

2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2171

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

SB 2171

1/20/2015

Job Number 22183

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to multiple prime bids

Minutes:

Attachments

Chairman Klein: Opened the hearing.

Shane Goettle, Airport Association of North Dakota: Written Testimony Attached (1).
(1:08-3:33)

Chairman Klein: What happened in your instance with the terminal project, did they have to rebid it?

Shane Goettle: Yes legally that is all they can do. This gives rise to the possibility then that we're running short on a construction season to get these projects done. That's the issue, especially in some of the smaller towns. (3:50-4:35)

Chairman Klein: So what you're actually doing is soliciting bids for the portions that you may have not gotten a bid on without going through the entire process.

Shane Goettle: That's correct.

Senator Miller: Can you speak to the process on how they bid. What is required in law, do they have to advertise in the newspaper?

Shane Goettle: Yes there are publication requirements but I am going to defer to some of the industry folks that are sitting behind here for the exact nature of the process.

Chairman Klein: If this bill passes what happens in your case of the six hundred and fifty thousand dollar project?

Shane Goettle: He recreated a hypothetical; a six hundred and fifty thousand dollar bid is out there and they get bids on two components of it and not the third, so what do they do.

That's the question that this answers. Right now they wouldn't be able to proceed with the project; they would have to rebid and go out again and try to get that third component. (6:41-7:45)

Senator Sinner: Asked if the general contractor puts in a combined bid but didn't get an electrical bid, wouldn't that be okay that you would want to circumvent that process.

Shane Goettle: My knowledge of that process isn't that deep but if they can submit a combined bid that is a different situation with the general. Then they would be responsible for finding that sub. I believe but I could be wrong in that.

Brad Darr, Maintenance Division Director, For the north Dakota Department of Transportation: Written Testimony Attached (2). (9:17-11:00)

Chairman Klein: Asked if he is finding this to be happening more under the current environment in our state.

Brad Darr: I believe it is.

Rick Tonder, Director of Facility Planning for the North Dakota University System: In support of the bill. In reference to the multiple prime versus the single prime contracting environment it has been routine over the past four years that we do not receive all three prime bids in a multiple prime environment. (12:00-14:47)

Chairman Klein: On your projects for the system do you have to do three, general, electrical and mechanical or do you just search out a general?

Rick Tonder: It involves having multiple prime, three separate prime contractors, general, mechanical and electrical, has been a tradition that goes back some time. (15:16-16:57)

Senator Miller: Where do you have to advertise, is there any specific criteria in the century code?

Rick Tonder: There are specific requirements in the century code, chapter 48, that specify exactly how you must advertise. You must advertise in the local newspaper, you must have it advertised for three consecutive weeks; you must open the bids publically at a date and time indicated in the bids. The requirements are you must award the bids to the lowest, best bidder. (17:30-19:40)

Bill Kalanek, Representing North Dakota Association of Plumbing, Heating and Mechanical Contractors and the Dakotas Chapter of the National Electrical Contractors Association: In support of what is laid out in the bill.

Renee Pfenning, Representing North Dakota Electrical Workers: In support of the bill.

Bonnie Staiger, Representing American Council of Engineering Companies and North Dakota American Institute of Architects: In opposition to the bill. Written Testimony Attached (3). (22:20-25:25)

Chairman Klein: Said that it sounded to him that they are not throwing out the public safety. According to Brad Darr of the DOT it is costing us more money by not having this ability.

Bonnie Staiger: I questioned the need for the DOT to comply with that. I believe with the instances that they mentioned that they have the opportunity to procure those services without the same bidding requirements and they also can do some of that in-house. I believe statutorily they are free to do that. If you're not able to get the bids in the current statutory requirements how are you going to get them outside of the current statutory requirements? The same market place factors still apply. (27:24-29:44)

Chairman Klein: So you would suggest that the project would never get done but just rebidding will provide a whole new opportunity. My question would be, "what changes when we rebid later on"?

Bonnie Staiger: Exactly.

Chairman Klein: To me we are providing support for what I would believe is not being able to get that.

