

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1260

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1260

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1260

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-1-05

Tape Number	Side A	Side B	Meter #
1	x		0-end
1		x	0-end
2	x		0-18.0

Committee Clerk Signature



Minutes:

Chairman Keiser: Opened the hearing on HB 1260

Representative Carlson: Appeared in support of the bill and also was a sponsor.

Carlson also presented amendments.

Curt Peterson, Association of General Contractors of ND: Appeared in support of bill my purpose here is to endorse this bill, we think this is good legislation.

Mark Dougherty, Associated General Contractors, of ND: Appeared in support of HB 1260 and provided a written statement (SEE ATTACHED TESTIMONY).

Representative N. Johnson: What does it take to be a licensed contractor?

Mark Dougherty: You have to fill out an application to the secretary of state, pay a fee and have some insurance, and there is no education requirements.

Tracy Twos, of Twos Construction, Dickinson, ND: Appeared in support of bill. We are requesting of this committee, not do away with construction management but restore the dignity, the professionalism of our industry. Simply by passing this bill to make it fair and equitable that all parties are on a level playing field, this bill creates this by a construction manager at risk and bonded doing their job properly will establish a professionalism down the line by assuring the owner, that the design team, management team, construction workforce have the same goal of a successful project at the lowest possible cost.

Glen Moen, Baukol Builders, Inc., Grand Forks, ND: Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

Greg Sund, City Administrator, Dickinson, ND: Appeared in support of bill.

Eric Johnson 4th Generation Construction Manager, Meinecke Johnson

Construction, Fargo, ND: Appeared in support of HB 1260.. We want to see it ran the same way across the state, not seeing each city having their own different ways of running it.

Rick Engabritzen, ND Amercian Institute of Architects: Appeared in opposition of bill and provided a written statement (SEE ATTACHED TESTIMONY).

Dan Huffman, Assistant Superintendent, Business Service, Fargo Public School District : Appeared in opposition of bill and provided a written statement (SEE ATTACHED TESTIMONY).

Dennis Falsing, Dickinson, ND: Appeared in opposition of bill. Our firm believes projects should be 100% bonded. A bond as required for projects, is for performance and payments, so when we talk about a bond, were talking about is that contractor will do the projects as in the plans and he will pay all of his vendors and contractors.

Pat Seaworth, State Board of Higher Education: Appeared in opposition of HB 1260 and provided a written statement (SEE ATTACHED TESTIMONY).

Rick Tondou, University Planner: Appeared in opposition of HB 160 and provided a written statement (SEE ATTACHED TESTIMONY).

Connie Sprynczynatyk, Executive Director, ND League of Cities: Appeared in opposition of HB 1260 and provided a written statement (SEE ATTACHED TESTIMONY).

Jerold R. Backes, PE, American Council of Engineering Companies:
Appeared in opposition of HB 1260 and provided a written statement (SEE ATTACHED TESTIMONY).

Bonnie Larson Staiger, Executive Director, American Institute of Architects:
Appeared in opposition of HB 1260 and provided a written statement (SEE ATTACHED TESTIMONY).

Hearing closed

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1260

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-9-05

Tape Number	Side A	Side B	Meter #
3	xx		2.9--4.2

Committee Clerk Signature



Minutes: **Chair Keiser:** Can we get a report on HB 1260, the construction management bill..

Rep. Dosch: Both parties, architects VS contractors, have agreed to a study resolution. We are in the process of getting input on what they would like in the resolution. Should get back to committee by Monday.

Chair Keiser: As the committee knows, I hate to put bills into study resolutions. But this issue has been coming back to the legislature, at least four sessions. The very same issue. I think we need to take a harder look at it by resolution.

Discussion ended.

(moved on to another report on a different bill)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1260

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-14-05

Tape Number
1

Side A

Side B
x

Meter #
21.9-30.5

Committee Clerk Signature

Minutes:

Chairman Keiser: Opened the hearing on HB 1260. All committee members were present.

Representative Dosch: Presented amendments to HB 1260. The amendments basically hog house the bill into a study resolution, the bill is the differences between the architects and the construction managers, both sides are having issues, that after we had a subcommittee meeting on this, and after that both sides decided on a study resolution.

Representative Dosch: I so **MOVE** the **AMENDMENTS**.

Representative Boe: **SECOND** the motion to **ADOPT AMENDMENTS**.

Motion carried.

Representative Clark: I **MOVE** a **DO PASS AS AMENDED**.

Representative Dosch: **SECOND** to **DO PASS AS AMENDED** motion.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1260

Hearing Date 2-14-05

Motion carried. **VOTE: 13 -YES 1-NO 0-Absent.**

Representative Dosch will carry the bill on the floor.

Hearing closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1260

Page 1, line 1, after "to" insert "create and enact a new subsection to section 48-01.1-05 of the North Dakota Century Code, relating to contents of a bid advertisement for a public improvement; and to" and remove "48-01.1-05,"

Page 2, line 3, remove ". firm or corporation"

Page 2, line 4, replace ", The construction" with "and is"

Page 2, line 5, remove "manager shall be appropriately" and replace "in accordance with" with "under"

Page 2, line 11, replace "demanding immediate action and whereby the" with "that requires immediate action to protect" and remove "is"

Page 2, line 12, remove "endangered" and replace "An emergency situation" with "The term"

Page 2, line 14, replace "The" with "An"

Page 2, line 19, replace "Prime" with "Multiple prime" and replace "complete" with "construction of the entire"

Page 2, line 25, replace "'public improvement'" with "term"

Page 2, line 26, replace "shall" with "may"

Page 2, line 28, after the underscored period insert "'Single prime bid" means a single bid for construction of an entire public improvement.

11.

Page 3, line 2, remove "or construction management"

Page 3, line 8, remove the overstrike over ", oxxopt the advorticoomont for a public improvomont financed by opooial"

Page 3, remove the overstrike over line 9

Page 3, line 10, remove the overstrike over "with the first publication boing at loast fourtoon days beforo bid oponing"

Page 3, line 11, replace "shall" with "must"

Page 3, line 13, replace "Section" with "A new subsection to section"

Page 3, line 14, replace "amended" with "created" and replace "reenacted" with "enacted"

Page 3, remove lines 15 through 31

Page 4, remove lines 1 through 9

Page 4, line 10, remove "7.", replace "incomplete" with "submitted", and remove "form"

Page 4, line 11, remove "cause the bid to" and replace "nonresponsive and must be immediately resealed" with "nonresponsive"

Page 4, line 12, remove "and returned to the bidder"

Page 4, line 15, remove the overstrike over "~~Multiple~~" and remove "Three"

Page 4, line 16, overstrike "any"

Page 4, line 17, overstrike "individual general, electrical, or mechanical contract or any combination of individual contracts" and insert immediately thereafter "the estimated total cost of the public improvement"

Page 4, line 18, remove the overstrike over "~~may also~~" and remove "shall"

