

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1136

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1136
1/22/2019
31188

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Bid requirements for public improvements.

Minutes:

Attachment 1, 2

Vice Chairman Lefor: Opens the hearing on HB 1136.

Chairman Keiser: Introduces HB 1136. This is political subdivision for public improvement. First, a general contractor is to discuss the projects with subcontractors. Generals tend to have favorites & other subcontractors wanted the same opportunity for the subcontractors. Subcontractors could bid individually their segment. The bids get open & become public information. The law is not clear on this, so it opens the door for the subcontractors' opportunity to participate in larger public improvement projects. Now you would have two options, the general with the subs & the subs collectively.

Reads page 2 on lines 1-3 of the bill. This makes it fair.

7:35

Rep Adams: I sit on the political subdivision committee & they have a similar bill. Can we combine the bills?

Chairman Keiser: It's one of the frustrations of the legislative process. If they want to combine them, they can come to us. Unfortunately, we are hearing this bill here & we have to deal with it.

Rep M Nelson: Is it your intention that the political subdivision could take the overall bid, since the whole project is bid, we don't know the price of the bidding the whole project under the subdivision.

Chairman Keiser: The auditor said that "I can't take your bid because I don't have the complete bid of the subs". Therefore, they determined that they would not accept the bids because the law says we have the two forms of bids & we take the lowest, best price.

Rep Richter: Does this bill allow them to take the two bids that are reasonable & redesign, then rebid the one piece that was way over or does it have to be not bid? Prime bids might be a different structure.

Chairman Keiser: I'll defer the question to the experts.

Russ Hanson~Associated General Contractors of ND: Attachment 1. Presented Tom Todd who. We support the bill.

Tom Todd~Owner of Northwest Contracting: Attachment 1.

Rep P Anderson: Why don't (inaudible), what is the primary reason?

Tom Todd: Maybe they didn't hear of the bid, weren't aware, time constraints, time of bid they were busy.

Rep O'Brien: Do you think the 150 thousand is enough to negotiate?

Tom Todd: We were neutral with that. I see both sides of it.

Rep Richter: If one areas is over of what you anticipated in your budget. Do you require to accept the lowest bid regardless of where it at?

Tom Todd: I believe that we would have to accept that lowest bid. I'm not 100% sure of that.

Rep Richter: Once they accept that bid, could they negotiate that down?

Tom Todd: I don't know.

Rep C Johnson: If it was rebid & it came in so high, that it would kill the entire project?

Tom Todd: That could be possible, but I'm not sure though.

Chairman Keiser: If it's rebid, does it still have to be added in with the other subs & that has to be less than the general bid. We could would kill the project in that case.

Mike Krumwiede~American Counsel of Engineering Companies: I stand before you in support. The more tools we give the owners, that a good move.

Bill Kalanek~ND Association of Plumbing, Heating Mechanical Contractors & National Electricat Contractors Association: I want to voice our support of the bill. It's a nice tool to add allow some more flexibility for the political subs in our state.

Bonnie Staiger~American Architects-ND Chapter: It took two years of grinding work to better understand & look forward rather backward at the various systems in place. We thought that was a perfect bill, but in the interpretation & application, there were thing that came to light that weren't exactly perfect. The interpretation & application that is seen as a

loophole. We have to make sure that the statute goes forward & addresses complications as they arise. We are in support of this bill.

21:50

Travis Greff~Commercial Estimator for HA Thompson & Sons, President of the ND Association of Plumbing, Heating & Mechanical Contractors: Attachment 2.

Rep P Anderson: When they rebid, (inaudible)

Travis Greff: Yes.

Rep Schauer: How often does this happen?

Travis Greff: I can't say for sure but it is an issue that does happen.

Stephanie Dassinger~ND League of Cities: We stand in support the bill. It's another tool in the tool box.

Chairman Keiser: Anyone else here to testify in support, opposition, neutral position? Closes the hearing. What are the wishes of the committee?

Rep Laning: Move a Do Pass.

Rep Bosch: Second.

Chairman Keiser: Further discussion?

Roll call was taken for a Do Pass on HB 1136 with 12 yes, 0 no, 2 absent & Rep Bosch is the carrier.

Date: Jan 22, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1136

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 Laning Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	Ab	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	Ab	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	X	

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep Bosch

REPORT OF STANDING COMMITTEE

HB 1136: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
HB 1136 was placed on the Eleventh order on the calendar.

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1136

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1136
3/6/2019
Job # 33270

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane / Carie Winings

Explanation or reason for introduction of bill/resolution:

Relating to bid requirements for public improvements.

