 1) Annual Aggregate: \$1,000,000

Comprehensive Automobile Liability:

- 1) Bodily Injury:
 - (a) Each Person: \$500,000
 - (b) Each Occurrence: \$1,000,000
- 2) Property Damage:
 - (a) Each Occurrence: \$200,000

Umbrella:

- 1) Umbrella Liability or Excess Liability with minimum limits of \$1,000,000 per occurrence and \$5,000,000 aggregate. The self-insured retention, if written on an umbrella liability form, shall not exceed \$10,000. The policy shall provide a minimum of following form liability over the previous specified general liability and automobile liability. The

amounts listed for Umbrella coverage include the total of the amount of the basic coverage plus Umbrella coverage.

Worker's Compensation:

- 1) State of North Dakota: Statutory
- 2) Applicable Federal: Statutory
- 3) Employer's Liability: \$500,000

Contractor's Property Damage Insurance specified shall cover property that the Contractor did not provide and that is damaged by the Contractor while he is working on other items in the vicinity.

Other insurance deemed necessary by the Contractor, including, but not limited to, coverage on contractor's or subcontractor's equipment.

11.1.3 Replace the first sentence with: "Proof of workmen's compensation insurance coverage shall be a copy of Certificate of Premium Payment and proof of other insurance coverage shall be a fully descriptive standard AIA or ACCORD Certificate of Insurance. The Certificate of Insurance portrays the Insurance Agent's description of coverages provided the Contractor. Such certificates shall be filed with the Owner prior to commencement of the Work."

11.3 PROPERTY INSURANCE

11.3.1 Add: In bidding, the General Contractor shall include the premium on an amount equal to 100% of his bid plus all his add alternates, plus [65]% of this amount for other Contracts, including the portion of Architect's fee in connection with any loss. The Contract amount shall be adjusted for the "difference between the premium on this estimated amount and the actual amount. The Contract will not be signed until the Owner has received from the Contractor the proper policy and one copy thereof for insurance specified under this Article. The insurance required by this Article shall be written by a company licensed in the state where the Work is located at the time the policy is issued.

Add: 11.3.1.1 The form of this coverage shall be completed value. If the Owner or other Contractors are damaged by the failure of the General Contractor to maintain such insurance, then the General Contractor shall bear all reasonable costs properly attributable thereto.

Delete: 11.3.1.2 and 11.3.1.3.

11.3.1.4 Add: See paragraph 9.3.2 in these Supplementary Conditions for requirements on materials or equipment stored off-site.

11.3.2 After "Subcontractors,", add "Architect,".

Add: 11.3.2.1 The Mechanical Contractor shall give notice to the Owner stating when the boilers are to be first operated in order for the Owner to effect the Boiler Insurance.

Add: 11.3.2.2 The Owner shall carry the boiler insurance and shall maintain it in effect until final payment has been made as provided in Paragraph 9.10. This insurance shall cover the total value of the boiler equipment at the site, including both new and existing, plus damage to the building and personal property, plus bodily injury and in no case be less than \$500,000. The Contractor may at his option carry such insurance until the Owner's insurance takes effect.

Delete 11.3.4

11.3.6 Replace the text in its entirety with: Before an exposure to loss may occur, the General Contractor shall file with the Owner two certified copies of the policy or policies providing

insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements specifically related to the Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days prior written notice has been given to the Owner.

11.3.7 Waivers of Subrogation, at the end of the first sentence delete: "the Owner as fiduciary", replace with: "the General Contractor as fiduciary".

11.3.8 Replace the first sentence with: A loss insured under this property insurance shall be adjusted by the General Contractor as fiduciary and made payable to the General Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.3.10.

11.3.9 Replace the text in its entirety with: If required in writing by a party in interest, the General Contractor as fiduciary shall, upon occurrence of in insured loss, give bond for proper performance of the General Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The General Contractor shall deposit in a separate account proceeds so received, which the General Contractor shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Owner-Contractor Agreement. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the General Contractor after notification of a Change in the Work in accordance with Article 7.

11.3.10 Replace the text in its entirety with: The General Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the General Contractor's exercise of this power. If such objection is made, the dispute shall be resolved in the manner selected by the Owner and General Contractor as the method of binding dispute resolution in the Agreement. If the Owner and General Contractor have selected arbitration as the method of binding dispute resolution, the General Contractor as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 Replace the text in its entirety with: The Each Prime Contractor shall furnish bond or bonds as described below, covering the faithful performance of the Contract and the payments of all obligations arising thereunder. The Contract will not be executed by the Owner until the Owner has received the properly executed bond or bonds specified under this Article, issued by a bonding company and licensed to do business in the jurisdictional where the Project is located.

11.4.2 Replace the text in its entirety with: Where there are State, Federal or other jurisdictional bond forms required by statute or regulation, the bond or bonds shall be on those forms, in the amount of 100% of the Contract amount. Where no such requirements exist, the Contractor shall furnish both AIA A312 Performance and AIA A312 Labor and Material Payment Bond. Each bond, Performance and Payment, shall be in the amount of 100% of the Contract amount.

Add: 11.4.3 The Contractor shall require the attorney-in-fact who executes the required bond or bonds on behalf of the surety to affix thereto a certified and correct copy of the power of attorney.

Add 11.4.4 Bond amounts shall not exceed the single bond limit for the Contractor's bonding company as set forth in the Federal Register current as of the bid date.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

No supplement.

ARTICLE 13 MISCELLANEOUS PROVISIONS

Add: 13.8 TAX CLEARANCE

Add: 13.8.1 The Contract will not be signed by the Owner until the Contractor has obtained an income tax clearance, and Workmen's Compensation certificate from the North Dakota State Tax Department and submitted it with the Contract and other supporting documents to the Owner. Certificates must be current and must not have expired as of the date of the contracts are submitted for approval.

Add: 13.9 SAFETY PROGRAMS

Add: 13.9.1 For all projects exceeding \$100,000, Contractors shall submit to the Owner a copy of the written safety program to be used as guidelines and direction of the contractors and subcontractors worksite activities.