Page 4, line 19, remove the overstrike over "~~for~~", remove the overstrike over "~~the~~", and after "~~discretion~~" insert "entire public improvement"

Page 4, line 25, remove "prime"

Page 4, line 26, overstrike "and any"

Page 4, line 27, overstrike "other contracts"

Page 5, line 4, replace "and" with ". The construction manager" and remove "undertake to"

Page 5, line 7, overstrike "project" and insert immediately thereafter "public improvement"

Page 5, line 8, overstrike "by" and after "~~packages~~" insert "with"

Page 5, line 10, remove the overstrike over "~~services~~" and remove "service"

Page 5, line 11, overstrike "project" and insert immediately thereafter "public improvement"

Page 5, line 12, overstrike "project" and insert immediately thereafter "public improvement"

Re-number accordingly

House Amendments to HB 1260 - Industry, Business and Labor Committee 02/15/2005

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall study public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

Date: 2-14-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1260

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments . 102

Motion Made By

Rep. Dosch

Seconded By

Rep. Boe

Representatives
G. Keiser-Chairman
N. Johnson-Vice Chairman
Rep. D. Clark
Rep. D. Dietrich
Rep. M. Dosch
Rep. G. Froseth
Rep. J. Kasper
Rep. D. Nottestad
Rep. D. Ruby
Rep. D. Vigasaa

Yes No

Representatives Yes No
Rep. B. Amerman
Rep. T. Boe
Rep. M. Ekstrom
Rep. E. Thorpe

Total (Yes)

14

No

0

Absent

Floor Assignment

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

Date: 2-14-05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1260

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58119:0102 .0200

Action Taken Do Pass As Amended .102

Motion Made By Rep. Clark Seconded By Rep. Dosch

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom		X
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes) 13 No 1

Absent -0-

Floor Assignment Rep. Dosch

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

REPORT OF STANDING COMMITTEE

HB 1260: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1260 was placed on
the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall study public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1260

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1260

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-07-05

Tape Number

3

Side A

xxx

Side B

Meter #

3480-4200

Committee Clerk Signature



Minutes: **Chairman Mutch** opened the hearing on HB 1260. **Senator Heitkamp** was absent.

HB 1260 relates to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems.

Curt Pederson, Association of General Contractors, introduced the bill.

Curt: When the bill was in it's original form, it seemed like no body liked it, other than me.

The bill since then has been provided to Legislative Council for a study.

Senator Klein: I see we are going to study this. Is that part of the trade off?

Curt: Yes.

Bonnie Staiger, American Institute of Architects, spoke in support of the bill.

See written testimony. She also submitted testimony from other entities. See attached.

Ron Rebenitsch, ND Society of Builders, stated there support for the bill.

Tom Tupa, National Electrical Contractors Association and the North Dakota Plumbing and Heating Mechanical Contractors Assoc., stated support for the study resolution.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1260

Hearing Date 03-07-05

Ranae Pfenning, North Dakota Electrical Workers, stated support for the record.

Senator Nething moved a **DO PASS**. **Senator Klein** seconded.

Roll Call Vote: 6 yes. 0 no. 1 absent.

Carrier: **Chairman Mutch**

Date: 3-7-05
Roll Call Vote #:)

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1260

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Nothing

Seconded By

Klein

Senators
Chairman Mutch
Senator Klein
Senator Krebsbach
Senator Espegard
Senator Nething

Yes No
X
X
X
X
X

Senators
Senator Fairfield
Senator Heitkamp

Yes No
X

Total (Yes)

6

No

0

Absent

1

Floor Assignment

Mutch

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

REPORT OF STANDING COMMITTEE (410)
March 8, 2005 1:10 p.m.

Module No: SR-42-4392
Carrier: Mutch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1260, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1260 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1260



RESIDENTIAL - COMMERCIAL - NEW CONSTRUCTION - RENOVATION

Zeller Construction, Inc.

403 2nd Street S.W.
Dickinson, North Dakota 58601
(701) 225-6619
Fax (701) 225-9566

1-31-05

TO: LEGISLATIVE ASSN. OF N.DAK.

WE ARE IN FAVOR OF THE WORDING ON THE AMENDMENT
TO SECTION 48-01.1-09 AS WRITTEN IN BILL DRAFT 48-01.1.

ALONG WITH CONSTRUCTION MANAGERS WE FEEL THAT CONSTRUCTION
COMPANIES OF ANY PRIME CONTRACTORS SHOULD HAVE NO COMMON
OWNERSHIP WITH THE ARCHITECT, ETC.

AS THE LAW READS, THERE IS AN UNFAIR PLAYING FIELD WITH
AN ADVANTAGE FOR ARCHITECTS, WITH CONSTRUCTION MANAGERS OR
CONSTRUCTION COMPANIES TO SPEC. PRODUCTS & SERVICES TO
THEIR FAVOR.

SOMETHING NEEDS TO CHANGE TO PROTECT THE OWNER AND
THE PROFESSIONAL FIELDS IN THIS INDUSTRY.

Thank you for your concern.

Ronald R. Zeller
President

February 1, 2005

Fifty-Ninth
Legislative Assembly
Of North Dakota

RE: BILL NO. H.B. 1260

Mr. Chairman, Members of the Industry, Business & Labor Committee.

I'm Glenn Moen
1402 - 12th Ave. S.
Grand Forks, ND 58201
701-775-7894
qrmoen@hotmail.com

I represent Baukol Builders, Inc. we are a General Contractor from Grand Forks, ND we build commercial and industrial projects.


I support this bill.

The Section 1 Amendment is definitely a need. The proposed clarification and revision will close loopholes and prevent public entities from abusing or prolonging emergency situations, as we saw in Grand Forks.

The Section 2 Amendment will result in a saving to public entities. When contractors are allowed adequate bid preparation time it results in better bids and lower bids. It is not uncommon for public owners to advertise for bid without having plans and specifications done. When they finally finish them they kick them out shortly before bids are due, resulting in less competition and higher prices. You may hear those in opposition say that by having to have the bid documents complete when the project is advertised will hinder them somehow. First I wonder how getting better and lower bids could be a hindrance. Secondly they could just do a better job of planning.

The Section 7 Amendment will prevent sweetheart deals by not have the proverbial fox guarding the hen house. This Amendment will also provide checks and balances similar to what you have here in government with a separation of powers: executive, senate and house.

Sincerely yours,



Glenn R. Moen



North Dakota Legislative Session
House of Representatives
Testimony in Opposition to House Bill 1260
February 1, 2005

In 1998 the Fargo Public School District entered into a contractual arrangement with Meinecke Johnson, a local construction firm, to provide construction management services for our remodeling project at South High School. The process allowed us to interview for construction management services and treat it like the professional service it should be. As a result of this relationship, the Fargo School District paid for and received professional construction management and supervision of our \$15 million project at South High. While this was our first association with Meinecke Johnson as a construction manager, we had used them as contractors for several of our projects over the past several years.

