

2019 HOUSE POLITICAL SUBDIVISIONS COMMITTEE

HB 1304

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

1/17/2019

HB 1304

Job # 30985

Subcommittee

Conference Committee

Committee Clerk: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to bid requirements for public improvements.

Minutes:

1,2,3,4,5

Chairman J. Dockter: Opened the hearing on HB 1304.

Rep. Nelson: (Handout #1) Introduces HB 1304 by reading his testimony. This bill is to clarify the Century Code. This section of code is new and some feel the contractors are not getting a fair shake with some of the political subdivisions.

Rep. Johnson: You said the attorney was the States Attorney not the attorney for the political subdivisions?

Rep. Nelson: It was for the political subdivision.

Bill Kalanek: (Handout #2) Dakota Chapter of National Electrical Contractors Association (NECA) and ND Association of Plumbing, Heating, & Mechanical Contractors: He read his testimony. There is another bill that our associations have been working with the AGC on and it hasn't been heard yet. It would address that nonresponsive portion of the bid that would allow you to accept the general and electrical and then rebid the other portion of the project.

Rep K. Koppelman: Do you know if that bill has been assigned to this committee?

Mr. Kalanek: I don't know.

Rep. Adams: What if there is only one general contractor bidding? Do you have to wait and rebid that again?

Mr. Kalanek: If there is only one contractor the political subdivision or state would most likely take that bid. If you are the only one responding to the bid, you follow the process.

Rep. Adams: If you only have one person bidding, why would you have to rebid? I don't understand why you are saying this is unfair?

Mr. Kalanek: The process in ND is set up that we have multiple prime bids is the primary method of doing business. When you put something out for bids generally there is general, mechanical and electrical. There might be other subcontracts as well. The way the system is set up you can accept a single bid if a contractor puts in a bid for all the whole project, they can do that. However, if they do that and at the same time that political subdivision gets multiple prime bids and that combined total is less than the contractor put in as a single bid, they are obligated to take those three because it saves the tax payer money. We have had situations where they might only get a mechanical or an electrical and not get the third piece that's why we introduced the other legislation so you can pick those two and then rebid the third portion and not hold up the entire project.

Rep. Adams: This bill is striking out one thing and that is letting them take the one bid. Why are you curtailing the prime bidder under all the general contractor and everybody else?

Mr. Kalanek: We are dealing with tax payers dollars and supposed to be getting the most value for our money. If we are knowingly picking a contractor who is more expensive to do it as a single prime, we don't think that is good public policy. By bidding it out and having separate primes and saving tax payer dollars to stretch those dollars for other projects, we feel that is sound policy.

Rep K. Koppelman: In reference to another bill you were talking about since it may not be here, we could hold this until we have a look at that one. Is there a way you could you get us a copy of the other bill, or if you have a suggested amendment that might harmonize this bill without conflicting with the other bill?

Mr. Kalanek: I will get you that information.

Rep. Fegley: Do you know how many times this happens when tax paying entities have to rebid projects because they don't fit the criteria?

Mr. Kalanek: I don't have that data.

Travis Greff: (Handouts #3,4) Commercial Estimator for HA Thompson and Sons: Read his testimony. Asked for a do not pass on this bill.

Jeff Klemetsrud: (Handout #5) President of Klemetsrud, Plumbing & Heating Co. Inc. Read his testimony.

Rep K. Koppelman: The testimony against the bill is generally about money. What about the value that the general contractor brings to a project? Most general contractors supervise the entire project and there is some value in that for a public or private one.

Mr. Klemetsrud: I think they currently do it. The states contract is with us not with the general contractor. Even in private money when you work with the general contractor they control most aspects of the job and coordinate things. That would not change. The lack of transparency will change.

Russ Hanson: Associated General Contractors of ND. We think the other bill HB1136 will be heard on Tuesday and address the scenario that Rep. Nelson brought out about one of the three portions not receiving bids. My suggestion is to let it go for a week.

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

1/24/2019

HB 1304

Job # 31450

Subcommittee

Conference Committee

Committee Clerk: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to bid requirements for public improvements

Minutes:

Chairman J. Dockter: Opened the hearing for committee work. He said IBL had a similar bill which included a compromise which passed out of the committee. This bill would be a duplication.

Rep. Guggisberg: Made a do not pass motion.

Rep K. Koppelman: Second the motion.

Vote: yes 11, no 3, absent 0

Rep. Adams: She stated she is on IBL and HB 1136 they passed out said if the bids came in and one section wasn't bid, and there is three parts to the prime bid if one part came in and nobody bid that section of the project, only that section would go out for rebid instead of rebidding the whole thing.

Carrier: Rep. Longmuir was assigned carrier.

Carrier: Vice Chairman Pyle. Later changed to Vice Chairman Pyle off the record.