Dean Anagnost, Professional Engineer, Chief Financial Officer Kadrmas, Lee and Jackson, Inc.: (37:15-40:18) I work for Kardmas, Lee and Jackson, I am a professional engineer. I thought I would get up and just try to respond to some of Senator Campbell's questions, if that would be helpful. I believe your questions, Senator Campbell, Mr. Chairman was, "why would it be a bad thing to allow a negotiation after a bid was not received". I don't know that it would be a bad thing but I would offer that there is some underlying reason why there wasn't a bid received and were not getting to the root of that. And as soon as we allow a change in conditions that unfairly levels the playing field, right, because everybody doesn't have the same opportunity to respond to that change in conditions. So that's where I see the flaw in the language as proposed, it would allow the bids spec to change, might allow the timing to change, might allow any number of variables to change and only benefit one party instead of benefiting everybody like the bid process is intended to do. Does that answer your question? (38:20-44:58)

Senator Campbell: Yes it does and thank you but yet the reason there was a change is because there was a huge exception, there wasn't an electrical contractor so this would allow us to take care of that problem. So without this their hands are tied what do they do?

Dean Anagnost: Mr. Chairman, Senator Campbell I understand what you are saying and I think my frame of mind is a little bit different because I hear Mr. Chairman and the committee all focusing on the problem being that everyone was too busy to bid but that isn't always the case. There may have been some other factor that caused people not to bid. They may not of liked the timing of it, they man not of liked the location of it, they may not of liked the conditions of the bidding specifications, they may not of liked their materials delivery channels, there's any number of things involved in construction project that a good contractor is going to consider. So it's not necessarily just an availability issue. Like this

committee is perceiving here and that would be my concern is that in order to negotiate there is going to have to be a concession. Is that concession simply that nobody had the time, well then this is a good solution but if that concession needs to be something else to entice a valid negotiation then why isn't everybody else offered that same opportunity.

Senator Burckhard: Is this good legislation that is being proposed or not?

Dean Anagnost: You know I don't have a strong opinion about it one way or another. I do have some concerns about all the activity in Aggregate that is going on with chapter 48 right now. So I would prefer to see all of this legislation put aside and coordinated better with solutions to whatever the real problems are but this particular legislation I think could be workable. I would of wrote it a little bit differently it were up to me.

Chairman Klein: Okay Dean if it's up to you maybe we will be looking to you for this amendment that were going to put on it because we have three powerful sponsors of the bill, if you haven't noticed.

Dean Anagnost: I have, I have. That's why I delayed getting up as long as I could.

Chairman Klein: We are here to address concerns. If there are folks out there who see issues that are affecting the public, we have every two years to address it. Whether you like attacking section 48 or not it happens. I guess it's happening a lot this session, but never the less; there must be a lot of issues out there. We may be looking to you for some help as we consider this and decide whether or not we are going to continue it or maybe we can get it fixed.

Senator Murphy: It seems fair to me because if you already got the two primes with their bid accepted and you're looking for another one and you say its changes the playing field, well maybe that's what it took to get the project done. If they don't get it, it isn't going to get done and KLJ likes to get it done.

Dean Anagnost: Mr. Chairman, Senator Murphy I don't disagree with you at all but what I would suggest is that rebidding and negotiating really isn't much different in terms of scope and time unless you already have a preconception about what you are going to do in the event that a bid doesn't get received. We are only talking about a twenty-one day advertisement period. How many people are going to be able to respond in twenty-one days if they couldn't respond the first time? So I don't see the re-advertisement as being a big problem other than the minor cost that is involved in re-advertising.

Senator Murphy: I didn't buy into the precept of the committee, the mindset being as you stated it, that it was simply a matter of people being too busy to bid. I think it's much more complex than that so I just don't fall into that umbrella that you stated.

Senator Miller: Reading the contents of advertisements, the section above the bill here in chapter 48, it talks about what needs to be advertised and the plans and then it talks about what the contractor needs to have, security and various bonds. I am just wondering are you familiar with this and is this typical for most states are you involved in other states, is this similar or is this cumbersome in any way?

Dean Anagnost: Mr. Chairman, Senator Miller in response to your question is this typical. The bid process in general is typical and the contents of the bid and the format of the bid is typical. What my personal experience finds to be atypical because are firm does work across multiple state environments, is the multiple prime scenario. We don't encounter that in most states, most states have a single prime or a qualification process as opposed to this multi prime process. I am not saying that is a bad thing. I am just saying it is a little bit different here then it is in a lot of states. (44:58)

Jeff Volk, President of Moore Engineering Inc.: Asked them to consider a different amendment. The amendment would allow the board, the owner, to award the single bidder with all the parts, if you don't get the bid for one of the parts. (45:30-47:40)

John Boyle, Director of Facility Management for the Office of Management and Budget: Opposed to the bill. Feels this could already be addressed in existing language. (54:30-58:20)

Senator Campbell: So you are in support of construction management, wouldn't that be another general contractor, another broker, another layer to go through?