The construction management process allowed us to interview and select a local firm with not only construction experience but experience with and knowledge of the Fargo Public School District and our long term goals. This process has been a definite advantage for the Fargo Public School District. It has created an owner/agent relationship which has allowed us to provide on site supervision of the project consistent with the expectations and desires of the Fargo Public School District.

In addition to this positive relationship that we have developed with the construction managers, and we have used several over the past seven years, including Meinecke Johnson, Minko Construction, and Lee Jones & Son Construction Company, this process has allowed us to bid multiple prime contracts for the construction services for the Fargo Public School District. We believe that this has also created a positive contractual relationship directly between the owner and the contractor providing the service. This has allowed us to provide direct construction supervision with each of the contracting companies working on our projects.

This ability to maintain a direct contractual relationship has also been a positive experience for the Fargo Public School District as an owner and has allowed us to deliver a quality product to the taxpayers in the Fargo School District. House Bill 1260 as it is written would eliminate our ability to enter into multiple contracts and to use construction management services. This is not a positive direction for the Fargo Public School District.

At the present time construction management is not required as a method of delivery or construction supervision. It is a decision each entity can make on each project. We believe it is in the best interest of each of us as government entities to be able to make these decisions on a project by project basis. To have that discussion locally and to enter into the contractual relationship which best suits the project, the needs, and the timing for that project, we are asking that House Bill 1260 receive a Do Not Pass recommendation from this committee and that each of us as an entity be allowed to continue to make those decisions which are in the best interest of our organization and our community.

Testimony provided by
Dan Huffman
Assistant Superintendent
Business Services
Fargo Public School District

House Bill No. 1260

Testimony by Mark Dougherty
Associated General Contractors of North Dakota

Support

before the

House Committee on Industry, Business and Labor
Rep. George Keiser, Chairman

Tuesday, February 1, 2005

Chairman Keiser and members of the House Committee on Industry, Business and Labor. For the record my name is Mark Dougherty and I represent the Associated General Contractors of North Dakota. We appear in favor of House Bill No. 1260 and the proposed amendments offered by Representative Carlson.

House Bill No. 1260 seeks to repair erroneous interpretations of the existing statute and stops some currently used practices which we feel are counter to the public's best interest.

The causes of the erroneous interpretations are numerous and I will attempt to cover them in general for the sake of time. During the 1989 legislative session Chapter 48-01.1 was amended to allow for "multiple prime bids" on public improvement contracts. The idea was to require a prime bid for the general, electrical, and mechanical portions of a public building project. At that time no changes were made to the definitions in the Chapter and that is where we get the various interpretations of a prime bid. In meetings this past year the AGC of North Dakota and other industry partners discussed what the intent of the 1989 legislation was and found that all agreed its intent was to have three prime bids and also to allow the general contractor to be assigned the coordination responsibilities for the electrical and mechanical contracts. So, to help get everyone using Chapter 48-01.1 moving to a more mutual understanding, Section 1 of the bill before you has some modified and new definitions. One new definition is for an "Emergency Situation"; this definition was added due to a project where the owner's idea of an "emergency situation" was playing a football game on a new field on a certain date. When the "emergency situation exemption is used to bypass State law, we feel it should be a real emergency, and not a lack of planning on the part of the contracting agency. The other new and modified definitions should help all to get on the same page when using the statute in the future.

Section 2. Amendment of House Bill No. 1260 requires all plans and specifications necessary to make a bid estimate be ready and available when the project is advertised. One would think this should go with out saying but it is not unusual for a contractor to call for plans early in the first week of advertisement and be told the plans are not ready. The statute requires that a public improvement be advertised for either 21 or 14 days depending on project type and we feel the needed documents should be available during that entire time.

Section 3. Amendment of House Bill No. 1260 requires the owner published bid form be fully completed as constructed and intended or the non-uniform bid be considered non-responsive. Some projects have numerous options, alternates and combinations of options and alternates. When that is desired on a project the designer usually constructs a specific form for the bidders to use for their proposal. This form is normally constructed to allow for a fair comparison of complicated bids. On several occasion in the past year we became aware of instances where a bidder submitted a different form or did not fully complete the published form and the bids were accepted. We feel this is like comparing apples to bananas and creates very unfair competition.

Section 4 of the House Bill No. 1260 requires multiple prime bids for the general, electrical, and mechanical portions of a project if the cost of the project is estimated to be in excess of one hundred thousand dollars. It also allows for the submission of a single prime bid and bids for other portions of a project. In some areas of the state the only bids that are allowed are for the other portions of a project and the bidding by general contractors on those projects are sometimes limited to a very few portions (sometimes as few as three portions). We feel this reduces competition and is not in the best interest of the public. Some projects in the past several years have been split into as many as 30 different and separate contracts or portions. As a long time business man I would be concerned about the efficiency lost in managing so many small contracts not to mention the time you'd have to spend assuring the owner all those contracts are held by licensed contractors and all are back-up with adequate bonding. We fear the bonding and licensure may not always be covered as required in Chapter 48-02 of the Century Code, and if the contracts are not covered by bonds the public is put at increased risk. We would offer an example of one project where one of the other portions was "doors and door hardware". This contract only bought the doors and door hardware we understand that the hanging of the doors was completed under an entirely separate contract. The 30 contracts on this project included 28 general construction packages and one electrical contract and one mechanical contract. Does it seem fair to you that the general contractors are limited to a few small portions? Well we don't.

Section 5 of the bill simply connects language changes from other amended sections.

Section 6 of the bill deals with the most important changes to the statute. In this section we added a requirement to prohibit any common ownership of the construction manager on a project with the design professionals or the contractors engaged in the project. We are aware of at least one design professional that has ownership in a general contracting company and a mechanical company and we see the possibility for misuse of the bidding process and the project management procedures. We feel that any common ownership between these stated groups is a clear conflict of interest and should be prohibited.

Chairman Keiser and members of the House committee on Industry, Business and Labor, we appreciate your patience on this issue and hope you understand, we would not keep bringing this issue back session after session if we didn't feel it was important. This bill as presented and amended is important to the fairness of public improvement contract bids and also precludes the possibility of miss-interpretation and misconduct in the future. For those reasons we strongly urge you to move this bill forward in the legislative process with a "do pass" recommendation and your continued support on the House floor.

ND 59th Legislative Assembly - 2005
House of Representatives'
Industry, Business & Labor Committee
Hearing – 8:00am, February 1, 2005

Opposition Testimony
to
HB 1260 – Relating to Public Improvement Contract Bids

presented by
North Dakota's American Institute of Architects

Executive Summary

HB 1260 was not drafted from an outcry by Public Owners asking for protection of the public's health, safety & welfare. HB 1260 was drafted by the AGC, taking away choices from Public Owners and restricting qualified competition.

HB 1260 is about legislating protectionism for general contractors, taking away rights of others already covered by the ND Century Code, and removing construction delivery choices for Public Owners on public improvements. HB 1260 is about legislating General Contractors' financial gain, rather than them earning it.

