

**1999 HOUSE INDUSTRY, BUSINESS AND LABOR  
HB 1418**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1418

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-27-99

Tape Number	Side A	Side B	Meter #
1	x		1714 - 4618
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **HB 1418**

Rep. Clark introduced HB 1418 relating to public improvement contract bids. He testified in support of the bill.

Rep. Ekstrom: Was there any consideration in adding language that would deal with subcontractors as well?

Rep. Clark: I think that was actually included in any combination of any individual contract.

Rep. Keiser: Are you familiar with any Attorney General's opinions within the last two years that address this issue?

Rep. Clark: No, I'm not.

Rep. Carlson: Testified in support of HB 1418. Our intent was that we want the bidding process to be used in any projects that are bid what ever subdivision it would be. We did not anticipate that they would break those down.

Chairman Berg Would there be any additional costs to associated with bidding out?

Rep. Carlson: I don't think so. Any projects that we have bid on are clearly specified on what is to be done on that project.

Tony Scheers testified in support of HB 1418.

Bonnie Larson Steiger, Executive Director AIA of ND testified in support of HB 1418. (See written testimony)

Curt Zimmerman, Director of Facility Management explained the fiscal note to the committee.

Tom Tupa: of NECA testified in support of HB 1418. It takes care of a problem discussed in previous legislative sessions. We think it will clear up these problems.

## **OPPOSITION**

Alan Walter, Director of Public works in Minot, testified in opposition of HB 1418. (See written testimony)

Ken Vein, Director of Public Works in Grand Forks, testified in opposition of HB 1418. (See written testimony)

Chairman Berg: The issue is if a city just wants a general contractor to bid the whole project, and they estimate that bid to be over \$100 thousand, there is no requirement that you break that bid down into three components and bid them out separately or is there?

Charlie Whitman, Bismarck City Attorney, responded to the Chairman's question. My understanding of the way the law is now and the way the Attorney General has interpreted it is that you can't mix and match or separate those. If it's over \$100 thousand you don't have to

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House Industry, Business and Labor Committee

Bill/Resolution Number Hb 1418

Hearing Date 1-27-99

require it that way you have to allow the bids to come in that way. The way the language is in this bill, if your project is over \$100 thousand you always allow multiple bids.

Chairman Berg closed the hearing.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1418 2-2-99

House Industry, Business and Labor

Conference Committee

Hearing Date 2-2-99

Tape Number	Side A	Side B	Meter #
2	x		20.5-38.0
Committee Clerk Signature <i>Lisa Honer</i>			

Minutes: Chairman Berg asked the committee to look at this bill.

Chairman Berg : Did we have any amendments brought forward? Hearing none, what does the committee wish.

ACTION: Vice Chair Kempenich made a motion DO PASS and Rep. Keiser seconded the motion.

ROLL CALL VOTE: 12 YES and 2 NO with 1 ABSENT. Passed. Rep. Keiser will carry the bill.

FISCAL NOTE

"REVISED"

(Return original and 14 copies)

Bill/Resolution No.: HB 1418

Amendment to: \_\_\_\_\_

Requested by Legislative Council

Date of Request: 2/23/99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

The proposed combining of electrical, mechanical and general bids for a project will have no financial impact on the advertising and professional services requirements if governing bodies consider the total cost of the project when determining the requirements for these services. NDCC 48-01.1-03 and 48-01.1-04 define the requirements for advertising and procuring plans, drawings and specifications for projects in excess of \$100,000. It is our understanding that this is the common practice for governing bodies.

- 2. State fiscal effect in dollar amounts:

Table with 6 columns: Biennium (1997-99, 1999-2001, 2001-03) and Other Funds (General Fund, Other Funds).

Revenues

Expenditures

- 3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For the rest of 1997-99 biennium: \_\_\_\_\_
b. For the 1999-2001 biennium: \_\_\_\_\_
c. For the 2001-03 biennium: \_\_\_\_\_

- 4. County, city, and school district fiscal effect in dollar amounts:

Table with 9 columns: Biennium (1997-99, 1999-2001, 2001-03) and School (Counties, Cities, Districts).