Date: 1-24-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1304**

House Political Subdivisions 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. Guggisberg Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	/				
Vice Chairman Pyle:	/				
Rep. Ertelt:	/				
Rep. Fegley:	/				
Rep. Hatlestad:	/				
Rep. Johnson:		/			
Rep K. Koppelman:	/				
Rep. Longmuir:	/				
Rep. Magrum:	/				
Rep. Simons:		/			
Rep. Toman:		/			
Rep. Strinden:	/				
Rep. Adams:	/				
Rep. Guggisberg:	/				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Pyle

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

REPORT OF STANDING COMMITTEE

HB 1304: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1304 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

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#1
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Chairman Dockter, members of the House Political Subdivisions committee.

I am Representative Marvin Nelson, District 9.

HB1304 is an attempt to take care of a situation that happened in Minot.

There was a project being bid. It was summer with construction time a wasting and when they opened the bids, there was a prime bid to do the whole project, but only part of the project was bid as separate portions. The attorney looked at that and if you added up the bids on the portions, it was less than the prime bid so they were told they could not accept the prime, and they couldn't do the project with the bid portions, and the nonbid portion was too big to roll into another contractor.

So they spent the time to rebid.

It was early in the biennium, so I thought no one is going to remember this so I had council draw up this language. I can't find the original news article in the Minot Daily.

What I propose is to remove the language in question saying the single prime bid cannot be accepted unless less that the combined total of the lowest multiple bids.

One could try another statement in there to handle the situation, but I would propose we actually put it in the hands of the local elected officials to do what is best for their citizens.

I will take any questions.

#2

Testimony
House Bill 1304
House Industry, Business & Labor Committee
January 17th, 2019
Bill Kalanek
National Electrical Contractors Association, Dakotas Chapter
North Dakota Association of Plumbing, Heating & Mechanical Contractors

Good Morning Chairman Dockter and members of the Political Subdivisions Committee. My name is Bill Kalanek and I'm here today on behalf of the Dakotas Chapter of the National Electrical Contractors Association (NECA) and the ND Association of Plumbing, Heating & Mechanical Contractors.

I'd like to begin by expressing our combined opposition to House Bill 1304. The bill you have before you although well-intentioned represents a departure from the philosophy the legislature has adhered to for more than 30 years. The bill as it is written allows for the state or political subdivision that is bidding a taxpayer funded project to dismiss the accepted process for awarding bids in favor of knowingly selecting a bid that will cost the taxpayers more money.

The traditional "design, bid, build" method utilizing multiple prime bids has been proven effective for decades in keeping costs down and maximizing dollars while creating a fair bidding environment for all contractors. HB 1304 looks to eschew the process and allows government entities to pick a "single prime bid" even if it is more costly than the aggregate of the multiple prime bids.

Additionally, mechanical and electrical contractors heartily support the current method which allows them the ability to independently bid their portions of a project. This works to prevent the practice of single prime contractors "bid shopping" subcontractors against each other.

In summary, the bill before you will ultimately cost the state and its political subdivisions more when building schools, offices, jails and other public buildings. I would ask you to give this bill a recommendation of **DO NOT PASS** and continue the fair and cost effective system that already serves the state well.

Thank you.

Chairman Dockter

Members of House Political Subdivisions Committee

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

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

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

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

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

Thank you

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

Total Savings

\$ 5,234,893.00

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Mr. Chairman and members of the ND House Political Subdivisions Committee,

My name is Jeff Klemetsrud from Devils Lake, ND. I am the president of a small mechanical construction firm, Klemetsrud Plumbing & Heating Co. Inc. I am here to explain why House Bill 1304 must be defeated. Being a native North Dakotan gives me a sense of great personal pride. I am always proud when I watch the news and hear about other states having financial troubles, some communities must even file for bankruptcy. Not my state. My state has always been fiscally responsible.

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

As I read about testifying before your committee today, it was stated that our legislature is one of the most open legislatures in the nation. All votes are public. If HB1304 were to pass, you would not extend the same privilege to subcontractors bidding on public projects. Presently we are tasked with compiling our construction costs and placing our proposal in an envelope where it is publicly opened and read. HB1304 would have us sending our price to a general contractor. The general contractor opens our proposals privately, taking our price and placing a mark-up on them. When this situation is used, the state will have no idea of the project costs other than the final bill. This practice has zero transparency, absolutely opposite of how our legislature is run.

If the average general contractor marks up all subcontractor proposals by ten percent this could possibly make some projects die. As an example, currently a small taxing authority would only need ten million dollars for a project; under HB1304 it would now need eleven million dollars. I feel the ten percent is a very conservative estimate and in my experiences have seen mark-ups as high as

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twenty five percent. This may not seem like a lot but take a small taxing district and many of its projects will not be completed due to the extra money needed under HB1304.

I am also concerned that these small taxing districts would not be allowed to use local contractors. Again, as an example: If a ten million dollar project were to be bid in the current environment, the general contractor would need a seven million dollar bond, the mechanical contractor would need a two million dollar bond and the electrical contractor would need a one million dollar bond. HB1304 would now require the general contractor to bond the entire ten million dollar project. A small general contractor who is able to bond work up to eight million dollars would be able to do the job if we were to continue to use the current situation; however, under the proposed legislation the general contractor would not be allowed to even bid on the job.

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

Thank you for your time,
Jeff Klemetsrud
President
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