Observations

1. In most large scale construction projects, the General Contractor is primarily a broker of construction services. Whereas, the General Contractor's scope of work carried out by its own crews represents less than twenty percent (20%) of the contracted work, and the balance of the contracted work is performed by sub-contractors to the General Contractor.
2. The reason that multiple prime bids and construction management has flourished in the public and private sector is because general contractors haven't been doing their job and Owners want more involvement and say in how the project progresses. The traditional construction delivery of Design/Bid/Build has been wrought with poor management, cost over-runs, delays and adversarial confrontations. The CM process has brought to the forefront professionals trained in management and acting as an agent for the Owner.
3. Construction Management in the United States is viewed as a profession service that applies effective management techniques to the planning, design, and construction of a project from inception to completion for the purpose of controlling time, cost and quality. NDSU has a professional degree program for Construction Management;

Executive Summary (continued)

4. A Construction Manager (CM) is a professional who acts as an extension of staff to the Owner and manages the project with pre-planning, design, construction, engineering and management expertise that can assure the best possible project outcome. A Construction Manager is **NOT** a general contractor.
5. A Construction Manager is hired based on qualifications rather than a competitive bid;
6. Under current ND Century Code, Multiple Prime Bids and Construction Management has been working without any problems to public health, safety or welfare; the Sponsors of HB 1260 have yet to produce any overwhelming evidence that multiple prime contracts and Construction Management have been detrimental in public improvement projects in North Dakota.
7. The AGC has been lobbying hard for HB 1260, especially to exclude Architects and Engineers from providing both Architectural & Construction Management Services on a public improvement project, saying that it is a conflict of interest. The North Dakota State Board of Architecture's Assistant Attorney General has given the Board his opinion that the North Dakota Century Code allows an Architect to perform both architectural and construction management agency services on public improvements or private projects, and said arrangement is not a conflict of interest.
8. If the public's health, safety and welfare in the design and construction of public improvements are really important, then why aren't General Contractors required to be trained and tested for proficiency as a prerequisite to be licensed?
9. Current licensing requirements for a General Contractor are to: correctly fill out an application; submit a \$300.00 fee and obtain workers compensation coverage. The other parties involved in the construction process, Architects, Engineers, Mechanical Contractors and Electrical Contractors, need specific education, training, and proficiency testing to be licensed.

Qualifications / Licensure

Architect's Licensure Process

- 5 year Bachelors or Masters Degree from an accredited school of Architecture;
- 3 - 5 years of working under the direct supervision of registered architect following a structured intern development program;
- Series of 9 tests (6 multiple choice sections & 3 computer drafting sections)

Multiple Choice <ul style="list-style-type: none">1. Pre-design2. General Structures3. Lateral Forces4. Mechanical & Electrical Systems5. Building Design/Materials & Methods6. Construction Documents & Services	Graphic/Computer Drafting <ul style="list-style-type: none">1. Site Planning2. Building Planning3. Building Technology
---	---
- 18 hours of Continuing Education each year of which 8 hours must cover health, safety & welfare;

General Contractor's Licensure Process

- No formalized schooling required;
- No formalized internship/apprenticeship required (Plumbers & Electricians are required);
- No testing required (Plumbers & Electricians are required);
- All it takes is to fill out an application and submit with a \$300.00 check;

Construction Manager

Knowledgeable & experience in:

- | | | |
|---|--|--|
| <ul style="list-style-type: none">▪ Permitting▪ Building Codes▪ Financing▪ Cost Estimating▪ Cost & Schedule Control | <ul style="list-style-type: none">▪ Contracts & Contract Administration▪ Document Control▪ Construction Inspection▪ Quality Control | <ul style="list-style-type: none">▪ Value Engineering▪ Risk Management▪ Dispute avoidance & resolution▪ Commissioning |
|---|--|--|

Vendor (At-Risk) vs Agency (Not-At-Risk)

- 1. Vendor Relationship** – a legal relationship by which one party delivers a product or a scope of services to a specified extent or in a specified manner for a bid price.
- 2. Agency Relationship** – a legal relationship by which one party is empowered to act in trust or in confidence on behalf of another party;

<u>Vendor</u>		<u>Agent</u>
• provides a specific service or product for a designated price or bid	<i>versus</i>	provides a service for a fee
• represents his/her own best interest	<i>versus</i>	representing the best interest of the owner (fiduciary)
• selections based on price	<i>versus</i>	selection based on qualifications
• Vendor Delivery Systems <ul style="list-style-type: none">- ND Traditional Multiple Primes- ND Multiple Primes- CM at Risk- Design/Build	<i>versus</i>	Agency Delivery Systems <ul style="list-style-type: none">- CM Agency

Another important factor in the vendor relationship versus agency relationships is expressed in the flow of the money. If the money doesn't flow directly to the recipient of the work, rather it goes through an intermediary, the intermediary is a vendor (i.e...ND Single Prime, ND Multiple Prime & CM at-risk). If you are acting as an agent (i.e...AE/CM or CM Agency) and not a vendor, you do not have a conflict of interest.

Project Delivery Options (reference to 11" x 17" at the end of this testimony)

1. **Single Prime – Traditional Design/Bid/Build** – a project delivery method where the professional designer (architect or engineer) produces the drawings and specifications; send it out for a single combined bid; and, the lowest qualified bidder is awarded a prime contract to build the project..
2. **ND Multiple Prime Contracts** – a project delivery method where the professional designer (architect or engineer) produces the drawings and specifications; send it out for multiple (3 or more) bids for specific and designated elements of the work; and, the lowest qualified bidders are awarded into separate prime contracts directly with the Owner to build the project.
3. **Construction Manager At-Risk (At-Risk CM)** – A delivery method which entails a commitment by the construction manager to deliver the project within a Stipulated Sum or Guaranteed Maximum Price (GMP). The construction manager acts as a consultant to the owner in the development and design phases, but as the equivalent of a general contractor during the construction phase. When a construction manager is bound to a GMP, the most fundamental character of the relationship has change from an agent to a vendor.
4. **Construction Management Agency (Agency CM)** – A form of construction management performed in a defined relationship between the CM and Owner. The agency form of Construction Management establishes a specific role of the CM acting as the Owner's principal agent in connection with the construction of the project.
5. **Definitions**
 - **Prime Contractor** – a contractor who has a contract with the Owner;
 - **Sub Contractor** – A contractor who has a contract with a prime contractor to perform specified work;

Project Delivery System Characteristics (reference to 11" x 17" at the end of this testimony)

	<u>ND Single Prime</u>	<u>ND Multiple Prime</u>	<u>Construction Mgmt At Risk</u>	<u>Agency</u>
• Vendor Relationship	√	√	√	
• Agency Relationship				√
• Competitive Bidding	√	√		√
• Better Budget Control			√	√
• Fewer Change Orders			√	√
• Better Communications			√	√
• Better On-site Coordination				√
• Owner/Architect/Contractor Team				√
• More Checks & Balances				√

Molecular Make-Up of Construction Delivery Methods
(reference to 11" x 17" at the end of this testimony)

The Molecular Make-Up of Construction Delivery Methods, shows the relationships of Owners, Architects/Engineers, Contractors (General, Mechanical & Electrical), and Sub Contractors in the traditional delivery of the Single Prime or Multiple Prime Bids compared to the relationships of Owners, Architects/Engineers, Construction Managers (at-risk & agency), Multiple Prime Contractors & Sub-Contractors in a Construction Management delivery method.