Date Prepared: 2/23/99

Signed: [Signature]

Typed Name: Curt Zimmerman

Department: Facility Management

Phone No.: 328-4002

FISCAL NOTE

"REVISED"

(Return original and 10 copies)

Bill/Resolution No.: HB 1418 Amendment to:
Requested by Legislative Council Date of Request: 01-20-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached

2. State fiscal effect in dollar amounts:

Table with 6 columns: Biennium (1997-99, 1999-2001, 2001-03) and Fund Type (General Fund, Other Funds). Rows include Revenues and Expenditures.

3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium:
b. For the 1999-2001 biennium: \$200 advertising
c. For the 2001-03 biennium: \$ 400 advertising

4. County, city, and school district fiscal effect in dollar amounts:

Table with 9 columns: Biennium (1997-99, 1999-2001, 2001-03) and Location (Counties, Cities, School Districts). Rows include Counties, Cities, and School Districts.

Signed:

Curt Zimmerman (handwritten signature)

Typed Name:

Curt Zimmerman

Department:

OMB - Facility Management

Phone Number:

328.4002

Date Prepared:

01-25-99

Narrative: Combining the general, mechanical, and electrical bids for projects would qualify more projects to cost more than \$100,000. Any project over \$100,000 requires public advertising and professional services. NDCC 48-01.1-03 requires a three week public notice in a local newspaper for construction bids. NDCC 48-01.1-04 requires projects over \$100,000 to use registered architects or engineers to provide plans, drawings and specifications for the project. It is unknown how many projects could be affected by this combining of bids but if 10 projects statewide per biennium were estimated to cost more than \$100,000, the additional advertising and professional services could cost as much as \$10,000 per project for a total of \$100,000. If the governing body had chosen to use professional services regardless of the \$100,000 threshold then the only additional cost would have been the public advertising.



**FISCAL NOTE**

(Return original and 10 copies)

Bill/Resolution No.: HB 1418 Amendment to: \_\_\_\_\_

Requested by Legislative Council \_\_\_\_\_ Date of Request: 1-20-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:** Combining the mechanical, electrical and general bids could result in additional advertising costs. Each public advertisement for construction projects cost at least \$800 for a 21 day advertising period. Facility has one proposed project for the 1999-2001 biennium which may require public advertising if multiple bids were combined.

2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures: \$800 \$1,600

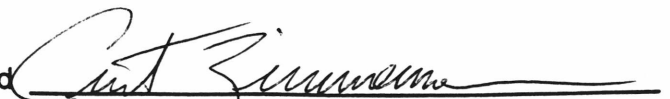
3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: \_\_\_\_\_
- b. For the 1999-2001 biennium:           \$800
- c. For the 2001-03 biennium:           \$1,600

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
				Unknown			Unknown	

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name Curt Zimmerman

Department Facility Management

Phone Number 328.4002

Date Prepared: 1-21-99

Date: 1-27-99  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1418**

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken do pass

Motion Made By Kempenich Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		/
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glasheim		/			
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 12 No 2

Absent 1

Floor Assignment Keiser

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

**REPORT OF STANDING COMMITTEE (410)**  
February 2, 1999 4:39 p.m.

**Module No: HR-21-1724**  
**Carrier: Keiser**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1418: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1418 was placed on the Eleventh order on the calendar.**

**1999 HOUSE APPROPRIATIONS**

**HB 1418**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1418

House Appropriations Committee

Conference Committee

Hearing Date 2/10/99

Tape Number	Side A	Side B	Meter #
2	x		0.3-12.3
Committee Clerk Signature <i>Kevin Kaul</i>			

Minutes:

(0.3) Chairman Dalrymple opened the hearing on HB 1418 in the Roughrider Room.

(2.1) Rep. Clark testified as the sponsor of the bill and explained it.

(3.5) Mr. Zimmerman of the OMB appeared neutral to the bill and explained the fiscal note.

HB 1418 was carried as a DO PASS motion, and the hearing was closed.

Date: 2/10/99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1418

House Appropriations Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Poolman Seconded By Boehm

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple	X		Nichols	X	
Vice-Chairman Byerly	X		Poolman	X	
Aarsvold	X		Svedjan	X	
Bernstein	X		Timm	X	
Boehm	X		Tollefson	X	
Carlson	X		Wentz	X	
Carlisle	X				
Delzer	X				
Gulleson					
Hoffner	X				
Huether	X				
Kerzman	X				
Lloyd	X				
Monson	X				

Total (Yes) 19 No 0

Absent 1

Floor Assignment Carlson

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

REPORT OF STANDING COMMITTEE (410)  
February 10, 1999 3:52 p.m.