Add: 13.9.2 It shall be a condition of the Contract, and shall be made a condition of each Subcontract entered into pursuant to the Contract, that the Owner assumes no liability relating to its receipt and review of the Contractor's safety program. Safety remains the responsibility of the Contractor(s). Furthermore, the right of the Owner to receive and review the safety program shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor(s) or any other person or entity.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1.2 At the end of the Subparagraph Add "or in accordance with the Contract Documents".

Add: 14.2.1.5 files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of commencement of same, makes an assignment for the benefit of its creditors, has a receiver appointed to manage the Contractor's assets or otherwise becomes insolvent;

Add: 14.2.1.6 fails to maintain schedules as required by the Contract Documents, or fails to comply in a material way with design requirements of the Contract Documents, or persistently fails to perform the Work in accordance with the Contract Documents.

14.2.4 Replace the text with: If the unpaid balance of the Contract Sum exceeds the direct and indirect consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs), and other damages incurred by the Owner, such excess will be paid to the Contractor. If such costs and damages exceed such unpaid balance, the Contractor shall pay the difference to the Owner. Such costs incurred by the Owner will be approved as to reasonableness by the Architect, but when exercising any rights or remedies under this paragraph, the Owner shall not be required to obtain the lowest price for the Work performed. This obligation to payment shall survive termination of the Contract.

SECTION 01 3000 - ADMINISTRATIVE REQUIREMENTS

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Electronic document submittal service.
- B. Preconstruction meeting.
- C. Progress meetings.
- D. Submittals for review, information, and project closeout.
- E. Number of copies of submittals.
- F. Submittal procedures.

1.02 RELATED REQUIREMENTS

- A. Document 00 7200 - General Conditions: Dates for applications for payment.
- B. Section 01 3216 - Construction Progress Schedule: Form, content, and administration of schedules.
- C. Section 01 7000 - Execution and Closeout Requirements: Additional coordination requirements.
- D. Section 01 7800 - Closeout Submittals: Project record documents.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION

3.01 ELECTRONIC DOCUMENT SUBMITTAL SERVICE

- A. All documents transmitted for purposes of administration of the contract are to be in electronic (PDF) format and transmitted via an Internet-based submittal service that receives, logs and stores documents, provides electronic stamping and signatures, and notifies addressees via email.
 - 1. Besides submittals for review, information, and closeout, this procedure applies to requests for information (RFIs), progress documentation, contract modification documents (e.g. supplementary instructions, change proposals, change orders), applications for payment, field reports and meeting minutes, and any other document any participant wishes to make part of the project record.
 - 2. Contractor and Architect are required to use this service.
 - 3. It is Contractor's responsibility to submit documents in PDF format.
 - 4. Subcontractors, suppliers, and Architect's consultants will be permitted to use the service at no extra charge.
 - 5. Users of the service need an email address, Internet access, and PDF review software that includes ability to mark up and apply electronic stamps (such as Adobe Acrobat, www.adobe.com, or Bluebeam PDF Revu, www.bluebeam.com), unless such software capability is provided by the service provider.
 - 6. Paper document transmittals will not be reviewed; emailed PDF documents will not be reviewed.
 - 7. All other specified submittal and document transmission procedures apply, except that electronic document requirements do not apply to samples or color selection charts.

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- B. Cost: The cost of the service will be paid by Owner.
- C. Submittal Service: The selected service is:
 - 1. Submittal Exchange (tel: 1-800-714-0024): www.submittalexchange.com.
- D. Training: One, one-hour, web-based training session will be arranged for all participants, with representatives of Architect and Contractor participating.
- E. Project Closeout: Architect will determine when to terminate the service for the project and is responsible for obtaining archive copies of files for Owner.

3.02 PRECONSTRUCTION MEETING

- A. Architect will schedule and conduct a meeting after Notice of Award.
- B. Attendance Required:
 - 1. Owner.
 - 2. Architect.
 - 3. Contractor.
 - 4. Major subcontractors.
- C. Agenda:
 - 1. Execution of Owner-Contractor Agreement.
 - 2. Submission of executed bonds and insurance certificates.
 - 3. Distribution of Contract Documents.
 - 4. Submission of list of Subcontractors, list of Products, schedule of values, and progress schedule.
 - 5. Designation of personnel representing the parties to Contract and Architect.
 - 6. Procedures and processing of field decisions, submittals, substitutions, applications for payments, proposal request, Change Orders, and Contract closeout procedures.
 - a. Shop drawings and sample distribution.
 - b. Mockups.
 - c. Critical products for the project timeline.
 - 7. Scheduling.
 - a. Contractor's schedule.
 - b. Start of on-site work.
 - c. Completion date.
 - d. Coordination with on-site Owner's representatives.
 - e. Sequence of work.
 - f. Full or partial Owner occupancy as applicable.
 - 8. Material deliveries.
 - 9. Procedures to be followed when working on site.
 - 10. Address items prior to on-site work.
 - a. Parking.
 - b. Security.
 - c. Temporary Facilities including heat, electricity and water.
 - d. Noise and general safety.
 - e. Site fencing.
 - f. Use of the site.
- D. Record minutes and distribute copies within two days after meeting to participants, with two copies to Architect, Owner, participants, and those affected by decisions made.

3.03 PROGRESS MEETINGS

- A. Schedule and administer meetings throughout progress of the Work at maximum two week intervals.
- B. Make arrangements for meetings, prepare agenda with copies for participants, preside at meetings.
- C. Attendance Required: Job superintendent, major Subcontractors and suppliers, Owner, Architect, as appropriate to agenda topics for each meeting.
- D. Agenda:
 - 1. Review minutes of previous meetings.
 - 2. Review of Work progress.
 - 3. Field observations, problems, and decisions.
 - 4. Identification of problems that impede, or will impede, planned progress.
 - 5. Review of submittals schedule and status of submittals.
 - 6. Maintenance of progress schedule.
 - 7. Corrective measures to regain projected schedules.
 - 8. Planned progress during succeeding work period.
 - 9. Maintenance of quality and work standards.
 - 10. Effect of proposed changes on progress schedule and coordination.
 - 11. Other business relating to Work.
- E. Record minutes and distribute copies within two days after meeting to participants, with two copies to Architect, Owner, participants, and those affected by decisions made.
- F. Prime Contractors shall coordinate with Architect and their Consultants to schedule and conduct special meetings including Pre-installation meetings on critical systems as deemed necessary.