Notice how the ND Single Prime looks identical to the CM at Risk, and the Multiple Prime and AE/CM look similar. This indicates that the A/E, when acting as a CM, is coordinating the work performed by other Prime Contracts, which does not cause a conflict of interest. Also, any inference by any party that the Architect/Engineer will be able to cover up any design errors as the CM on a project is false information. Errors by the Architect will be brought up by any of the multiple primes that have a direct contract with the Owner.

HB 1260's - Proposed Legislation Opposition Issues

- **48-01.1-01 Definitions, subparagraph 3. , (page 1 lines 18 through 24 & page 3, lines 1 & 2):**
Changing the definition of "Construction Management" restricts Public Owners from allowing someone within their organization or another professional (Architect or Engineer) from performing construction management of the Contracts;
- **48-01.1-01 Definitions, subparagraph 4. (page 2, lines 3 through 6) :**
"Construction Manager" last sentence prevents Public Owners from allowing someone within their organization or another professional (Architect or Engineer) from performing construction management of the Contracts; unless he is a licensed as a contractor;
- **48-01.1-01 Definitions, subparagraph 8. (page 2, lines 19 & 20):**
Changing the definition of "Prime Bids" restricts Public Owners the ability to have more than 3 prime bids;
- **48-01.1-01 Definitions, subparagraph 9. (page 2, lines 21 through 27)**
The definition of "Public Improvement", when interpreted with the other language now being introduced in the Bill may affect the private owner, who is receiving tax increment funding or federal grants, from controlling his construction delivery process.
- **48-01.1-03 Publication of Advertisement for bid. (page 3, line 2):**
The addition of "Construction Management" as a bid service based on price rather than a professional service based on qualifications, eliminates the Public Owners choice of a qualified Construction Manager;
- **48-01.1-06 Bid Requirements for public buildings. (page 4, lines 15 & 16)**
Changes from multiple prime bids (minimum of three) to "one each for the general, electrical, and mechanical portions of a project" (maximum of three prime bids), eliminates Public Owners from more than three direct contract relationships;
- **48.01.1-09 Use of Construction Manger. (page 5, lines 3 through 6)**
Eliminates the Public Owner's choice to hire a qualified Architect (or Engineer) who also performs Construction Management services to perform both Architectural (or Engineering) and Construction Management services on its project.

Questions

1. Why would the Sponsors of HB 1260 want to change the multiple prime bids from "3 or more" prime bids to "just 3" prime bids?

Answer: *The AGC wants the General Contractors to get the pass through mark-ups from the Sub-contractors and reduce the choices of the Public Owners;*

2. Why would the Sponsors of HB 1260 want to prevent the Architect/Engineer from being both the Architect & the Construction Manager on a project?

Answer: *The AGC wants to prevent Public Owners from having a choice about project delivery and legislate their business rather than earning it;*

3. If a private project receives public funding (i.e. tax increment funding, Federal Grants) does it mean the private owner cannot use more than three multiple prime contracts or use the Architect (or Engineer) as both the Architect (or Engineer) and Construction Manager?

Answer: *It sure sounds like it.*

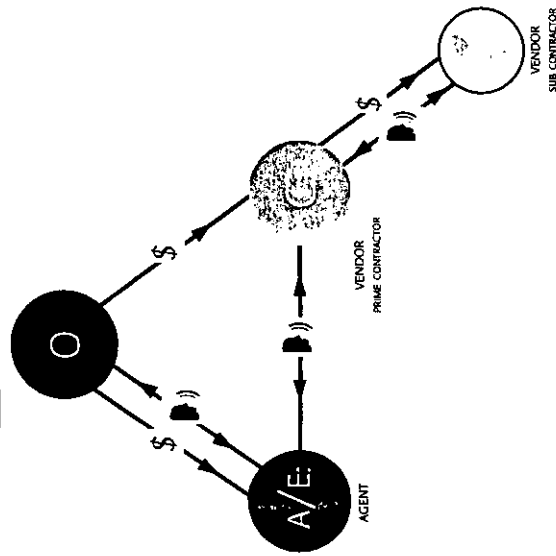
Conclusions

1. HB 1260 is **NOT** about protecting the public's health, safety & welfare; HB 1260 IS about protectionism, a restraint of trade benefiting only one group, the General Contractors.
2. The current Century Code provides Public Owners with choices in construction delivery systems, their own choices. With HB 1260 the Public Owners do not have choices, the AGC has dictated the options through self-serving legislation;
3. HB 1260 language creates a law that in essence says that Architects (or Engineers) who perform both Architectural (or Engineering) and Construction Management Services on a project are in conflict of interest. The ND Century Code says it is not a conflict of interest.
4. HB 1260 amending the ND Century Code on Public Improvement Contract Bids crosses over to the private owner receiving any public funding assistance to invest in expansion in North Dakota. The local private investors constructing the building for Alien Technology would be impacted.

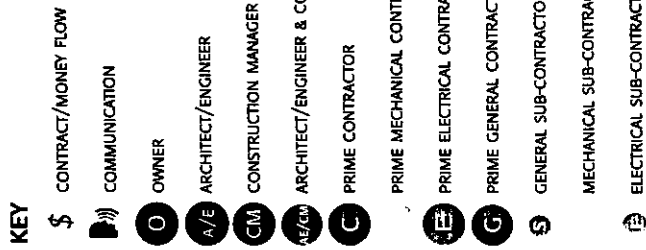
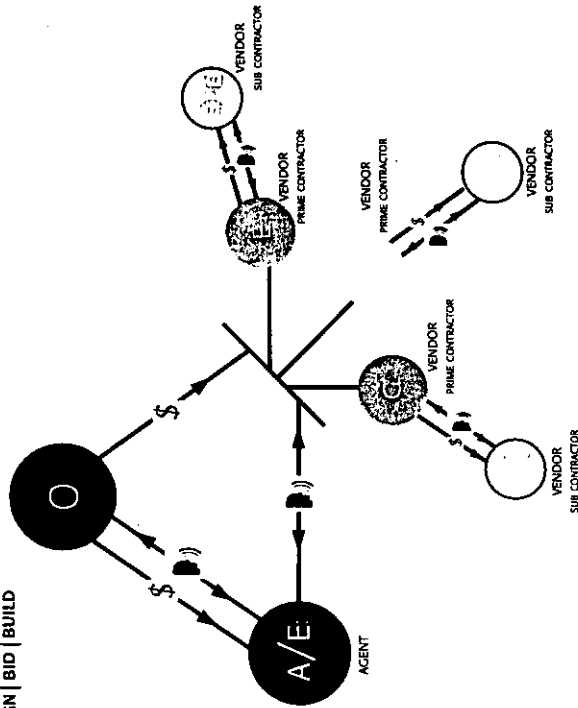
Recommendations

