

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2209

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2209
January 19, 2011
Job Number 13065

Conference Committee

Committee Clerk Signature

Eva Libelt

Explanation or reason for introduction of bill/resolution:

Relating to using the design-build procurement process for public improvement projects

Minutes:

Testimonies Attached

Chairman Klein: Opened the meeting. Is one of the sponsors of Senate Bill 2209.

Russ Hanson, AGC of North Dakota: For a historical background there was a bill, House Bill 1260. The bill addressed Chapter 48, construction management at risk and design-bid-build and design-build aspects. That bill went through the hearing process and it was amended and mandated for a study resolution. Continues to talk about the bill and that it is a request of the AGC as a result of the study resolution.

Eric Johnson, Vice President of the Meinecke-Johnson Company: He is on the board of directors of the AGC of North Dakota. Testimony Attached (1).

Chairman Klein: In a Design-Bid-Build there is a process, it is put out for bids and someone accepts the bid and then it is designed and then built. Trying to understand why there is a need to go Design-Build.

Eric: The latest lingo in the construction industry is fast tracking. Everyone wants to get it done faster. Getting everyone together right away instead of separately. He feels this will save time and money.

Chairman Klein: The contractor would be on top?

Eric: It varies from engineer to contractor to subcontractor in Design-Build.

Senator Nodland: It could be the contractor who takes the lead; if you are out on a bid process you may have various contractors and subcontractors. Does this change the ability for everyone to be able to bid?

Eric: Instead of the design coming first they put out an RFP, then the professionals get together and put together a proposal for the owner who then chooses what he would like to do with it.

Continued with questions for Eric.

Jeffry Volk, President and CEO of Moore Engineering, Inc.: Testimony Attached (2).

Senator Nodland: Said that he is worried about the smaller contractors and wanted to know if they are given an opportunity to bid.

Jeffry: Stated that he thought they would be able to bid to the team. There might be some of them already with the team they want to work with. There is no assurance provided that they will get to bid the project.

Senator Larsen: In your testimony you talked about the ten million dollars would allow the small contractors to not be put out but if on the back side if they have to have fees to get there project in, will that shut them out to be able to afford to many of those loses if they are not chosen.

Jeff: That is up to each team, how much a team member puts forth money is up to each team. It can't be dictated from the outside, it has to come from the inside. Continued to explain how he felt it would work.

Chairman Klein: How would the public entities know what is good and where does their confidence come from?

Jeff: The entities that are doing this are usually more sophisticated owners and they are dealing with projects on regular bases and they understand industry.

John Eickhof, President of Construction Engineers, LTD: Testimony (3).

Chairman Klein: Commented that he thought people in the room didn't think this would be good for the smaller contractors and they would get squeezed out of the way.

John: Feels it in no different from the other way. They always pick who they like to work with. Handed out testimony of Scott Boettner (4).

John Perry, PE, McFarlane: Testimony Attached (5).

Chairman Klein: Asked for any opposition.

Bill Kalanek, National Electrical Contractors Association, Dakotas Chapter, North Dakota Association of Plumbing, Heating and Mechanical Contractors: Testimony Attached (6). In opposition.

Discussion and Questions about how the way they are doing it is working and this Design-Build could keep smaller construction companies from bidding and getting jobs.

Brent Michelsen, Member National Electrical Contractors Association, Dakotas Chapter: Testimony Attached (7). In opposition in of the bill.

Comment made that this could restrict his ability to grow.

Dave Romine, Executive VP, NDPHCC: Testimony Attached (8). In opposition of the bill. Handed out written testimony from Jim Fristad, Profession Engineer, Lunseth Plumbing and Heating (9).

Question was asked, why there is a seven percent cost increase and answer was that it was because they are looking for the project to finish quicker and that's an advantage some are willing to pay for. It was used on the bridge in Minneapolis, which went over the seven percent increase.

James Devine, American Architecture of North Dakota: In favor of the bill.

Doreen Riedman, Executive Officer North Dakota Association of Builders: Testimony Attached (10). Would like the threshold increased.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2209
January 19, 2011
Job Number 13096

Conference Committee

Committee Clerk Signature

Erin Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to using the design-build procurement process for public improvement projects

Minutes:

Committee discussion

Chairman Klein: Committee we heard 2209 and thought they needed more discussion.

Senator Laffen: Did a drawing on the board to show how design-bid-build works. He explained how it works and what would happen with design-build. He feels there is no one to make sure quality work is being done because there would not be an agent for the state any longer. He feels this would cut out seventy-five percent of the architects in the state. It would only be for the bigger contractors the smaller ones would not be able to do this. The case can be made for it being faster but not cheaper. The time and place for this is in an emergency like the Minneapolis Bridge. The larger companies can afford to take this risk but not the smaller ones.

More questions directed to Senator Laffen. Discussion continued and a dollar amount was discussed.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2209
January 24, 2011
Job Number 13250

Conference Committee

Committee Clerk Signature

Em Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to using the design-build procurement process for public improvement projects.

Minutes:

Continued Discussion

Chairman Klein: Wanted to discuss Senate Bill 2209 to know the direction they will be going with the bill if amendments are drafted.