3.04 CONSTRUCTION PROGRESS SCHEDULE - See Section 01 3216

3.05 SUBMITTALS FOR REVIEW

- A. When the following are specified in individual sections, submit them for review:
 - 1. Product data.
 - 2. Shop drawings.
 - 3. Samples for selection.
 - 4. Samples for verification.
- B. Submit to Architect for review for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.
- C. Samples will be reviewed only for aesthetic, color, or finish selection.
- D. After review, provide copies and distribute in accordance with SUBMITTAL PROCEDURES article below and for record documents purposes described in Section 01 7800 - CLOSEOUT SUBMITTALS.

3.06 SUBMITTALS FOR INFORMATION

- A. When the following are specified in individual sections, submit them for information:
 - 1. Design data.
 - 2. Certificates.
 - 3. Test reports.

4. Inspection reports.
5. Manufacturer's instructions.
6. Manufacturer's field reports.
7. Other types indicated.

B. Submit for Architect's knowledge as contract administrator or for Owner. No action will be taken.

3.07 SUBMITTALS FOR PROJECT CLOSEOUT

A. When the following are specified in individual sections, submit them at project closeout:

1. Project record documents.
2. Operation and maintenance data.
3. Warranties.
4. Bonds.
5. Other types as indicated.

B. Submit for Owner's benefit during and after project completion.

3.08 NUMBER OF COPIES OF SUBMITTALS

A. Samples: Submit the number specified in individual specification sections; one of which will be retained by Architect.

1. After review, produce duplicates.
2. Retained samples will not be returned to Contractor unless specifically so stated.

3.09 SUBMITTAL PROCEDURES

- A. Transmit each submittal with approved form.
- B. Sequentially number the transmittal form. Revise submittals with original number and a sequential alphabetic suffix.
- C. Identify Project, Contractor, Subcontractor or supplier; pertinent drawing and detail number, and specification section number, as appropriate on each copy.
- D. Apply Contractor's stamp, signed or initialed certifying that review, approval, verification of Products required, field dimensions, adjacent construction Work, and coordination of information is in accordance with the requirements of the Work and Contract Documents.
 1. The Architect and Consultants will not begin review of the shop drawings without review by the Contractor.
- E. Schedule submittals to expedite the Project, and coordinate submission of related items.
- F. For each submittal for review, allow 15 days excluding delivery time to and from the Contractor.
- G. Identify variations from Contract Documents and Product or system limitations that may be detrimental to successful performance of the completed Work.
- H. Provide space for Contractor and Architect review stamps.
- I. When revised for resubmission, identify all changes made since previous submission.
- J. Distribute reviewed submittals as appropriate. Instruct parties to promptly report any inability to comply with requirements.

K. Submittals not requested will not be recognized or processed.

L. Do not use shop drawings without an appropriate final stamp indicating action taken in connection with construction.

END OF SECTION

SECTION 01 3216 - CONSTRUCTION PROGRESS SCHEDULE

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Preliminary schedule.
- B. Construction progress schedule, bar chart type.

1.02 REFERENCES

- A. AGC (CPSM) - Construction Planning and Scheduling Manual; Associated General Contractors of America; 2004.

1.03 SUBMITTALS

- A. **Within 10 days after date of Agreement, submit preliminary schedule defining planned operations for the first 60 days of Work, with a general outline for remainder of Work.**
- B. Submit updated schedule with each Application for Payment.

1.04 SCHEDULE FORMAT

- A. Listings: In chronological order according to the start date for each activity. Identify each activity with the applicable specification section number.
- B. Diagram Sheet Size: Maximum 22 x 17 inches (560 x 432 mm) or width required.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION

3.01 PRELIMINARY SCHEDULE

- A. Prepare preliminary schedule in the form of a horizontal bar chart.

3.02 CONTENT

- A. **The General Construction Contractor shall be responsible for coordinating the schedule with other Prime Contractors, shall prepare and submit the schedule for the Owner's and Architect's information, and shall obtain and submit to the Architect written evidence of the other Prime Contractor's concurrence with that schedule.**
- B. Show complete sequence of construction by activity, with dates for beginning and completion of each element of construction.
- C. Identify each item by specification section number.
- D. Show accumulated percentage of completion of each item, and total percentage of Work completed, as of the first day of each month.
- E. Provide legend for symbols and abbreviations used.

3.03 BAR CHARTS

- A. Include a separate bar for each major portion of Work or operation.
- B. Identify the first work day of each week.

3.04 REVIEW AND EVALUATION OF SCHEDULE

- A. Participate in joint review and evaluation of schedule with Architect at each submittal.
- B. Evaluate project status to determine work behind schedule and work ahead of schedule.
- C. After review, revise as necessary as result of review, and resubmit within 10 days.

3.05 UPDATING SCHEDULE

- A. Maintain schedules to record actual start and finish dates of completed activities.
- B. Indicate progress of each activity to date of revision, with projected completion date of each activity.
- C. Annotate diagrams to graphically depict current status of Work.
- D. Identify activities modified since previous submittal, major changes in Work, and other identifiable changes.
- E. Indicate changes required to maintain Date of Substantial Completion.
- F. Submit reports required to support recommended changes.

3.06 DISTRIBUTION OF SCHEDULE

- A. Distribute copies of updated schedules to Contractor's project site file, to Subcontractors, suppliers, Architect, Owner, and other concerned parties.
- B. Instruct recipients to promptly report, in writing, problems anticipated by projections shown in schedules.

END OF SECTION

SECTION 01 2000 - PRICE AND PAYMENT PROCEDURES

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Procedures for preparation and submittal of applications for progress payments.