1. Send out of committee with a ***"do-not pass"***;
2. **Do not** allow any language now or in the future, which restricts Public or Private Owners' choices or creates a restraint of trade;

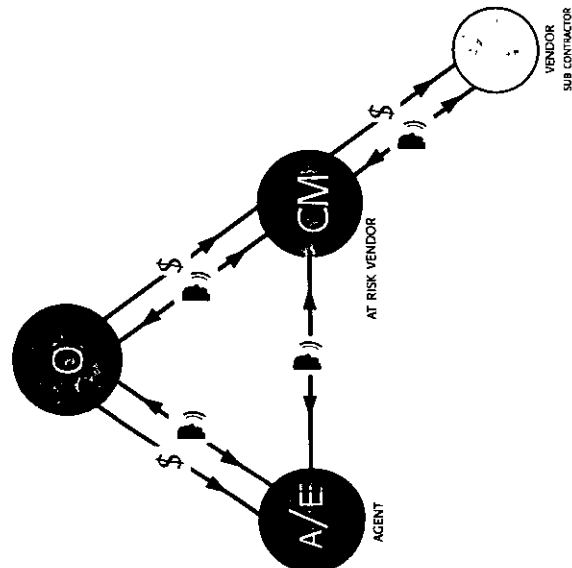
TRADITIONAL - SINGLE PRIME
DESIGN | BID | BUILD



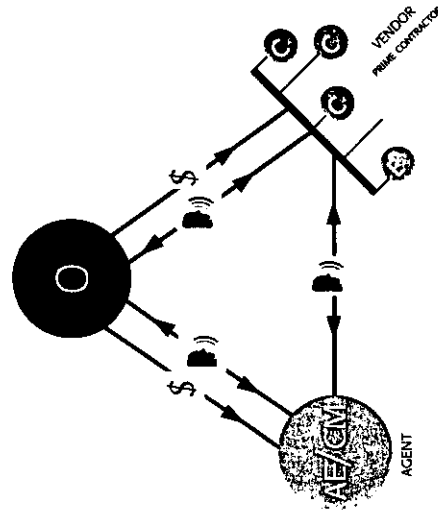
NORTH DAKOTA MULTIPLE PRIMES
(3 MINIMUM BIDS)
DESIGN | BID | BUILD



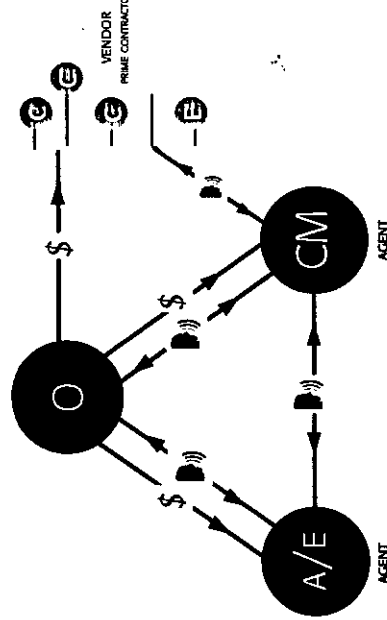
CM AT RISK



AE/CM AGENCY



CM AGENCY



ND 59th Legislative Assembly
House of Representatives'
Industry, Business & Labor Committee
Hearing – 8:00am, February 1, 2005

TESTIMONY BY THE UNIVERSITY OF NORTH DAKOTA HB 1260
Presented by Rick Tonder, University Planner

House Bill 1260 as drafted presents a significant concern to the University of North Dakota and other university system campuses to the extent it would result in increased construction costs, delay building occupancy, and function to limit the University's ability to meet the changing needs of today's competitive education/research environment.

Increased Costs Modern university construction projects included everything from simple renovation projects to sophisticated, federally sponsored research laboratories. Limiting the owner's contracting ability to three prime vendors greatly reduces the cost effectiveness available for such items and building controls, security systems, and advanced telecommunication infrastructure. Including these important services within the traditional prime contracts can create conflicts of interest, resulting in poor building performance and increased operating costs.

As an example, having a building control contractor work separately from the mechanical contractor ensures that the HVAC performance meets specifications, and shortfalls in duct construction are not compensated through modifications in control operation. This situation occurred recently when a fresh air duct that did not meet specifications at the Biomedical Research Facility collapsed when full controlled operation was applied. The mechanical contractor quickly corrected the deficit.

Occupancy Delays Placing a new building in operation as quickly as possible is paramount to establishing the scientific research or institutional function that initiated the project. Research and education are the primary components for revenue and job creation at the University of North Dakota. Limiting the University's flexibility in acquiring these new venues will slow that growth.

As an example, constructing the new Energy and Environmental Research Center (EERC) addition on time and budget required a separate bid package for structural steel and foundations. This allowed the final design of building interior components to continue as the building frame work was being erected. A second bid package resulted in completing the building six to eight months ahead of schedule, ramping up numerous new research projects at the EERC that would not have been obtained if the building addition were delayed.

Meet New Challenges The University of North Dakota is growing at a fantastic rate that promises new economic opportunities for our state. This growth comes as a result of our increased ability to compete with universities nation wide for both research and students. Capturing both venues requires the institution to be both flexible and fluid in how it responds to the changing marketplace. Limiting its ability to acquire new construction with this legislation will reduce our ability to compete, and slow our economic growth.

Summary The University has grown dramatically over the past few years, and that success is due in great part to our relationships with local contractors and design consultants who wish to succeed with us. Let's take as an example the efforts of Ralph Engelstad, who as an experienced contractor, chose construction management as the means to deliver his \$104 million ice arena to UND. Numerous contractors working together were able to deliver this project on time and provide this state with an unforgettable gift of great economic strength. Ralph must have known something about construction acquisition to select that method, and it seems to have worked.

NORTH DAKOTA

UNIVERSITY SYSTEM

The Vital Link to a Brighter Future

House IBL Committee Testimony on HB 1260

Pat Seaworth, General Counsel

February 1, 2005

Chairman Keiser and members of the House Industry, Business and Labor Committee:

I am here today on behalf of the State Board of Higher Education to oppose HB 1260. The Board opposes this legislation because it will limit flexibility of campus officials in planning and managing construction projects and result in increased costs and delays for some projects.

Use of construction managers is common in the private sector. It may be assumed that is the case because it is a proven and cost effective method to get projects done on time.