John Boyle: There are positives and negatives with either delivery method but when you do design bid build, which is what this is, you're getting the lowest bidder. When you do construction management risk you are getting the most qualified contractor, where they submit based on their qualifications of doing a project.

Senator Miller: The process in this bill is strictly the design build method. When you start a project you have to decide what direction you are going to go?

John Boyle: That is correct; you have to make that choice.

Senator Miller: What if we say something to the fact that if there is an incomplete bid but there was a single prime bid submitted the body may elect to use that avenue?

John Boyle: The option that Jeff brought up before me, you do have a bid there so I would not be opposed to that because you still have all three primes covered it's just under the general contractor.

Chairman Klein: Closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2171
2/2/2015
Job Number 23003

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Eva Lilelt

Explanation or reason for introduction of bill/resolution:

Relating to multiple prime bids

Minutes:

Attachments

Chairman Klein: We have an amendment that will address some of the concerns we had issues with. You can take a look at it and visit with some of the folks who had issues. I will have Shane Goettle come back in and explain the amendments. He closed the hearing. Amendment attached (1).

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2171
2/3/2015
Job Number 23106

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to multiple prime bids

Minutes:

No Attachments

Chairman Klein: I handed out some amendments yesterday to 2171, Mr. Goettle would you explain what you have come up with here?

Shane Goettle, Representing the Airport Association of North Dakota: Listening to some of the concerns that were addressed at the hearing this amendment tries to do with two of them. Our main objective here was to deal with the smaller projects or one of the multiples was missing after a bid period. We have targeted these amendments to just that specific issue. (1:00-2:46)

Senator Burckhard: Said Bonnie Staiger was opposed to the bill and asked if this would change that.

Shane Goettle: Said he gave Miss Staiger a copy of this and he hadn't gotten a response back that she has changed her opinion which she communicated to this committee before.

Chairman Klein: I think Bonnie doesn't want us to touch chapter 48, period. It doesn't matter what the bill is or how good it looks, just my opinion.

Bill Kalanek, Representing North Dakota Association of Plumbing, Heating and Mechanical Contractors and the Dakotas Chapter of the National Electrical Contractors Association: Shane did run the amendments by us and we felt it was a reasonable solution even as wordy as it ends up being. As long as it is utilized the way Shane says we are essentially fine with it.

Russ Hanson, AGC of North Dakota: Their group didn't have a problem with the original bill.

Renee Pfenning, North Dakota Electrical Workers Council: Shane did share the amendments with us and we are fine with Shane's fix.

Chairman Klein: What are the wishes of the committee?

Senator Murphy: Moved to adopt the amendment.

Senator Sinner: Seconded the motion.

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

Chairman Klein: Called for discussion.

Senator Murphy: Moved a do pass as amended.

Senator Sinner: Seconded the motion.

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

Senator Murphy will carry the bill.

February 3, 2015

TD
2/3/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2171

Page 1, line 16, replace "solicit" with "negotiate"

Page 1, line 16, after "contract" insert "amendment, up to an additional one hundred fifty thousand dollars, with the general electrical or mechanical contractor, whose contract would represent the largest portion of the project cost,"

Page 1, line 16 after "for" insert "providing"

Page 1, line 16, replace "not receiving" with "for which"

Page 1, line 16, after "bid" insert "was not received"

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2171**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 15.8159.01001

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 Murphy Seconded By Senator Sinner

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2171**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 15.8159.01001

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 Murphy Seconded By Senator Sinner

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

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

REPORT OF STANDING COMMITTEE

SB 2171: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2171 was placed on the Sixth order on the calendar.

Page 1, line 16, replace "solicit" with "negotiate"

Page 1, line 16, after "contract" insert "amendment, up to an additional one hundred fifty thousand dollars, with the general electrical or mechanical contractor, whose contract would represent the largest portion of the project cost,"

Page 1, line 16 after "for" insert "providing"

Page 1, line 16, replace "not receiving" with "for which"

Page 1, line 16, after "bid" insert "was not received"

Renumber accordingly

2015 HOUSE INDUSTRY, BUSINESS AND LABOR


SB 2171

2015 HOUSE STANDING COMMITTEE MINUTES

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

SB 2171
3/16/2015
24853

☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Multiple prime bids.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens the hearing on SB 2171.