Minutes:

Attachments: 1

Chairman Klein: Opened the hearing on HB 1136. All members were present.

Russ Hanson, Associated General Contractors of North Dakota: Testified in support of the bill. This bill was introduced at our request. We believe this bill will address a problem that we have seen several times over the last couple of biennium that have slowed or delayed projects. The bill adds additional language and it gives the owners on public bids, under North Dakota Century Code, Chapter 48 which has the three separate prime bids (mechanical, electrical, general). In instances where there have been multiple bids that are received for two of the three portions, and the third portion, the smaller portion, receives none. There have been instances where governmental officials have read the code to state that all of the bids need to be thrown out and everything rebid. This would propose to allow the two portions that receive the competitive bids to either be awarded, and the third portion can either negotiate a contract with the larger of the other two for up to \$150,000 or they have the option to rebid the third portion. I have a contractor here that can give you actual examples here to testify.

(2:45) Tom Todd, owner, Northwest Contracting of North Dakota, past president, Associated General Contractors of North Dakota: See Attachment #1 for testimony in support.

(5:35) Chairman Klein: This seems pretty simple. If you're lacking one of the three, we can move ahead with just rebidding the one?

Tom Todd: That is what we are asking.

Senator Burckhard: If a bid happened where there were several bids for the general and electrical portion, and only one bid for the mechanical portion, would that company automatically get the bid for the mechanical portion.

Tom Todd: I believe so, yes.

Bill Kalanek, Dakota's Chapter, National Electrical Contractors Association, and North Dakota: Testified in support of the bill. We worked with Russ and the AGC in the interim to put this together and I think it is a reasonable solution to a problem that has occurred a couple of times. It has affected my members as well. The opportunity to bid is a good thing, and under the current scenario, if you were low the first time and a rebid is forced, you were not low the second time. We support the whole heartedly.

Mike Krumwiede, American Council of Engineering Companies, and the American Institute of Architects: Testified in support of the bill. We also worked with Russ on this bill to make sure that we were ok with everything in there. We have also had some engineers that have had this issue, and we think this will resolve one of those issues.

Stephanie Dasinger, North Dakota League of Cities: Testified in support of the bill. We support this change, and we believe it adds flexibility and ability to get projects done in a short construction period.

Chairman Klein: No further testimony. Closed the hearing.

Vice Chairman Vedaa: Moved a DO PASS.

Senator Roers: Seconded.

Chairman Klein: Any discussion?

Senator Roers: In my 40 years, I have never seen this happen. Where there has not been one of those spots filled. However, if it did happen, we would be furious about that fact that our numbers are in but you would have to rebid to get the same project that you once had as a result of this law. I think it is a great change.

Senator Kreun: I have seen that happen and this would make it much simpler for the process.

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

Motion Carried.

Senator Roers will carry the bill.

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1136
03/06/019
Job # 33274

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane / Carie Winings

Explanation or reason for introduction of bill/resolution:

Relating to bid requirements for public improvements.

Minutes:

No Attachments

(1:15) Chairman Klein: Some committee members asked for clarification on some information for HB 1136. The committee proceeded to discuss with a person that is in the room about the specifics of bids and how it works if one is missing etc.

(2:52) Senator Piepkorn: If you have three biddable aspects of the project and one is competitive and has been bid on, leaving two that are left vacant, does that one bid get accepted and the remaining two get rebid? Or, is it only if two of the aspects are covered and one is left open?

Tom Todd, Northwest Contracting of North Dakota: I believe if there was two, it would be completely rebid.

Chairman Klein: That is the way that I understood you answering my question. We have been concentrating on the one open bid.

Tom Todd: We only stated the one, so I believe that is the only way that it would be able to be negotiated. We did not go that direction on it.

Chairman Klein: Asked Russ Hanson to clarify the intent in the draft.

Russ Hanson, Associated General Contractors of North Dakota: On line 2, page 2, the word portion is singular, so I believe that would mean one as opposed to if there were two that were left open.

Chairman Klein: So, if two were open then all three would be put out for bid again?

Russ Hanson: We believe so. Just to comment; the reason that we had this bill drafted the way that we did is that four or five times we have seen this it has always been one portion that is significantly less than the other two. That is why we wrote the bill this way.

Chairman Klein: And it is generally which portion?

Russ Hanson: It depends on the project.

Senator Piepkorn: Page 2, Line 1; “award a contract for each portion”, it does not say “the portion”, so that each is meaningless.