University system campuses continue to use the traditional design/build/bid process for most construction projects. However, that method is not necessarily the best, nor the most cost effective, for all projects. There may be projects, especially those involving complex systems such as advanced telecommunications or other infrastructure, extensive furnishings and equipment for laboratories, etc, where work traditionally done by a general contractor is but a very small part of the entire project. Currently, campus officials have the option of retaining an architect or other construction management professional to manage these projects. That option would be effectively foreclosed under HB 1260. Amendments to definitions in NDCC section 48-01.1-01, in section 1 of the bill, and other amendments, including amendments to NDCC section 48-01.1-09, in section 6 of the bill, would prevent campuses from employing campus officials to manage projects and severely restrict the ability to contract with an architect or engineer for construction management services. Requiring three prime bids and prohibiting contracts between a construction manager and subcontractors if a construction manager is employed, as stated in section 6, would add unnecessary costs and make it impractical to employ construction managers.

The Board and campus officials have other concerns about HB 1260. In section 1, "construction" is defined to include "equipping" and "maintaining" buildings. That apparently means that a purchase of furniture, laboratory equipment, computers or other property must be bid under the construction bid process, which doesn't make sense and

State Capitol - 600 E. Boulevard Ave., Dept. 215, Bismarck, ND 58505-0230

Phone: 701.328.2960 • Fax: 701.328.2961

E-mail: NDUS.office@ndus.nodak.edu • Web: www.ndus.nodak.edu

The North Dakota University System is governed by the State Board of Higher Education and includes:
Bismarck State College • Dickinson State University • Lake Region State College • Mayville State University •
Minot State University • Minot State University-Bottineau Campus • North Dakota State College of Science •
North Dakota State University • University of North Dakota • Valley City State University • Williston State College.

HB 1260 testimony
Pat Seaworth
February 1, 2005
page two

would increase costs (bonding requirements alone would increase costs by up to one and one-half per cent). Nor does it make any sense to require such bids for a maintenance contract such as, for example, an elevator maintenance contract (which at a large campus could exceed \$100,000 for a term of years).

Finally, university system officials do not agree with the proposed amendment to NDCC section 48-01.1-03, which would make construction management a construction bid service instead of a professional service like architectural or engineering services, which is now the case. Selection of professional services should not be based solely on price.

Thank you for your consideration. I would be happy to answer any questions you may have.

Contact information: 328-4169 or pat.seaworth@ndus.nodak.edu



NORTH DAKOTA LEAGUE of CITIES

Founded in 1912

*Service, Advocacy, Leadership,
Education & Support*

HB 1260

House Business, Industry and Labor Committee

February 1, 2005

The purpose of public bidding is to protect the public interest and maximize use of public dollars in construction projects. HB 1260 seems to seek changes focused on the contractors rather than benefit to the public. The League's legislative committee opposes passage of this bill.

Section 1 (1) The word "maintaining" is questionable in this definition. There are few maintenance contracts in excess of \$100,000 and those contracts would bid under city ordinance. Another concern about that section is the apparent requirement to have plans from an engineer or architect for a maintenance project like repainting a water tower.

Section 1(6) eliminates economic reasons from those reasons the city might consider doing emergency work. For example, if a contractor is on site constructing a large project and identifies a problem related to (but not the same as) the work they are performing, it would be common for the city to consider doing the work with the contractor already engaged. This would save time and money and would likely avoid inconvenience to the public. Paragraph 6 applies a much stricter standard, virtually eliminating any discretion from the governing body.

Another example would be when the city has agreed to make an improvement and to finish by a certain date and a third party (perhaps the developer) is relying on the city being done. Even though it would incur financial liability to the developer, the city could not declare an emergency and speed up the process to be done on time. Economics or efficiency could no longer be a consideration.

The amendment in section 2 would require all special assessment projects to have three weeks of advertising rather than two. North Dakota doesn't enjoy a long construction season and with all of the other requirements of creating special improvement districts, the extra week can be crucial, especially for an improvement district that originates after the start of the construction season.

In Section 3 (7) adds language that will likely result in fewer, not more bidders. It is not uncommon for contractors to make errors when submitting bid forms. For example, a common mistake is to not acknowledge addenda or fail to total a column of numbers. In a bid form, there is often more than one place to acknowledge an addendum and usually by reading the bid it is possible to tell if the addenda have been considered and incorporated into the bid. It is possible to do the math and total a column if the bidder failed to do so; however, (7) seems to say that a bid form with a blank must be eliminated. There is apparently no discretion for the governing body and the likely result will be fewer bids.

The city's interest is to be able to consider as many bids as possible as long as the playing field is kept level

Section 4 appears to limit how cities shape their projects for bidding. It appears a city would be limited to just three prime bids and would have to always include all three and only three. It is common to have more than three and it is also common to not include one of the primes if there is little or negligible work involved for that prime.

On one street project, for example, there might be little or no electric work. On the next street project, signal lights might be involved. In the first instance, a city wouldn't include a prime for electrical but on the second project it would. Section 4 appears to remove all discretion and that can result in spending more public dollars than really need to be spent.

The League urges a "do not pass" recommendation on HB 1260.

Connie Sprynczynatyk
Executive Director

DATE: January 31, 2005

TO: Connie Sprynczynatyk
North Dakota League of Cities

FROM: Waide D. Kritsky
City Engineer

RE: House Bill No. 1260

The City of Minot has reviewed the above referenced bill and has determined that the City of Minot would not support this legislation for the following reasons:

- 1) Section 48-01.1-03 requires three consecutive weeks week of advertisement with the first publication to be at least 21 days before the bid opening. This will add publication costs to Special Assessment Projects that currently require two consecutive weeks of advertisement with the first publication to be at least 21 days before the bid opening.
- 2) The City of Minot currently utilizes engineers or architects on our projects for Preliminary Engineering and Construction Engineering. Preliminary Engineering may include the Project Concept Report (PCR) and/or preparation of Plans & Specifications. The same engineer or architect is normally used for Construction Engineering that encompasses the same duties as the proposed Construction Manager in Section 48-01.1-09.

AIA North Dakota

A Chapter of The American Institute of Architects

HB 1260



Chairman Keiser and members of the House IB & L Committee,

My name is Bonnie Larson Staiger (Lobbyist #273)

I have been the Executive Director of AIA North Dakota since 1997 and the records in my office go back until that time—everything else has been archived. This legislative war has been battled every session since I started—maybe longer. Every session the AGC has tried to stop architects and owners of public projects from using a construction management arrangement. Every session they come up with a different twist -- using a variety of arguments such as bonding, liability, contracting license, and this year it's conflict of interest. The fact is once again, another attempt to eliminate competition.

The AGC is asking you to take North Dakota back in time rather than forward. They have put the full weight of their organization behind their building division which represents only a fraction of their total membership.

While not new, there is a growing trend around the country for the architect to become the lead —designer and project manager. The architect is leaning toward being a master builder. Architects are choosing to be the source of quality, one-stop shopping and are selling their services by offering total project management services in addition to standard design services. And more and more clients *want* this complete service.