Senator Nodland: Stated that he liked what Senator Laffen brought up. He is also concerned about the smaller contractors, would like to see it go up to 25 million.

Senator Laffen: Not sure what purpose serves North Dakota. Had two ideas of what could be done, they could raise the limit to be higher or lower it down to a million or less, so it is not a risk for the State.

Chairman Klein: By lowering it to a million it gets more people in the loop because they don't have to put all this work at risk that they may not get.

Senator Laffen: That's correct. On big projects there is a huge up front risk you take as a design-builder. You have to do design work, major estimating because you will be putting your name on that contract even though the project hasn't been designed yet. That is a big risk that only the big companies can afford to do. It could take a small company down if they made a mistake on that. On the other side state law says any project over \$100,000 has to have four contracts to get that project done. Allowing design-build at a lower limit, like under a million, would allow that facility manager to go out and say he needs the project done, one contract, design and build it and get it done.

Discussion continued and question asked if design-build for vertical buildings could go under the emergency rules.

Senator Schneider: Said he thought it does apply to all public improvements.

Chairman Klein: Said he has enough information. Will get some amendments drafted to go to twenty five million. Closed the discussion.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2209
January 25, 2011
Job Number 13349

Conference Committee

Committee Clerk Signature

Em Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to using the design-build procurement process for public improvement projects

Minutes:

Discussion and amendment

Chairman Klein: Presented his amendment. Said it incorporates the issues brought by the engineer Jeff Volk and stated he changed the amount from ten to twenty million.

Senator Andrist: Motioned for a do pass on the Klein amendment.

Senator Schneider: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Andrist: Motioned for a do not pass.

Senator Murphy: Seconded the motion.

Discussion followed

Roll Call Vote: Yes-6 No-1

Senator Laffen to carry

January 25, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2209

Page 3, after line 4, insert:

- "
14. "Design Builder or Design-Build Entity" means the corporation, partnership, limited partnership, sole proprietorship, joint venture or other organization established by written agreement that undertakes or enters a contract with a governing body for the design and construction of a design-build project.
15. "Design-Build Team" means the design-build entity and major subcontractors including those entities which are responsible for completing at least the design, general construction, mechanical construction and electrical construction of a design-build project."

Page 3, line 5, replace "14." with "16."

Page 3, line 10, replace "15." with "17."

Page 3, line 11, replace "16." with "18."

Page 3, line 15, replace "17." with "19."

Page 3, line 17, replace "18." with "20."

Page 3, line 19, replace "19." with "21."

Page 3, line 21, replace "20." with "22."

Page 3, line 24, replace "21." with "23."

Page 3, line 30, replace "22." with "24."

Page 4, line 5, replace "ten" with "twenty"

Page 5, line 9, replace "A list of each partner, general partner, limited partnership, and subcontractor that will participate in the contract proposal." with "A list of each member of the design-build entity."

Page 5, line 11, replace "Evidence that each partner, general partner, limited partnership, and subcontractor that will participate in the proposed project has completed or demonstrated the experience, competency, capability, and capacity to complete a project of the size, scope, and complexity of the proposed project and that key personnel expected to be involved on the project have sufficient experience and training to competently manage and complete the design and construction of the proposed project." with "Evidence that the design-build team for the proposed project has completed or demonstrated the experience, competency, capability and capacity to complete a project of the size, scope, and complexity of the proposed project and that key personnel expected to be involved on the project have sufficient experience and training to competently manage and complete the design and construction of the proposed project."

Page 6, remove line 7

Page 6, line 10, replace "j." with "i."

Renumber accordingly



Date: 1/25/2011
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2209

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Andrist Seconded By Senator Schneider

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Klein amendment

Date: 1/25/2011
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2209

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Andrist Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein		✓	Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Laffen

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

REPORT OF STANDING COMMITTEE

SB 2209: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2209 was placed on the Sixth order on the calendar.

Page 3, after line 4, insert:

- "14. "Design-builder" or "design-build entity" means the corporation, partnership, limited partnership, sole proprietorship, joint venture, or other organization established by written agreement that undertakes or enters a contract with a governing body for the design and construction of a design-build project.
- 15. "Design-build team" means the design-build entity and major subcontractors, including those entities that are responsible for completing at least the design, general construction, mechanical construction, and electrical construction of a design-build project."

Page 3, line 5, replace "14." with "16."

Page 3, line 10, replace "15." with "17."

Page 3, line 11, replace "16." with "18."

Page 3, line 15, replace "17." with "19."

Page 3, line 17, replace "18." with "20."

Page 3, line 19, replace "19." with "21."

Page 3, line 21, replace "20." with "22."

Page 3, line 24, replace "21." with "23."

Page 3, line 30, replace "22." with "24."

Page 4, line 5, replace "ten" with "twenty"

Page 5, line 9, remove "partner, general partner, limited partnership, and subcontractor that"

Page 5, line 10, replace "will participate in the contract proposal" with "member of the design-build entity"

Page 5, line 11, replace "each partner, general partner, limited partnership, and" with "the design-build team for the proposed project has completed or demonstrated the experience, competency, capability, and capacity to complete a project of the size, scope, and complexity of the proposed project and that key personnel expected to be involved on the project have sufficient experience and training to competently manage and complete the design and construction of the proposed project."