Russ Hanson: That “each” does not mean anything. Samantha from legislative council took our concept and drafted this to achieve what we were wanting.

Senator Vedaa: I look at that award of contract for “each” as being more than one. So that would mean that at least more than one portion of responsible bids. You would rebid the portion which is singular. That is how I see it.

Russ Hanson: That is how we see it. There has always only been one missing. If there are issues we can fix this in two years.

Chairman Klein: Closed the discussion.

REPORT OF STANDING COMMITTEE

HB 1136: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1136 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1136

Testimony HB 1136
House Industry Business & Labor Committee
January 22, 2019

Attachment 1
Page 1

Mr. Chairman and members of the House Industry Business & Labor committee, my name is Tom Todd and I am one of the owners of Northwest Contracting of Bismarck, ND. I am also the immediate past president of the Associated General Contractors of North Dakota. AGC of ND is a 400 member association which has been in existence since 1951. Our membership consists of all aspects of commercial construction - highway contractors, vertical contractors, civil/heavy, specialty contractors, subcontractors as well as material and equipment suppliers.

I appreciate the opportunity to testify today and we bring this legislation to you as we believe it will bring an improvement to NDCC 48 multiple prime bid method. The scenario we occasionally are faced with is when 2 of the 3 portions of the multiple prime bid method receive competitive bids but the 3rd portion does not. Attached to my testimony is a real life example of a project bid in the summer of 2017. A number of bids were submitted for the general portion and a number for the electrical portion. However, there were none submitted for the mechanical portion. See the second attachment where the owner's attorney references the current statute indicating all portions of the must be rebid. When this occurs, valuable time is lost in an area where our construction season is very short. Also, the competitive bids for the portions receiving bids are publicly read so their numbers are available for other competitors to review when the project is re-bid.

HB 1136 would clarify the statute and allow the owner to award contracts to the portions receiving bids and rebid only the portion not receiving bids. The language in NDCC allowing the owner to negotiate a contract up to \$150,000 for the portion of the project not receiving bids remains. If negotiating a contract within that amount does not occur like the situation illustrated with this testimony, HB 1136 would give the additional option to re-bid just the one portion not receiving bids.

HB 1136

Attachment 1
Jan 22, 2019
Page 2

We believe this legislation is a good improvement to the public bid process and alleviates unfortunate situations where competitive bids are not received in a particular portion of a project.

Thanks for the opportunity to comment HB 1136 and we'd request the committee issue a Do Pass recommendation on the bill. I'd be happy to address questions the committee may have.

Tabulation of Bids

Bid Opening 11:30 AM, August 30, 2017

Contractor

Acknowledges Addenda 1, 2, & 3	Bid Bond	Item-Collusion Affidavit	Contractor's License	Contract No. 1 - General Construction	Alternate 1 - Generator Pad	Contract No. 2 - Mechanical Construction	Contract No. 3 - Electrical Construction	Alternate 1 - 800 KW Generator	Contract No. 4 - Combined Construction	Alternate 1 - Generator Pad and 800 KW Generator
✓	✓	✓	✓	\$1,046,000.00	\$11,000.00	NO BID	NO BID	NO BID	\$1,858,000.00	\$285,000.00
✓	✓	✓	✓	\$1,186,900.00	\$8,700.00	NO BID	NO BID	NO BID	\$1,976,900.00	\$285,000.00
✓	✓	✓	✓	\$1,268,500.00	\$16,750.00	NO BID	NO BID	NO BID	NO BID	NO BID
✓	✓	✓	✓	\$1,425,000.00	\$25,650.00	NO BID	NO BID	NO BID	\$2,274,000.00	\$350,000.00
✓	✓	✓	✓	NO BID	NO BID	NO BID	\$626,672.00	\$256,367.00	NO BID	NO BID
✓	✓	✓	✓	NO BID	NO BID	NO BID	\$627,000.00	\$280,000.00	NO BID	NO BID
✓	✓	✓	✓	NO BID	NO BID	NO BID	\$653,160.00	\$267,000.00	NO BID	NO BID
✓	✓	✓	✓	NO BID	NO BID	NO BID	\$787,200.00	\$355,100.00	NO BID	NO BID
									\$2,200,000.00	\$450,000.00

True Tabulation of Bids
Respectfully Submitted by:

HB 1136

Attachment 1
Jan 22, 2019
Page 3

HB 1136

Attachment 1
Jan 22, 2019
Page 4

From: [redacted] [mailto:...]@...
Sent: Wednesday, September 13, 2017 11:30 AM
To: [redacted] [mailto:...]@construction.com>
Cc: [redacted] [mailto:...]@cityofchicago.com>
Subject: Fair...