Shane Goettle~Representing the Airport Association of North Dakota: Introduces the bill. Could I draw your attention to line 13 on the original bid, we are having some problem on the small projects, getting the bid for the electrical portion of it. This is a fix for that.

Representative Becker: On line 15, I assume it's supposed to be written like it is on line 17.

Goettle: I believe they missed a comma on line 17 between general and electrical.

Representative Becker: It is intended to be three.

Goettle: That's correct.

Representative Becker: If you don't have a general contractor, how or what are you going to amend.

Goettle: The way this is written if the general is missing, you could go to the electrical & mechanical and say "could you find me a general" if that portion of the project is less than \$150,000.

Chairman Keiser: We do need to amend it for the comma. Why limit it to \$150,000?

Goettle: We made a judgment call but the larger projects, they track the bids. It's the smaller projects that don't. We used the real world examples and they were under \$150,000.

Blake Crosby~Executive Director of the North Dakota League of Cities: Mr Goettle explained the changes in the bill quite sufficiently and respectfully ask for a Do Pass.

Chairman Keiser: You get licensed as an electrical & mechanical; I assume you get licensed as a general. If there is no general and it defers to the electrical, they by default become the general; can they operate without a license as a general?

Crosby: You're correct, I can't answer that question.

Bill Kalanek~Represents the National Electrical Contractors Association & the North Dakota Association of Plumbing, Heating & Mechanical Contractors: We have worked with Shane to come up with this concept. Although it's not the best solution, it's the best we could come up with.

Chairman Keiser: The question is relative to bonding for licensing, they are not bonded as a general contractor. If I were an insurance company I would say you're not bonded for general work.

Kalanek: Under the multiple prime, they each have a contract.

Bonnie Staiger~Representing ACEC (American Council of Engineering Companies) & AIA North Dakota (American Institute of Architects): (Attachment 1).

13:10

Wayde Swenson~Director of the Office of Operations for the North Dakota Department of Transportation: (Attachment 2).

14:23

Representative M Nelson: When you are getting your combined bid in these situations, that would cover the whole project?

Swensen: That's correct.

Representative M Nelson: What is the problem accepting the combined bid?

Swensen: We felt if we could have negotiated, we could have had a savings in the buildings.

Representative M Nelson: Have you had situations where you haven't had one complete bid?

Swensen: Yes.

Chairman Keiser: Do you think this bill will allow you to take a valid combines bid and arbitrarily reject parts of it and rebid it?

Swensen: No, not necessarily. I don't think we have the ability to reject a combined bid.

Chairman Keiser: Your testimony says rebid the electrical.

Swensen: That is an option.

Chairman Keiser: If they were separate bids.

Swensen: We do bid them separately, we bid for a combined and for mechanical and electrical.

Chairman Keiser: If there is a combined bid, you don't have to accept it.

Swensen: That correct.

Chairman Keiser: Those bids public information?

Swensen: Yes.

Chairman Keiser: Do you think that's fair?

Swensen: I agree, it's not fair.

Chairman Keiser: It's not fair to anyone.

Swensen: The part we were in favor of is that we would have the ability, if we didn't get a bid.

Chairman Keiser: If I don't get a bid, that's different.

Swensen: Correct.

Representative Becker: The new legislation, when a bid is not received, I'm not sure if you have a fully combined bid, then you haven't met the one requirement for the new language.

Swensen: You may be correct there.

Representative Laning: There are contracts that have a clause in there that you reserve the right to reject any and all bids. That gives you the authority to reject any or all of the bid, it's not uncommon in a bid process.

Chairman Keiser: Anyone else here to testify in support of SB 2171, opposition, neutral?
Closes the hearing on SB 2171, what are the wishes of the committee?

Representative Beadle: Moves to amend the commas.

Representative Hanson: Seconded.

Chairman Keiser: What are the wishes of the committee?

Motion carried.

Representative Beadle: Move a Do Pass as Amended.

Representative Laning: Seconded.

Roll call was taken on SB 2171, for a Do Pass with 14 yes, 0 no, 1 absent and Representative Louser will carry the bill.