1.02 SCHEDULE OF VALUES

- A. Form to be used: AIA G702/G703.
- B. Electronic media printout including equivalent information will be considered in lieu of standard form specified; submit sample to Architect for approval.
- C. Forms filled out by hand will not be accepted.
- D. The apparent low bidder shall be required to submit a preliminary Schedule of Values to the Architect within 24 hours of the bid opening.
- E. Submit Final Schedule of Values to the Architect at the earliest feasible date, but in no case later than seven days before the date scheduled for submittal of the initial application for payment.
- F. Format: Utilize the Table of Contents of this Project Manual. Identify each line item with number and title of the specification Section.
 - 1. Provide a breakdown of the Contract Sum in sufficient detail to facilitate continued evaluation of Applications for Payment and progress reports.
 - 2. Break principle subcontract amounts down into several line items.
 - 3. Round amounts off to the nearest whole dollar; the total shall equal the Contract Sum.
 - 4. For each part of the Work where an Application for Payment may include materials or equipment purchased or fabricated and stored, but not yet installed, provide separate line items on the Schedule of Values for initial cost of the materials, for each subsequent stage of completion, and for total installed value of that part of the Work.
 - 5. Margins of Cost: Show line items for indirect costs, and margins on actual costs, only to the extent that such items will be listed individually in Applications for Payment. Each item in the Schedule of Values and Application for Payment shall be complete including its total cost and proportionate share of general overhead and profit margin.
 - 6. At the Contractor's option, temporary facilities and other major cost items that are not direct cost of actual work-in-place may be shown as separate line items in the Schedule of Values or distributed as general overhead expense.
- G. Correlate line items in the Schedule of Values with other required administrative schedules and forms, including:
 - 1. Contractor's construction schedule.
 - 2. Application for Payment form.
 - 3. List of subcontractors.
 - 4. List of principal suppliers and fabricators.
- H. Revise schedule to list approved Change Orders, with each Application For Payment.

1.03 APPLICATIONS FOR PROGRESS PAYMENTS

- A. Form to be used: AIA Document G702 and Continuation Sheet G703.

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- B. Forms filled out by hand will not be accepted.
- C. **Payment Application Times: The date for each progress payment is the 7th day of each month. Submit applications for payment to the Architect no later than the 15th day of each month. The Architect will process the application and forward it to the Owner within 7 days.**
- D. Execute certification by signature of authorized officer.
- E. Use data from approved Schedule of Values. Provide dollar value in each column for each line item for portion of work performed and for stored products.
- F. List each authorized Change Order as a separate line item, listing Change Order number and dollar amount as for an original item of Work.
- G. **Transmittal: Submit three executed copies of each Application for Payment to the Architect by means ensuring receipt within 24 hours; one copy shall be complete, including waivers of lien, payroll reports, and/or similar attachments, when required.**
 - 1. **One approved copy will be retained by the Architect, one will be returned to the Contractor, and one forwarded to the Owner for their use in issuing payment.**
- H. Initial Application for Payment: Administrative actions and submittals that must precede or coincide with submittal of the first Application for Payment include the following:
 - 1. List of subcontractors: AIA G705.
 - 2. List of principle suppliers and fabricators.
 - 3. Schedule of Values: AIA G703.
 - 4. Contractor's Construction Schedule (preliminary if not final).
 - 5. Schedule of principal products.
 - 6. List of Contractor's staff assignments.
 - 7. Certificates of insurance and insurance policies.
 - 8. Performance and payment bonds: AIA A312.
- I. Include the following with each application:
 - 1. Waivers of Mechanics Lien: Submit waivers of mechanics lien from every entity who may lawfully be entitled to file a mechanics lien arising out of the Contract, and related to the Work covered by the payment.
 - 2. Affidavits attesting to off-site stored products.
- J. Application for Payment at Substantial Completion: Following issuance of the Certificate of Substantial Completion, submit an Application for Payment; this application shall reflect any Certificates of Partial Substantial Completion issued previously for Owner occupancy of designated portions of the Work.
 - 1. Administrative actions and submittals that shall precede or coincide with this application include:
 - a. Occupancy permits and similar approvals.
 - b. Warranties (guarantees) and maintenance agreements.
 - c. Testing, adjusting, and balancing reports.
 - d. Maintenance instructions.
 - e. Start-up performance reports.
 - f. Change-over information related to Owner's occupancy, use, operation, and maintenance.
 - g. Final cleaning.
 - h. Application for reduction of retainage, and consent of surety.
 - i. List of incomplete Work, recognized as exceptions to Architect's Certificate of Substantial Completion.

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1.04 MODIFICATION PROCEDURES

- A. For minor changes not involving an adjustment to the Contract Sum or Contract Time, Architect will issue Supplemental Instructions on AIA form G710 directly to Contractor.
- B. For other changes involving an adjustment to the Contract Sum or Contract Time, the A/E shall evaluate the Contractor's response to each Proposal Request against recognized cost estimating references. Upon acceptance of the Contractor's "not to exceed" price, the A/E shall prepare and submit for signature by the Contractor, Architect, and Owner (in this sequential order) a Construction Change Directive (CCD).
- C. When the Work of the CCD is complete, the A/E shall prepare a Change Order (CO), using the Owner's format. CO's may include Contractor responses to one or more PR's and CCD's. CO's shall describe changes in the Work, both additions and deletions, with references to revised Contract Documents or other supporting documents to define details of the changes. CO's shall include an accounting of the adjustments in the Contract Sum and Contract Time. The Construction Manager, A/E and then the Owner (in this sequential order) will sign and date the CO to indicate their agreement. The Contractor may not request payment for the change(s) in the Work prior to receipt of an approved CO.
- D. Computation of Change in Contract Amount: As specified in the Agreement and Conditions of the Contract.