I spoke with the [redacted] City Attorney this morning. He indicates that we cannot award the project without a Mechanical bid. Attached is the Statute that he is referencing. There are two remedies, negotiate a price with you to complete the mechanical work or rebid the project.

Let's discuss...

HB 1136

Attachment 2
Jan 22
Page 1, 2019

Chairman Keiser

Members of House Industry, Business and Labor 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. I am here today to voice support to this bill.

We our organization met with AGC and agrees with their proposal to make certain that when a project is bid multiple prime that the responsive portions of the bid can be awarded to keep moving forward in the meantime the non-responsive portions of the bid can be rebid. This insures that project can start in a timely manner as well as keep from wasting the time of the primes that have already gone through the work of pricing out the project the first time.

I ask you to vote yes on HB 1136.

Thank you

Testimony HB 1136
Senate Industry Business & Labor Committee
March 6, 2019

HB 1136 3/6/19 ATT #1
P.1

Mr. Chairman and members of the Senate Industry Business & Labor committee, my name is Tom Todd and I am one of the owners of Northwest Contracting of Bismarck, ND. I am also the immediate past president of the Associated General Contractors of North Dakota. AGC of ND is a 400 member association which has been in existence since 1951. Our membership consists of all aspects of commercial construction - highway contractors, vertical contractors, civil/heavy, specialty contractors, subcontractors as well as material and equipment suppliers.

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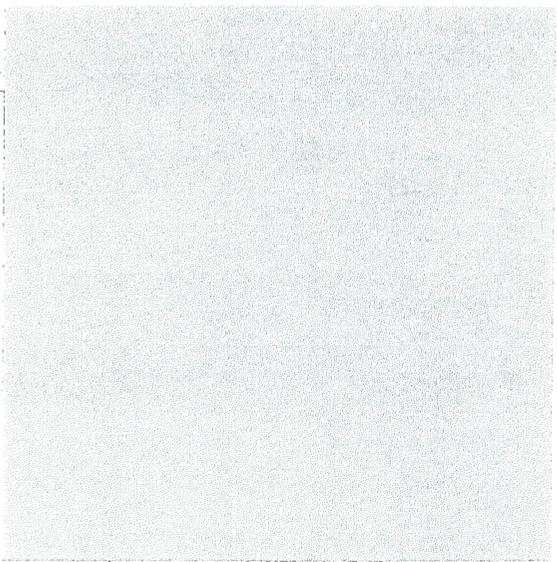
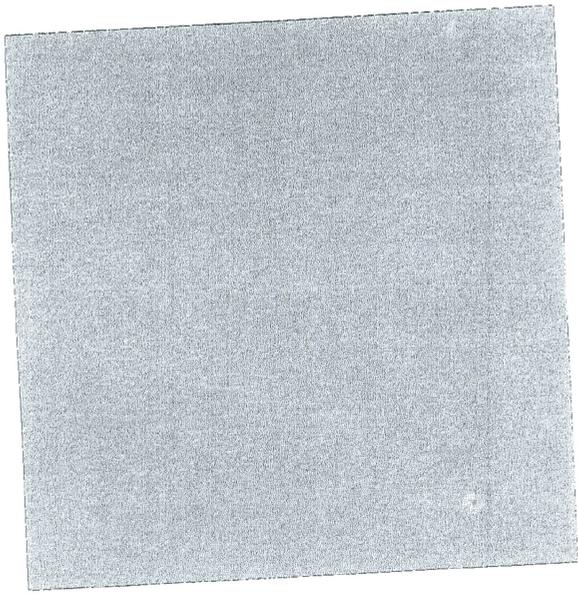
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[REDACTED]	✓	✓	✓	NO BID	NO BID	NO BID	\$627,000.00	\$280,000.00	NO BID	NO BID
[REDACTED]	✓	✓	✓	NO BID	NO BID	NO BID	\$653,160.00	\$267,000.00	NO BID	NO BID
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True Tabulation of Bids
Respectfully Submitted by:



HB 1136 3/10/19 AFT/A
P. 3

HB 1136 S/O/19 Att#1
p. 4

From: [redacted] [mailto:...]
Sent: Wednesday, September 13, 2017 11:30 AM
To: [redacted] <[redacted]@construction.com>
Cc: [redacted] <[redacted]@cityofchicago.com>
Subject: [redacted]

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Let's discuss...