Module No: HR-27-2513  
Carrier: Carlson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1418: Appropriations Committee (Rep. Dalrymple, Chairman)** recommends **DO PASS**  
(19 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1418 was placed on the  
Eleventh order on the calendar.

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1418**



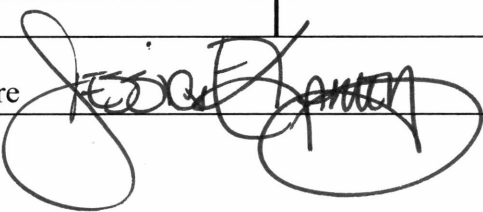
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1418

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date March 1, 1999

Tape Number	Side A	Side B	Meter #
2	x		0-600
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1418. All senators were present.

Representative Clark introduced HB1418 to the committee.

Gary Peterson testified in support of HB1418.

Tom Tupa, North Dakota Electrical Contractors Association, testified in support of HB1418.

Bonnie Larson-Steiger testified in support to HB1418.

Senator Mutch closed the hearing on HB1418.

Committee discussion took place on March 1, 1999.

Senator Heitkamp motioned for a do pass recommendation on HB1418. Senator Krebsbach seconded his motion. The motion carried with a 6-0-1 vote.

Senator Heitkamp will carry the bill.

~~XXXXXXXXXX~~

SR383971

Date: 3/1/99

Roll Call Vote #:

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
HOUSE BILL/RESOLUTION NO. 1418

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By HEITKAMP Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson					

Total (Yes) 6 No 0

Absent 1

Floor Assignment HEITKAMP

REPORT OF STANDING COMMITTEE (410)  
March 3, 1999 3:33 p.m.

Module No: SR-38-3971  
Carrier: Heitkamp  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1418: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1418 was rereferred to the Appropriations Committee.**

**1999 TESTIMONY**

**HB 1418**



Chairperson Berg and Members of the House Industry Business and Labor Committee:

My name is Bonnie Larson Staiger, Executive Director of AIA North Dakota.

As you have heard in previous testimony, the crafters of this statute thought they had solved a problem and with language that was clear. As sometimes happens, we have now found the statute holds the opportunity for misunderstanding and misinterpretation.

So, here we are. Back to the drafting table.

House bill 1418 does not seek to change any of the generally accepted procedures. It simply clarifies current practice.

We join our colleagues in the AGC and ask your support of this bill.

HB 1418

### **48-01.1-03. Publication of advertisement for bids.**

If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks, the first publication to be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need only be published once each week for two weeks in the official newspaper with the first publication being at least fourteen days before bid opening.

**Source:** S.L. 1995, ch. 443, § 16; 1997, ch. 395, § 1.

**Effective Date:** The 1997 amendment for this section by section 1 of chapter 395, S.L. 1997 became effective August 1, 1997.

### **48-01.1-04. Plans and specifications for public improvement contracts.**

If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall procure plans, drawings, and specifications for the work from a licensed architect or registered professional engineer. For public buildings in use by or to be used by the North Dakota agricultural experiment stations in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the board of higher education, may be procured from a registered professional engineer if the engineer is in the regular employment of the agricultural experiment station.

**Source:** S.L. 1995, ch. 443, § 16; 1997, ch. 396, § 2.

**Effective Date:** The 1997 amendment of this section by section 2 of chapter 396, S.L. 1997 became effective March 19, 1997, pursuant to an emergency clause in section 3, chapter 396, S.L. 1997.

**Cross-References.** Agricultural experiment stations, see ch. 4-05.1.

Armories, see ch. 37-10.

Board of county commissioners may erect, repair, and maintain public buildings, see § 11-11-16.

County commissioners, advertising for bids, see §§ 11-11-26, 24-08-01.

Licensing of architects, see ch. 43-03.

Municipal improvements by special assessment, bids, see § 40-22-19.

Municipality, power to construct public buildings, see § 40-05-01, subd. 50.

Municipality, bid for service connections to sewer, water, gas and other mains, see § 40-28-07.

Public contracts involving labor reported to workmen's compensation bureau, see § 65-04-09.

School buildings, construction, see ch. 15-35.

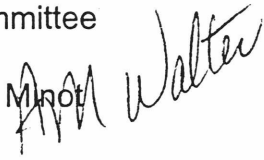
Sealed bids required, for purchase of personal property and equipment, see § 44-08-01.1.