15.8159.02001
Title.03000

Adopted by the Industry, Business and Labor
Committee

March 16, 2015

3/16/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171

Page 1, line 17, after "general" insert an underscored comma

Page 1, line 17, after "electrical" insert an underscored comma

Page 1, line 17, remove the underscored comma

Page 1, line 18, remove the underscored comma

Renumber accordingly

Date: Mar 16, 2015

Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2171**

House Industry, Business & Labor Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider

☐ _____

Motion Made By Rep Beadle Seconded By Rep Hanson

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

move to add comma, line 17

voice vote - motion carried

Date: Mar 16, 2015Roll Call Vote: 2

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2171**

House Industry, Business & Labor Committee
☐ Subcommittee

 ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
 ☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
 ☒ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐ _____Motion Made By Rep Beadle Seconded By Rep Laning

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

Total (Yes) 14 No 0Absent 1Floor Assignment Rep Louser

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

REPORT OF STANDING COMMITTEE

SB 2171, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2171 was placed on the Sixth order on the calendar.

Page 1, line 17, after "general" insert an underscored comma

Page 1, line 17, after "electrical" insert an underscored comma

Page 1, line 17, remove the underscored comma

Page 1, line 18, remove the underscored comma

Renumber accordingly

2015 TESTIMONY

SB 2171

**Senate Industry, Business & Labor
SB 2171**

**Testimony Shane Goettle
Airport Association of ND**

Senate Bill 2171 is designed to resolve an issue involving the multiple prime bidding requirements found in 48-01.2-06. This section of the law requires governing bodies to solicit bids for the general, electrical and mechanical portions of a project when the project is in excess of the bidding threshold of \$100,000.

In recent years governing bodies, including airport authorities, have experienced situations where one or more of the primes fails to submit a bid. For instance, in one project for a \$650,000 terminal building, the airport authority received only general bids ... no electrical, mechanical or combined bids were received. The statute does not provide any guidance on what to do in this situation, potentially subjecting the local governing body to challenges for any action they take to resolve the issue outside of rebidding the project. And rebidding the project will ensure costly delays and may likely not result in receiving any new bids. Thus, the dilemma for governing bodies is how do they proceed when prime bids are not received.

Senate Bill 2171 provides the answer by allowing a governing body to solicit a contract for the portion of the project not receiving a bid without rebidding all or a part of the project. Let me be clear, the bill does not allow governing bodies to circumvent the multiple prime bid requirement. It does, however, provide a road map for next steps when one or more of the multiple primes fails to submit a bid on a project.

On behalf of the Airport Association of ND, I encourage a Do Pass on SB 2171.

SENATE, INDUSTRY, BUSINESS and LABOR COMMITTEE
January 20, 2015 ~ 9:00 a.m. ~ Roosevelt Park Room

North Dakota Department of Transportation
Brad Darr, Maintenance Division Director

SB 2171

Mr. Chairman and members of the committee, my name is Brad Darr, Maintenance Division Director, for the North Dakota Department of Transportation (DOT). I'm here today in support of SB 2171. This bill amends language in Title 48 allowing a governing body to solicit a contract for the portion of the project not receiving a bid, without rebidding all, or part of the project.

This is a challenge the DOT has experienced and this will give us another means to deal with it.

The department put section buildings at Harvey and Rugby out for bid in June of last year. In both cases, the DOT received a combined bid, multiple general bids, two mechanical bids, but no electrical bid.

DOT choices: (current law)

1. Accept the combined bid.
2. Reject all bids and rebid the project. (Not fair to the general and mechanical contractors whose bids have been made public)

DOT choices (new legislation)

1. Accept the combined bid
2. Reject all bids and rebid the project
3. Award the general and mechanical bids and re-advertise/rebid electrical work
4. Award the general and mechanical bids and solicit quotes for the electrical work

Harvey Section Building: (Received one combined bid, four general construction bids, two mechanical bids, but no electrical bids)

Lowest Combined Bid:	\$607,000.
General and Mechanical bid:	\$491,740.
Electrical work estimate:	<u>\$ 75,260.</u>
Potential savings: (Approx.)	\$40,000

Rugby Section Building: (Received one combined bid, three general construction bids, two mechanical bids, but no electrical bids)

Potential savings :(Approx.) \$47,000

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions the committee may have.