Last session this committee heard and acted favorably toward a bill to license landscape architects. Some of the most compelling testimony was from NDSU students who testified that they were receiving the training but had no professional stature once they received their degrees. This same argument holds for NDSU students getting degrees in architecture. They are being trained in construction management. Are you going to legislate this area of professional practice out from under another group of graduates?

Architects understand their clients' goals, how buildings go together, and the financial aspects of construction. They have been offering this service to their clients and providing them with better-built, better designed projects.

We ask for a "Do Not Pass" recommendation.

ACEC

American Council of Engineering Companies

Jerold R. Backes, PE
Past President/Legislative Chairman
P.O. Box 1077
Bismarck, ND 58502-1077



Web Site: www.acecnd.org

e-mail: jerry.backes@bartwest.com
phone: (701) 258-1110
cell---: (701) 226-1382
fax---: (701) 258-1111

February 1, 2005

Industry, Business & Labor
North Dakota House of Representatives
Bismarck, North Dakota

RE: HB 1260 Modification to NDCC 48-01.1-01, 48-01.1-03, 48-01.1-05, 48-01.1-06, 48-01.1-08, and 48-01.1-09

Chairman Keiser and Committee Members:

ACEC/ND is an organization representing engineering companies within the state of North Dakota. We are a nonprofit, voluntary, self-governing, and self-funded body organized to assist our members in achieving higher professional, business, and economic standards. All members of the ACEC/ND are registered to practice professional engineering under the laws of North Dakota and many hold registrations in other states. I currently have the privilege of serving as the Chairman of the Legislative Committee and am the Past President of this organization. I wish to advise you of our position on the legislation before you today – HB 1260.

ACEC/ND POSITION ON HB 1260

ACEC/ND has reviewed this bill and its resulting modifications to Section 48 of the NDCC. Based on that review, ACEC/ND strongly opposes the bill. We urge the committee to recommend that the bill be presented to the with a "DO NOT PASS" recommendation. We request this recommendation for the following reasons:


1. The bill as written removes viable options for the public to choose in the completion of projects. The options removed include the ability to divide the project into more than three contracts if deemed appropriate, the use of a design professional as the Construction Manager, and several types of the CM services prevalent in the industry. Removal of such options is not in the public interest.
2. The bill removes safeguards from the system by possibility of moving the "Construction Administration" from the governing body or registered design professional to the "Construction Management" arena.
3. The bill as written (Page 1 line 24 and Page 2, line 1) allows the provision of engineering or design services (design review and value engineering) without the requirement to meet the necessary requirements for licensure and registration prescribed by law. Obtaining a contractor's license should not be substituted for the years of education, training, and testing required to provide these services.

4. The bill would limit the options available as far as number of contracts that can be let on a specific project. In some instances, specialty type work is best completed under a separate contract. The existing bill would force the governing body to include the work under one of the three contracts that the legislation prescribes. This could add cost to the project.
5. The legislation prescribes that only contractors can supply "Construction Management Service" and does not address that these services may also be provided by design professionals.
6. The law disallows the advertisement of a project prior to all necessary plans and specifications being ready. There are many times on projects where it is beneficial to the public to advertise the projects in advance of the final plans being back from the printers. In such instances, the project is often advertised in advance of the plans being fully ready to allow further awareness of the project. There is also delay from the time the project is actually advertised until requests for plans and specifications are actually requested.

For all of the reasons mentioned briefly above, ACEC/ND recommends a "Do Not Pass" recommendation from the committee.

We thank you consideration of our position.

Sincerely,



Jerold R. Backes, PE
Legislative Chairman
ACEC/ND

AIA North Dakota

A Chapter of The American Institute of Architects



Chairman Mutch and Members of the Committee

My name is Bonnie Larson Staiger and I represent the American Institute of Architects.
(#273)

We can't stress enough the importance of HB 1260 going forward. It is essential that the interim committee discuss these issues which have plagued the industry for decades. These issues have pitted many in this room against one another not unlike the Hatfields and McCoys. Unfortunately, most of you have witnessed prior skirmishes.

This language was crafted in the House subcommittee, endorsed by your colleagues in House IB &L with a vote of 13 to 1 and the floor vote was 87 to 2. Just as importantly all interested parties involved agreed in good faith to come to the table and participate in the dialogue.

The time has come for setting aside grudge matches and begin peace talks. We hope you will be a part of the peace process.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 48-01.1-01, relating to definitions for public improvement contract bids; to create and enact a new subsection to section 48-01.1-05, relating to bid advertisements for public improvement contract bids, and to amend and reenact sections 48-01.1-03, 48-01.1-06 and 48-01.1-09 of the North Dakota Century Code, relating to public improvement contract bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA

SECTION 1. One new subsection of to section 48-01.1-01 of the North Dakota Century Code is created and enacted as follows:

"Emergency situation" means any sudden, generally unexpected occurrence which requires immediate action to protect the public health, safety, or property.

The term does not include a lack of planning on the part of the governing body, architect, engineer, construction manager, or contractor. An emergency situation ends when the immediate threat to the public health, safety, or property ceases.

SECTION 2. AMENDMENT. Section 48-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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 manufactures, 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. All necessary plans and specifications for the advertised portion of a public improvement must be ready for delivery to requesting bidders during the minimum advertisement times required in this section.

SECTION 3. One new subsection to section 48-01.1-05 of the North Dakota Century Code is created and enacted as follows:

That the bid form issued or amended by the governing body for the public improvement must be used for bid submittal or the submitted bid must be considered non-responsive.

substantially the same

SECTION 4. AMENDMENT. Section 48-01.1-06 of the North Dakota Century Code is amended and reenacted as follows:

48-01.1-06. Bid requirements for public buildings. Multiple prime bids of at least one each for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts the estimated total cost of the entire project is in excess of one hundred 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. When the governing body ~~uses a construction manager and~~ separates the project into many small bid packages, the governing body shall allow for combined bids ~~of the general, electrical, and mechanical bid packages~~

multiple prime bids

of any or all

~~and combined single bids for all bid packages offered.~~ The governing body shall accept the lowest responsible bid or combinations of bids submitted.

SECTION 5. AMENDMENT. Section 48-01.1-09 of the North Dakota Century Code is amended and reenacted as follows:

48-01.1-09. Use of construction manager. If a governing body uses a construction manager on a public improvement, the construction manager must be a licensed contractor and may not have common ownership with any architect, engineer or contractor involved in the planning, design, or construction of the public improvement. The construction manager may not construct any portion of the public improvement or contract with any subcontractors to construct any portion of the public improvement. The construction manager awarded the contract for construction management of a public improvement shall bond the entire cost of the ~~project~~ public improvement through a single bond, or through bonds provided by all bid packages and the construction manager's bond for the full amount of the construction manager's services. If the total of the bonds is less than the total ~~project~~ public improvement bid, the construction manager shall bond the difference between the total of the bonds and the total ~~project~~ public improvement bid."

Renumber accordingly