1.05 CHANGE ORDER PROPOSAL REQUESTS

- A. **Owner-Initiated Proposal Requests:** Proposed changes in the Work that will require adjustment to the Contract Sum or Contract Time will be issued by the Architect, with a detailed description of the proposed change and supplemental or revised Drawings and Specifications, if necessary.
 - 1. Proposal requests issued by the Architect are for information only. Do not consider Proposal Requests as an instruction either to stop work in progress, or to execute the proposed change.
 - 2. Unless otherwise indicated in the proposal request, within 5 days of receipt of the proposal request, submit to the Architect for the Owner's review an estimate of cost necessary to execute the proposed change.
 - 3. Include a list of quantities of products to be purchased and unit costs, along with the total amount of purchases to be made. Where requested, furnish survey data to substantiate quantities.
 - 4. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
 - 5. Include a statement indicating the effect the proposed change in the Work will have on the Contract Time.
- B. **Contractor-Initiated Change Order Proposal Requests: When latent or other unforeseen conditions require modifications to the Contract, the Contractor may propose changes by submitting a request for a change to the Architect.**
 - 1. Include a statement outlining the reasons for the change and the effect of the change on the Work. Provide a complete description of the proposed change. Indicate the effect of the proposed change on the Contract Sum and Contract Time.
 - 2. Include a list of quantities of products to be purchased and unit costs along with the total amount of purchases to be made. Where requested, furnish survey data to substantiate quantities.
 - 3. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
 - 4. Comply with requirements in Section "Product Substitutions" if the proposed change in the Work requires the substitution of a product or system for a product or system specified.
- C. Proposal Request Form: Use AIA Document G709 for Change Order Proposal Requests.

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- D. **Change proposals shall be returned to the Architect no later than 5 days after being received by the Contractor.**

1.06 CONSTRUCTION CHANGE DIRECTIVE

- A. Construction Change Directive: When the Owner and Contractor are not in total agreement on the terms of a Change Order Proposal Request, the Architect may issue a Construction Change Directive instructing the Contractor to proceed with a change in the Work, for subsequent inclusion in a Change Order.
- B. The Construction Change Directive will contain a complete description of the change in the Work and designate the method to be followed to determine change in the Contract Sum or Contract Time.
- C. Documentation: Maintain detailed records on a time and material basis of work required by the Construction Change Directive.
- D. After completion of the change, submit an itemized account and supporting data necessary to substantiate cost and time adjustments to the Contract.

1.07 CHANGE ORDER PROCEDURES

- A. Upon the Owner's approval of a Change Order Proposal Request, the Architect will issue a Change Order for signatures of the Owner and Contractor, as provided in the Conditions of the Contract.
- B. Change Orders will be issued no later than the end of the month during which change proposals are received. If more than one change proposal is received during the month, they will be combined into a single change order.
- C. Change Orders shall be returned to the Architect no later than 1 week after being received by the Contractor.

1.08 REQUEST FOR INFORMATION

- A. Requests for Information: Use AIA Document G716. This is the standard form for the Architect, Owner and Contractor to request further information from each other during construction.
- B. The Contractor may request clarification from the Architect by means of written form. The nature of the question shall consist of issues not specifically explained in the bid documents. If a change of the scope of work is necessary, the procedures for change proposals and change orders will proceed.

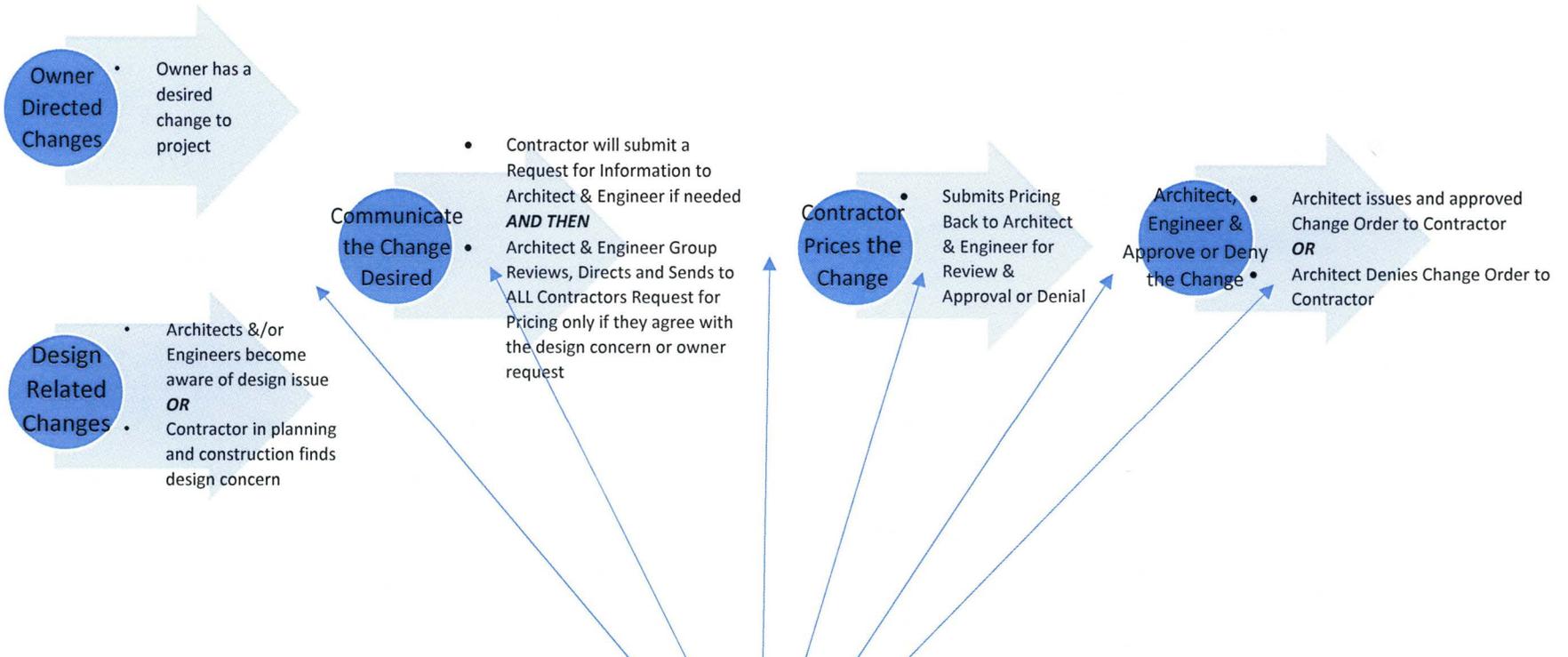
1.09 APPLICATION FOR FINAL PAYMENT

- A. Prepare Application for Final Payment as specified for progress payments, identifying total adjusted Contract Sum, previous payments, and sum remaining due.
- B. Application for Final Payment will not be considered until the following have been accomplished:
 1. All closeout procedures specified in Section 01 7000.
 2. Completion of items specified for completion after Substantial Completion (punchlists).
 3. Assurance that unsettled claims will be settled.
 4. Assurance that Work not complete and accepted will be completed without undue delay..
 5. Transmittal of required construction records to Owner.
 6. Proof taxes, fees, and similar obligations have been paid.
 7. Removal of temporary facilities and services.