Townships, powers and duties of township board of supervisors as to public buildings, see § 58-06-01,

DATE: January 26, 1999

TO: Industry, Business and Labor House Committee

FROM: Alan M. Walter, Director of Public Works, Minot



RE: House Bill #1418/Public Building Bids

The City of Minot is opposed to House Bill #1418. Let me just give you one instance where this bill will increase the costs for public buildings.

If a city calls for bids on a public building and the mechanical bid is \$33,000.00, the electrical is \$33,000.00 and the general contract is \$35,000.00 the bid is more than \$100,000.00. That means bid bonds are required as well as all of the necessary paperwork that goes along with each individual bid as required by law. So you have a combination of three bids in excess of \$100,000.00 and the price is driven up because of the requirement of bid bonds for each of the individual bids. Also, you have the added expense to the city of coordinating the three prime contractors on the project. If the project were left to a general contractor with subcontractors for the electrical and mechanical there would be one bid bond, the necessary paperwork and the general would then be responsible for coordinating the work and accomplishing the task. I suggest multiple prime contracts should be required when a combination of individual contracts is in excess of \$500,000.00. Then you have a project that may be substantial enough to warrant the need for multiple prime contracts and a contract coordinator. Even at \$500,000.00, the contract costs will rise enough to notice the increase in the contract amounts.

Please consider this testimony against the passage of House Bill #1418. I thank you for your consideration.

dm

**Public Works Department**

June 18, 1997

Honorable George Keiser  
State Representative  
2959 Domino Drive  
Bismarck, ND 58501

Dear Rep. Keiser:

Thank you for your letter concerning the interpretation of North Dakota Century Code (N.D.C.C.) § 48-01.1-06. The issues you raise are as follows:

The first issue is whether the bid for the entire project exceeds the defined limit (currently \$50,000 but soon to be \$100,000) or the bid for any required element (general, electrical or mechanical) exceeds the defined limit. For example, on a \$200,000 project wherein the electrical component is \$42,000, is the political subdivision required to write appropriate bid specs for the electrical component and then accept bids on that subsection which would be submitted by electrical contractors not included in the general contractor's bid?

A second issue deals with general contractors "imbedding" cost elements within categories. For example, in a bid for a golf course, a general might include in the specs for landscaping, the various motors and electrical pumps required for irrigation. The landscaping contractor would then subcontract with an electrical contractor to do the work which may legitimately exceed the \$50,000 or \$100,000 limit.

N.D.C.C. § 48-01.1-06 provides:

Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract is in excess of fifty thousand dollars. The governing body may also allow submission of single prime bids or bids for other portions of the project at its discretion. The governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest and best multiple bids for the project.



Honorable George Keiser  
June 18, 1997  
Page 2

(Emphasis added.)

The North Dakota Supreme Court in Milbank Mut. Ins. Co. v. Dairyland Ins. Co., 373 N.W.2d 888, 891-92 (N.D. 1985) (citations omitted), summarized the rule of statutory construction as follows:

[O]ur duty is to ascertain the intent of the Legislature. The Legislature's intent must be sought initially from the language of the statute. If a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit because the Legislative intent is presumed clear from the face of the statute. However, if the language of a statute is ambiguous or of doubtful meaning, the court may resort to extrinsic aids to interpret the statute.

I have reviewed the first sentence of N.D.C.C. § 48-01.1-06 and find it clear and unambiguous. This provision requires multiple prime bids for the general, electrical, and mechanical portions of a project whenever any individual portion is in excess of \$50,000. I understand that a contrary interpretation is posed to the effect that a multiple prime bid for a portion of the project is required only when the cost of that portion exceeds \$50,000. However, this interpretation ignores the plain meaning of the term "and" as a conjunction in the first sentence of the statute and would treat the term as a disjunctive "or."

I have reviewed the general bidding process outlined under N.D.C.C. ch. 48-01.1 and find that there is nothing within that chapter that creates any latent ambiguity with the plain language of N.D.C.C. § 48-01.1-06. See Kroh v. American Family Ins., 487 N.W.2d 306, 308 (N.D. 1992) ("[S]tatutes that are clear and unambiguous when read separately may contain a latent ambiguity when read together and applied to a particular set of facts.").