Chairman Klein and Members of the Committee

My name is Bonnie Staiger, Today I appear in opposition to SB 2171 representing both the ACEC (American Council of Engineering Companies) and AIA North Dakota (American Institute of Architects)

I'd like to take you through a brief time travel of how various industry groups have slogged their way through a time not unlike the Hatfields and McCoys which pitted many (in this room) against one another to an unprecedented level of collaboration on issues and peaceful coexistence in Chapter 48. For those of you unfamiliar with the history –with deference to Sen. Klein who knows it well, the undertaking started at the end of the 2007 session and represented the following design and construction industry organizations:

- ACEC/ND (American Council of Engineering Companies)
- AIA North Dakota
- Associated General Contractors of ND
- National Electrical Contractors Association
- ND Builders Association
- ND Plumbing, Heating, and Mechanical Contractors Association
- ND Society of Professional Engineers

The coalition formed after a mandatory interim study passed to look at procurement and delivery options. We came to the interim committee, chaired by Sen. Karen Krebsbach offering to be a resource, partner with them and maybe if we were really successful, help craft a bill draft that collectively we could support and would also protect the public trust and taxpayers of North Dakota.

The committee –knowing The Great Construction Wars--was relieved by our offer and we did come up with a bill--which was no small feat because first we had to learn how to be in the same room together, then to work together, compromise, and turn out a work product that we could give a little and all support.

During those 2 years, we met at least monthly and created better culture of collaboration and trust. We also worked with many other groups representing public owners and agencies such as Board of Higher Ed, Fargo Public Schools, Department of Transportation, and Office of Facilities Management.

Today we believe SB 2171 statutorily alters the bidding process based on current market factors which are temporary and not widespread is not in the best interest of protecting the public. If something needs to happen for the benefit of the public good, having time to coordinate the effort and clean up all the difficult areas would provide the best benefit. Perhaps another coalition

and a study period would be the alternative to having this bill pass or fail without coordination?

We ask for a **do not pass on SB 2171** and I will be happy to answer questions however I respectfully request you save more technical questions for the practitioners with us today.

2/2/15

#1

15.8159.01000

Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2171

Introduced by

Senators Klein, Murphy, Poolman

Representatives Amerman, Keiser, Ruby

- 1 A BILL for an Act to amend and reenact section 48-01.2-06 of the North Dakota Century 2 Code,
2 relating to multiple prime bids.

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

4 **SECTION 1. AMENDMENT.** Section 48-01.2-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **48-01.2-06. Bid requirements for public improvements.**

7 Multiple prime bids for the general, electrical, and mechanical portions of a project are
8 required when any individual general, electrical, or mechanical contract or any combination of
9 individual contracts is in excess of the threshold established under section 48-01.2-02.1. If a
10 general, mechanical, or electrical contract is estimated to be less than twenty-five percent of the
11 threshold, the contract may be included in one of the other prime contracts. A governing body
12 may allow submission of a single prime bid for the complete project or bids for other specialized
13 portions of the project. A governing body may not accept the single prime bid unless that bid is
14 lower than the combined total of the lowest responsible multiple bids for the project. If a bid for
15 the general, electrical, or mechanical portions of a project is not received, a governing body
16 may ~~solicit~~ negotiate a contract amendment, up to an additional one hundred fifty thousand dollars,
17 with the general electrical or mechanical contractor, whose contract would represent the largest
18 portion of the project cost, for providing the portion of the project ~~not receiving for which a bid was~~
19 not received without rebidding all or part of the project.

16 Mar 2015

House Industry Business and Labor

Testimony in opposition to further changes to SB 2171

Chairman Keiser and Members of the Committee:

My name is Bonnie Staiger (#158). Today I appear representing both the ACEC (American Council of Engineering Companies) and AIA North Dakota (American Institute of Architects). Each organization (ACEC and AIA) is requesting that you do not further amend SB 2171 as sent to you from the Senate. We feel that we can live with the changes but would oppose any further amendments. We are especially protective of—and prefer the interim study included in other bills so that further collaboration can occur among all stakeholders.

SB 2171 is among, at last count, 9 assorted bills introduced which make widely disparate and uncoordinated changes to Chapter 48 and similar provisions to other chapters. Both organizations believe all these bills should be moved to an interim study thus allowing enough time to collaborate under the auspices of an interim committee. This would provide an alternative to having them pass or fail without the critical coordination of the stakeholders. We have consistently offered the same request for all these bills.