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MULTIPLE PRIME CONSTRUCTION CONTRACT CHANGE ORDER PROCESS

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HIGHLIGHTED CHANGES TO PROCESS WITH SINGLE PRIME

General Contractor Acts as Pass through of Information between Architect and Mechanical/Electrical Contractors Adding Additional Time and Touches to Desired Information **without adding any** tangible value to the process **but** GC will add Margin to the final price submitted to the taxpaying funded entity

Mar 13, 2013

SB 2190

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Mr. Chairman and members of the IBL Committee,

My name is Jeff Klemetsrud from Devils Lake, ND. I am the president of a small mechanical construction firm, Klemetsrud Plumbing & Heating Co. Inc. I am here to explain why Senate bill 2190 must be defeated. Being a native North Dakotan gives me a sense of great personal pride. I am always proud when I watch the news and hear about other states having financial troubles, some communities must even file for bankruptcy. Not my state. My state has always been fiscally responsible.

Currently our state is able to construct projects with the wholesaler. The three prime construction practice, our current situation, is like bypassing the grocery store and buying your food from the producer. Going to single prime will only make projects more expensive. The middle man doesn't work free.

As I read about testifying before your committee today, it was stated that our legislature is one of the most open legislatures in the nation. All votes are public. If SB2190 were to pass, you would not extend the same privilege to subcontractors bidding on public projects. Presently we are tasked with compiling our construction costs and placing our proposal in an envelope where it is publicly opened and read. SB2190 would have us sending our price to a general contractor. The general contractor opens our proposals privately, taking our price and placing a mark-up on them. When this situation is used we have no idea how we did, where our price lies, or how many other contractors bid it. This practice has zero transparency, absolutely opposite of how our legislature is run.

If the average general contractor marks up all subcontractor proposals by ten percent this could possibly make some projects die. As an example, currently a small taxing authority would only need ten million dollars for a project; under SB 2190 it would now need eleven million dollars. I feel the ten percent is a very conservative estimate and in my experiences have seen mark-ups as high as twenty five percent. This may not seem like a lot but take a small taxing district and many of its projects will not be completed due to the extra money needed under SB2190.

I am also concerned that these small taxing districts would not be allowed to use local contractors. Again, as an example: If a ten million dollar project were to be bid in the current environment, the general contractor would need a seven million dollar bond, the mechanical contractor would need a two million dollar bond and the electrical contractor would need a one million dollar bond. SB2190 would now require the general contractor to bond the entire ten million dollar project. A small general contractor who is able to bond work up to eight million dollars would be able to do the job if we were to continue to use the current situation; however, under the proposed legislation the general contractor would not be allowed to even bid on the job.

As everyone knows, our budgets are getting tighter and tighter. I would like to ask you what has been wrong with the current situation. For over thirty years we have saved the state an abundance of money. Why change now?

Thank you for your time,
Jeff Klemetsrud
President
Klemetsrud Plumbing & Heating Co. Inc.
217 4th Street NE
PO Box 648
Devils Lake, ND 58301

Mar 13, 2017

SB 2190

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Chairman Keiser

Members of House IBL Committee

My name is Travis Greff. I am the Commercial Estimator for HA Thompson and Sons a plumbing and heating company located here in Bismarck. I am also the President of the North Dakota Association of Plumbing, Heating and Mechanical Contractors an association that has been in the state for almost 100 years and was one of the leading organizations that helped in drafting the original bill 30 years ago. I am here today to voice opposition to this bill as both a mechanical contractor and concerned tax payer of the state.

The argument is being made that the Architects do not have a contract with the primes and so cannot control the job. This statement implies that if a job is bid as a single prime, it will come in on time and on budget. Representative Becker can tell you firsthand what happens when an Architect does not take control of a single prime project how bad a project can go over schedule and over budget. They need to maintain that same control whether it is single prime or multiple prime. If you ask almost any contractor in the state, the overwhelming majority of multiple prime projects come in on time and under budget.

When a project is bid single prime, the general contractor marks up the mechanical and electrical bids when they submit their price which is why the price is always higher. This markup of the subs continues throughout the project as allowed by contract. In the event of a change order whether the general contractor has any work on it or not they mark-up the costs of the mechanical and electrical changes. One example our company had, was a new water main run on a city project. The change only affected the mechanical contract and our price was over \$100,000. By contract had that been a single prime project, the general contractor would have marked that up 5% just to submit the price to the city costing the taxpayers an additional \$5000 just to send a piece of paper to the Architect.

The supporters of this bill have been stating that the state has four methods of bidding public projects but currently only three can be used. This is untrue as whenever the multiple prime method is used a single prime bid can also be submitted. Over time though, since the multiple prime bid is almost always lower single prime bids are seldom submitted. In fact, many private projects have adapted the multiple prime method as the Architects realize what it can save their customers. I have gone through the bid tabs on just 10 projects that were bid in the state and shown what kind of savings the state tax payers have realized on just these few projects.

In talking with Architects across the state, if this bill becomes law they will be pushing state agencies towards the single prime method as it is easier for them to manage. As long as the project hits the budget they will use the method that is easier for them. In looking at that spreadsheet, had just those 10 projects been steered towards single prime and no multiple prime bids received, the taxpayers would have spent an additional \$5.2 million dollars. In a time in which the state is looking for additional dollars I ask that you give this bill a do not pass recommendation and help the state continue to save millions of dollars on commercial construction projects.