N.D.C.C. § 48-01.1-06 was enacted in its present form during the 1995 Legislative Session. 1995 N.D. Sess. Laws ch. 443 [House Bill 1452]. In reviewing the legislative history of House Bill 1452, I understand that committee testimony plainly indicates a contrary interpretation was intended. See Hearings on HB 1452 Before the Senate Comm. on Political Subdivisions, 54th N.D. Leg. (March 17, 1995) (Tape 1, Side A). As introduced, House Bill No. 1452, relating to multiple prime bids, provided:

48-01.1-06. Bid requirements for public buildings. When applicable, a governing body shall allow a contractor to submit multiple prime bids for the general, electrical, and mechanical contracts for competitive bids for public buildings estimated to cost in excess of fifty thousand

dollars. The governing body may also allow submission of single prime bids or bids for other portions of the project at its discretion. The governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest and best multiple bids for the project.

As proposed, multiple prime bids for the general, electrical, and mechanical contracts would have been required when the cost of any public building exceeded \$50,000. The City of Grand Forks supported House Bill 1452, but the following amendment and comment was offered:

2. Multiple prime bids for general, electrical or mechanical contracts should be required only when the estimated costs for any individual general, electrical or mechanical contract is in excess of \$50,000.00.

Explanation: The administrative costs for small multiple contracts under \$50,000.00 are excessive. Nearly as much time and effort goes into the process of administering a \$5,000.00 construction contract as a \$100,000.00 construction contract. These costs have to be absorbed by the municipality and passed on to our residents. An example would be a roofing project. The majority of the work is done by a roofing contractor (the general contractor) with the exception of the roof drains. A separate contract would have to be let to allow a mechanical contractor to bid a very minor part of the larger roof project. The mechanical contract could easily be for less than \$5,000.00, yet a separate contract would be required. In this example it would make more sense to allow the mechanical contractor to be a subcontractor to the general contractor and allow the municipality to bid only one project.

(Written Testimony of the city of Grand Forks) (emphasis added). The intent of the proposed amendment was to require a multiple prime bid for the general, electrical, or mechanical portions of the contract only when the estimated cost of the general, electrical or mechanical contract was in excess of \$50,000. Id. (Testimony of Curt Peterson) (Tape 1, Side A). However, the amendment was drafted to provide that "[m]ultiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical or mechanical contract is in excess of fifty thousand dollars." Id. (Report of Standing Committee) (emphasis added). The committee testimony on the proposed amendment contemplated the word "or" between electrical and mechanical. However, the final result was that "and" was written instead of "or."

Honorable George Keiser  
June 18, 1997  
Page 4

Because the Legislature is presumed not to perform idle acts, a latent ambiguity could be created if giving the term "and" its plain meaning would make the 1995 amendment meaningless. However, the term need not be interpreted as an "or" to give the amendment meaning; the plain language of the amendment made a substantial change in the bill. The bill as introduced reflected the law currently in effect and provided that multiple prime bids were required when the total cost exceeded \$50,000. Under the amendment, each of the three component parts of a project could equal \$50,000, for a total cost of \$150,000, and multiple prime bids would not be required. Although a governing body's authority under this interpretation of the amendment is not as broad as would result from interpreting the multiple bid requirement to apply only to the component part exceeding \$50,000, the amendment still made a meaningful change to the bill as introduced and to the law currently in effect.

The general rule is that "where it is manifest upon the face of a statute that an error has been made in the use of words, number, grammar, punctuation or spelling, the court, in construing and applying the statute, will correct the error in order that the intention of the Legislature as gathered from the entire act may be given effect." City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). In this case, it is not manifest from the face of the statute that a drafting error has occurred and, accordingly, it goes beyond a court's authority to rewrite the statute based on legislative history when the statute is clear and unambiguous. See Peterson v. Heitkamp, 442 N.W.2d 219, 221 (N.D. 1989) ("When a statute is unambiguous, it is improper for the court to attempt to construe the provisions so as to legislate that which the words of the statute do not themselves provide.").

Therefore, it is my opinion that the plain language of N.D.C.C. § 48-01.1-06 requires multiple prime bids for the general, electrical, and mechanical portions of a construction project whenever the cost of any individual, multiple prime portion is in excess of \$50,000.