While a few of you were here—on IBL-- in the 2005 and 2007 sessions you may recall this history. Others are aware through your current “B committee” assignment. For those who are not I’d like to take you through a short time-travel of how various industry groups have slogged their way through a history not unlike the Hatfields and McCoys which had pitted many (in this room today) against one another and evolving to an unprecedented level of collaboration on issues and a peaceful coexistence in Chapter 48. The undertaking started at the end of the 2005 session and represented the following design and construction industry organizations:

- ACEC/ND (American Council of Engineering Companies)
- AIA North Dakota
- AGC (Associated General Contractors of ND)
- National Electrical Contractors Association
- ND Home Builders Association
- ND Plumbing, Heating, and Mechanical Contractors Association
- ND Society of Professional Engineers

The coalition formed after a particularly contentious session dealing with procurement and delivery options. Out of desperation a mandatory interim study was passed. We came to the interim committee, chaired by Sen. Karen Krebsbach, offering to be a resource, partner with them and maybe if we were successful, help craft a bill draft that collectively we could support and would also protect the public trust and taxpayers of North Dakota.

Her committee --all too familiar with The Great Construction Wars--was relieved by our offer and we did come up with a bill--which was no small feat because first we had to learn how to be in the same room together, then work through compromises to produce a work product that we could support.

During those 2 years, we met at least monthly and we created a culture of collaboration and frequently reported our progress to the interim committee. We also worked with many other groups representing public owners and agencies such as Board of Higher Ed, Fargo Public Schools—which at that time was the only K-12 school district with much interest and experience in construction management. We also consulted with the Department of Transportation, the Office of Facilities Management, the Association of Counties, and through the interim committee we relied heavily on Legislative Council.

The collaborative bill introduced in 2007 largely overhauled and streamlined the public procurement and project delivery section of the statutes. It has remained effective and for the most part unamended since then.

We ask that this bill proceed through the House without further amendments or-- if you should have an interest in amending the bill to defer these issues to an interim study -- I have provided potential language for your consideration. We believe the public/private collaboration can once again create solutions and that will again withstand the test of time.

Overview of several bills dealing with this issue this session:

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

Others currently in committee

HB 1426 (Steiner) pending action by Senate Education –

Interim study amendment requested

SB 2149 (Burckhard) On House Calendar

SB 2171 (Klein) Hearing in House IBL 3/16

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

HOUSE, INDUSTRY, BUSINESS and LABOR COMMITTEE
March 16, 2015 ~ 8:00 a.m. ~ Peace Garden Room

North Dakota Department of Transportation
Wayde Swenson, Office of Operations Director

SB 2171

Mr. Chairman and members of the committee, my name is Wayde Swenson and I am Director of the Office of Operations, for the North Dakota Department of Transportation (DOT). I'm here today in support of SB 2171. This bill amends language in Title 48 allowing a governing body to negotiate a contract amendment for the portion of the project not receiving a bid, without rebidding all, or part of the project. The negotiating would occur with the contractor, whose contract would represent the largest portion of the project cost up to an additional \$150,000.

This is a challenge the DOT has experienced and this will give us another means to deal with it.

The department put section buildings at Harvey and Rugby out for bid in June of last year. In both cases, the DOT received a combined bid, multiple general bids, two mechanical bids, but no electrical bid.

DOT choices: (current law)

1. Accept the combined bid.
2. Reject all bids and rebid the project. (Not fair to the general and mechanical contractors whose bids have been made public.)

DOT choices: (new legislation)

1. Accept the combined bid.
2. Reject all bids and rebid the project.
3. Award the general and mechanical bids and re-advertise/rebid electrical work.
4. Award the general and mechanical bids and negotiate with the general contractor for the electrical work

Harvey Section Building: (Received one combined bid, four general construction bids, two mechanical bids, but no electrical bids)

Lowest Combined Bid:	\$607,000.
General and Mechanical bid:	\$491,740.
Electrical work estimate:	<u>\$ 75,260.</u>
Potential savings:	\$40,000

Rugby Section Building: (Received one combined bid, three general construction bids, two mechanical bids, but no electrical bids)

Potential savings:	\$47,000
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Mr. Chairman, this concludes my testimony and I would be happy to answer any questions the committee may have.