Thank you

<u>Project Name</u>	<u>Low Multiple Prime Bids</u>	<u>Low Single Prime Bid</u>	<u>Recognized Savings</u>
Lincoln Elementary Classroom Addition	\$ 1,195,600.00	\$ 1,375,850.00	\$ 180,250.00
Traill County LEC Renovation	\$ 648,706.00	\$ 689,800.00	\$ 41,094.00
Minot Internatuinal Airport Building Demolition	\$ 672,254.00	\$ 684,826.00	\$ 12,572.00
Ward County Office Building	\$ 16,573,084.00	\$ 18,662,250.00	\$ 2,089,166.00
Lewis and Clark School Addition	\$ 9,665,013.00	\$ 9,920,481.00	\$ 255,468.00
WTP PumpStation Improvements	\$ 2,442,599.00	\$ 2,526,900.00	\$ 84,301.00
Fargo Membrane WTP and Improvements	\$ 107,568,666.00	\$ 108,799,391.00	\$ 1,230,725.00
ND Highway Patrol Training Academy	\$ 2,035,895.00	\$ 2,488,000.00	\$ 452,105.00
NDDOT Storage Building	\$ 2,049,408.00	\$ 2,299,300.00	\$ 249,892.00
ND Governors Residence	\$ 4,038,080.00	\$ 4,677,400.00	\$ 639,320.00

Total Savings

\$ 5,234,893.00

March 13, 2017

Senate Bill #2190 Testimony

Chairman Keiser, Members of the House Industry Business & Labor Committee. Good morning & thank you for the opportunity to testify on Senate Bill 2190.

My name is James Ruud, I am the president of & a project manager for Edling Electric. We are an electrical contractor based out of Bismarck. My company has been working in North Dakota since our company's inception in 1949; we do Commercial Work, Civil Work & Industrial Work all over ND.

This bill basically strikes the requirement for multiple prime bids on public projects and just "allows" submitting of multiple prime bids. Really, why would this be beneficial to the state of North Dakota? Some of the reasoning behind multiple prime bids is to save money for the state and for transparency reasons during the bidding process.

The multiple prime bidding requirements have been around for a number of years and has been proven that it works on public projects to save money for the owner. A responsible general contractor includes what they think it takes to run the project they bid, the general contractor already has control of the project schedule and a lead in coordination of meetings. The responsibility requirements for each contract are already included in the spec books on public projects and have been for years. Also, the current law has requirements to have Multiple prime General, Electrical, and Mechanical or a Combined bid; so a general contractor currently has the ability to bid all project scopes under the combined bid option. Current law also already requires that the governing body may not accept the single prime bid unless it is lower than the combined total of lowest responsible multiple bids for the project so the cost savings are required on the project. In addition an architect's & engineer's project fees are a lot of times calculated off of the contract construction price, and any mechanical or electrical change orders on a project would also be marked up buy a single prime contractor; so you are essentially pyramiding additional costs that are not necessary.

In this day & age of major budget cuts it is our responsibility to make sure the taxpayer's dollars go as far as they can, for the benefits of all not just a few who stand to benefit from this change. The cost savings our state currently experiences on projects allows for funding additional needed projects for the improvement of our society as a whole.

Regarding transparency, the proposed language could put us in a situation where we have to bid through another contractor that we may or may not know, to get a project. We could

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have the lowest price on bid day but not get the work. This other contractor would have full control over if they want to use our business, or if they want to use their buddy down the street for our price. It also means they could potentially require us to sign a subcontract of their choice with one sided terms. My company could put a lot of work and expense into developing a bid and not get the work due to invalid personal reasons. My thought is that a responsible proven contractor should be awarded a contract when they are low bid, especially on a public project in which our tax dollars are being used. It's about checks and a balance, adding a little bit of language requiring a single prime contractor to list a subcontractor does not satisfy this in any way; it is still in a single person's hands to fill out who is low or fabricated as low.

As you can see this proposed language is bad for the state of North Dakota taxpayers and bad for responsible Electrical & Mechanical contractors. I urge you to provide a do not pass recommendation on this bill and fight to defeat this proposed revision in every way.

Thank you all for your time and allowing me to express my concerns.



March 13, 2017

Senate Bill #2190 Testimony

Chairman Keiser, Members of the House Industry Business & Labor Committee. Good afternoon & thank you for allowing me to testify on Senate Bill 2190.

My name is Tom Wolf. I am president of Skeels Electric Company. We are an electrical contractor that has been serving the Bismarck-Mandan and surrounding area since 1914. We do residential, commercial, institutional and industrial work.

Skeels Electric is opposed to this Senate Bill 2190. The stated goal of keeping construction projects on budget and on time is misguided.

I do not feel that the cost savings will be realized. General contractors will markup their subcontracts to cover the overhead of the administration of those contracts. Also any change orders on the project will have the additional markup.

I think an example of this can be seen in the bids for the North Dakota Governor's Residence. Under the single prime bid number (Construction Manager at Risk) the project was over budget by a large enough amount that the project was rebid. When rebid with the General contract, Mechanical contract and Electrical contract all being prime bids the project was then under budget.

Transparency in the bid process is also lost. The general contractor will be required to list his subcontractors but they are not required to give the amounts or a list of who they received bids from. This could result in the General contractor "shopping" the subcontractors prices which is giving numbers to preferred subcontractors.

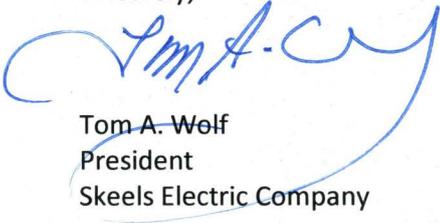
Additionally this bill could cause subcontractor hardship by causing them to lose financial control and direct contact with the architect, engineers and the owner.

Financial control could be lost because most General Contractors have a pay when paid policy and some hold the money even longer. In some cases Skeels does not see payment for 60 days and it is not uncommon for it to be stretched to 90 days plus from the date of invoice. Skeels has net 30 terms with our suppliers and when payment is held for 30 days or more it can and has caused Skeels to finance our portion of the project.

Direct contact with the architects, engineers and the owner is lost because Skeels Electric would be required to go to the General Contractor with any issues that may arise during the project. This adds another layer of communication which slows down answers and slows down the job.

Members of the House Industry Business & Labor Committee I believe this is a bad bill for the taxpayers of North Dakota along with many subcontractors in the state. I would urge he committee to vote do not pass on SB 2190.