Requiring all three multiple prime bids whenever the cost of a single portion exceeds \$50,000 is consistent with the additional provisions of N.D.C.C. § 48-01.1-06 where the three multiple prime bids are compared against the competitive cost of the single prime bid. Requiring all three multiple bids is also consistent with the coordination of work and assignability provisions under N.D.C.C. § 48-01.1-08. That section provides that "[a]fter competitive bids for the general, electrical, and mechanical work are received as part of the multiple prime bids, the governing board may assign the electrical and mechanical contract and any other contracts to the general contractor for the project to facilitate the coordination and management of the work only."

Honorable George Keiser  
June 18, 1997  
Page 5

Your second concern deals with general contractors "imbedding" or shifting cost elements within the multiple prime bid categories. Your hypothetical assumes that not all the electrical work necessary for the project would be bid under the electrical multiple prime portion thereby bringing the cost of that portion under \$50,000. Under the contrary interpretation of N.D.C.C. § 48-01.1-06 where each multiple prime portion of the contract would only be required to be bid if the cost of the individual portion exceeded \$50,000, such cost shifting would serve to circumvent the bidding requirements of that section. However, as stated above, it is my opinion that if the cost of any individual multiple prime portion exceeds \$50,000, then all three multiple prime bids are required. Accordingly, under this interpretation, there is little incentive to shift cost items from one multiple prime category to another.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

DEC\bah



# City of Grand Forks

255 North Fourth Street - P. O. Box 5200 - Grand Forks, ND 58206-5200

(701) 746-2640  
Fax # (701) 746-2514

## KEN VEIN – WRITTEN TESTIMONY ON HOUSE BILL 1418 JANUARY 27, 1999

Chairman Berg, members of the committee, my name is Ken Vein. I am the Director of Public Works and City Engineer for the City of Grand Forks.

I am here to testify in opposition of House Bill No. 1418.

Awarding a project to multiple prime contractors drives up direct project costs and also makes it much more difficult to meet completion dates.

Public buildings require the use of an architect or engineer to design. In Grand Forks, we also use these professionals for project construction, inspection and administration. When a project gets broken down into three separate accounts, the expenses of administering three separate contracts is added to the total project cost. When these costs are added together, the total project may cost more with the individual contracts than if it were administered under one contract, particularly if it is a small project.

One of our current projects illustrates this situation very well. Lift Station #39 was recently awarded at a cost of \$684,093. The lowest bid was achieved by awarding the individual work to three separate contractors. This resulted in a savings of \$5,107 compared to the lowest combined bid received. Our consulting engineer reviewed the additional time spent in preparing documents, bidding and awarding three separate contracts. They also prepared estimates of the additional hours needed to administer the construction phase of the contract. Their actual and estimated billings to the City will be \$10,800. This results in a net additional cost to the City of \$5,693 for this project. This does not include additional City staff time required to process and coordinate this project.

At random, ten City projects were selected and reviewed. The results show an average savings of approximately \$550 per project by awarding to the three contractors. The average additional cost to the City averaged \$10,000.

An item that is difficult to put a dollar value on, but is one of the most disturbing aspects of these multiple contracts is that, from a practical standpoint, many times it becomes impossible to meet project schedules. This is primarily due to the inability to assign responsibility to a specific contractor. When problems develop in the field, the tendency is to point to one of the other contractors (or their subcontractors) as the reason for the specific delay. These delays in a project ultimately costs someone money due to the inability to take possession of a facility and/or inability to provide service. The City is placed in a position of greater liability in such a situation as ultimately everyone from the contractors, to the developers, to the public, look to the City to resolve the situation and bring in the finished product.

In considering the high costs of construction, it does not take a very big project to reach a one hundred thousand-dollar threshold. Combining individual contracts, as proposed in this bill, will just drive the requirement for multiple bids down to smaller and smaller projects, which are less and less efficient to administer, thus driving the cost of small projects higher and higher.

Thank you for your consideration.



## Testimony in Support of HB 1418

Chairman Mutch and Members of the Senate Industry, Business and Labor Committee:

My name is Bonnie Larson Staiger, Executive Director of AIA North Dakota.

As you have heard in previous testimony, the crafters of the current statute thought they had written legislation that was clear. As sometimes happens, we have now found that the statute is ambiguous and creates the opportunity for future misunderstanding and misinterpretation.

So, here we are. Back to the drafting table.

House Bill 1418 does not seek to change any of the procedures of the design and construction industries or the intent of the current statute. It simply seeks to clarify current practice.

AIA North Dakota joins our colleagues in the AGC and asks your support of this bill.