Sincerely,

A handwritten signature in blue ink that reads "Tom A. Wolf". The signature is stylized and fluid, with a long horizontal stroke at the end.

Tom A. Wolf
President
Skeels Electric Company

A large, faint, stylized watermark logo for "Skeels" in a cursive font, positioned diagonally across the center of the page.

SB 2190

House IBL Committee

March 20, 2017

Rick Tonder, Director of Facility Planning
701.777.4270 | rick.tonder@ndus.edu

Chair and Committee Members: My name is Rick Tonder, Director of Facility Planning for the NDUS, and I'm here today in support of SB 2190. The bill amends NDCC 48-01.2-06 to allow a governing body to specify a single prime bid for a complete construction project in lieu of both single prime and multiple prime bids.

One of the single greatest challenges for many of the NDUS institutions while undertaking a construction project is the successful management and coordination of all contracted services. Although NDCC 48-01.2 currently allows the governing body to assign project coordination responsibilities to the general contractor, doing so may not be effective if there is no contractual relationship between all parties. Such is the case where multiple prime bids are awarded to various contractors who may not have a positive working relationship with each other, yet the general contractor is being required to coordinate and schedule their activities.

Given the option to solicit only single prime bids would help prevent coordination and scheduling missteps which often result in additional costs, delays in schedules, or both. The language addition contained in the bill requires bids to include a list of subcontractors. This addition would ensure that the subcontractors providing bids to the single prime would not be substituted after award by other subcontractors who would agree to do the work for less compensation.

I recommend a "do-pass" vote on SB 2190. This concludes my testimony, and I am available for any questions you may have.

My Name is Blake Wrigley I am the President/CEO of Wrigley Mechanical, Inc in Fargo we have been in Business for 39 year as a heavy Commercial and Industrial mechanical contractor, we are licensed and work in 14 states, I have been working for and now the second generation owner of the business that my dad started in 1978. I am here today to voice my opposition to SB 2190 as a tax payer and mechanical contractor and changing century code that has been working for 30 years why change it.

If this bill was to pass I believe a number of contractors would change how or if they bid projects at all as not know which general contractor they felt safe to give their bid to that was truly going to use them or was just shopping numbers to use their own company they have to do the work or a smaller company that cannot bond the work but is riding on the GC shirt tail to make it along, with the 3 prime bids you get 3 primes that supply bid bonds at the time they bid so the owner knows they are approved by a bond company, and Knows the bids of the 3 prime and or the single prime bid to determine which is lower.

Wrigley Mechanicals looks for projects where we can be a single prime for the simple reason that when we work direct for the owner we have less problems then when we work for a GC as the communication between the owner and Us does not get mix up and issues can be solve quicker and if there is a change there is only our price not the mark up from the GC on it also, when they really have nothing to do with M & E change orders other then move papers around.

What we have found also working for GC is the Project Managers they know a lot about concrete, Brick, flooring, finishing's, etc. and very little about M & E issues, it is very rare for the GC to have a M & E project Manager on board to work with the M & E contractors to solve issues.

We also get paid quicker as GC contracts are paid when paid and if something is wrong with their work or someone on the bill did something wrong the pay request can drag out longer, and job close out goes much quicker as we are only dealing with our parts of the specifications with the Engineer and not the whole project that can lead to long delays out of our control so the retainage can be held up for long periods of time, it is not uncommon for this to go for up to a year after project is done before final payment.

In closing I ask that this board gives SB 2190 a do not pass as single prime bids have been working, and we work them in both the public and private sector and they work just fine the way they are now, the option is there they just need to be lower.

Thank you for your time today and your service to the State of North Dakota
Blake Wrigley
President/CEO
Wrigley Mechanical, Inc.

LUNSETH

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Mar 20, 2017

Chairman Keiser
Members of the House IBL Committee

RE: **SB2190 – DO NOT PASS**

This bill was introduced under the premise that the North Dakota taxpayers need a Single Prime Bid option for public construction projects. If that was truly the intent, then this bill is not necessary. Single Prime Bids are currently allowed and often submitted on public construction projects.

The true intent of this bill is to eliminate the *Multiple Prime Bid Law* that the State has operated under for nearly 40 years and which has saved the North Dakota taxpayer untold millions of dollars. At a previous hearing, you were given a list of 10 recently bid public projects where the Multiple Prime Bid savings exceeded \$5M. This was just a small sampling of recent projects. Just think of how many more millions of taxpayer dollars have been saved in the nearly 40 years of Multiple Prime Bidding!

Benefits of the present *Multiple Prime Bid Law*:

- Saves taxpayers millions of dollars
- Allows more open competitive bidding
- Increases transparency in public bids
- Increases the integrity in the bidding process, i.e. reduces 'bid shopping'
- Increases the opportunity for small businesses, i.e., lower bonding limits
- Improves Owner's line of communication with all contractors

The supporters of this bill are placing their own interests above the North Dakota taxpayers.

- Large general contractors are in favor because it reduces their bidding competition
- General contractors are in favor because it increases their profit for the same job
- General contractors are in favor because they can 'bank' on their subcontractor's money
- Architects are in favor because it saves them time administering 1 contract vs 3 contracts
- AGC is in favor of it because it is good for their Contractor members (not Associate members!)
- AGC is in favor of it because it stands to increase the annual dues their Contractor members pay

I urge you to vote "**NO**" on **SB 2190**.

Thank you for your valuable time.

Jim Fristad, P.E.
Resident District 17
Sec/VP Engineering
Lunseth Plumbing and Heating Co.
Grand Forks, ND

Mar 21, 2017

17.0800.02001
Title.

Prepared by the Legislative Council staff for
Representative Laning
March 15, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2190

Page 1, line 7, remove the overstrike over "~~Multiple prime bids for the general, electrical, and mechanical portions of a project~~"

Page 1, line 7, remove "Bids"

Page 1, line 9, remove "A"

Page 1, remove line 10

Page 1, line 11, remove "mechanical portions of a project."

Page 1, line 13, overstrike "may" and insert immediately thereafter "shall"

Renumber accordingly