Page 5, remove lines 12 through 17

Page 6, remove lines 7 through 9

Page 6, line 10, replace "i." with "l."

Renumber accordingly

2011 TESTIMONY

SB 2209

Testimony SB 2209
Senate Industry, Business, and Labor Committee
January 19, 2011

Mr. Chairman and members of the Senate Industry, Business, and Labor Committee, my name is Eric Johnson. I am the Vice President of the Meinecke-Johnson Company, a Fargo based construction company and am a member of the AGC of North Dakota Board of Directors. I'm here to support SB 2209. The work on this delivery method began in 2005 as the result of a mandated study resolution. Since then, industry groups have met on a monthly basis during the interims to discuss Design Build and other industry issues governed by NDCC 48. In fact, our final industry coalition meeting was held in December 2010. This bill is being brought to you individually rather than by the industry coalition due to the fact there was agreement to all facets of the draft except for the dollar threshold in SB 2209.

SB 2209 proposes to amend the North Dakota Century Code to allow the use of Design Build procurement on a very limited basis for construction projects governed by NDCC 48 (commonly referred to as "vertical building chapter"). This bill, if enacted, would only allow the consideration of the use of this procurement process if a project is estimated to be \$10 million or more.

Section one defines Design Build procurement. Design Build utilizes a team approach of design professionals and contractors as a single entity rather than working separately which is the practice in Design Bid Build procurement.

Section two of the bill outlines the \$10 million value threshold and stipulates the owner must determine that design build will reduce project costs, expedite the completion of the projects, or provide design features not achievable through traditional Design/ Bid/ Build procurement method. This is a key aspect to the bill. Dollar Thresholds, costs, and timelines are considerations which must be met before this procurement process can be considered.

Section two also outlines the governing body which would review proposals and establishes criteria for qualifications.

Section three outlines the selection process for qualifying projects and the criteria included in the decision to award the contracts. Price, Technical Design, and Construction Expertise are specifically stated in this bill and must be given consideration during the awarding of the bids.

The intention of this bill is not to replace Design Bid Build procurement as the most commonly used delivery method. The dollar threshold prevents the vast majority of projects to consider utilizing this method. The philosophy is there are times on high value, complex projects where Design Build could be utilized to either expedite the completion of the project or lower the costs of the project, or both.

Design Build is utilized in most states in some form or another. It is used frequently in the private sector in North Dakota. However, in our research, we noticed no two states statutes governing Design Build are identical. Each statute reflects the local environment of that state and what would be appropriate for use in North Dakota is an aspect which was seriously considered when crafting this legislation over the past 5 years. SB 2209 respects the current Design Bid Build procurement for the vast majority of projects. It would allow owners to consider Design Build procurement on select projects where deemed appropriate.

I appreciate the opportunity to testify today in support of SB 2209 and request the committee's favorable consideration of it in the form of a "Do Pass" recommendation. If there are any questions, I would be happy to attempt to entertain them.

Senate Industry, Business & Labor Committee
Testimony Supporting SB 2209

January 19, 2011

Chairman Klein and Committee Members

My name is Jeffry Volk. I currently serve as President and CEO of Moore Engineering, Inc. and I am a Professional Engineer and Registered Land Surveyor in North Dakota. I have spent my entire professional career as an engineering consultant in North Dakota. My testimony today is on behalf of the American Council of Engineering Companies/North Dakota. I currently serve as President of this Council.

My testimony today is in support of SB 2209. I will be recommending a couple of amendments that we believe will enhance the design-build delivery method.

SB 2209 authorizes the political subdivisions that are regulated under Chapter 48 of the NDCC to utilize the "design-build" delivery method for the construction of public improvements. Currently political subdivisions may utilize "design-bid-build", "agency construction management" or "construction management at-risk" delivery methods for the construction of a public improvement. Each of these delivery systems have their appropriate use, as is true with the proposed design-build delivery method.

The "design-build" delivery method is generally utilized for larger complex projects. It can be a very effective delivery system for projects with a longer than normal design lead time or where unique innovations can help with project cost or schedule. Attachment 1 to my testimony is a brief summary of this delivery system with a few Pros and Cons listed. I want to stress design-build is not suited for most public works projects, but it definitely is a proven delivery system that can reduce costs and save time for the construction of certain public improvements. One recent high profile design-build project was the reconstruction of the I-35W bridge in Minneapolis.

The attached maps to my testimony are a representation of which states had some form of design-build authority in 2010 as reported on the Design Build Institute of America website and which states were expanding that authority during their 2010 legislative sessions.

I would like to discuss our recommended amendments.

We think a couple of additional terms should be added to the definitions in Section 1.

14. "Design Builder or Design-Build Entity" means the corporation, partnership, limited partnership, sole proprietorship, joint venture or other organization established by written agreement that undertakes or enters a contract with a governing body for the design and construction of a design-build project.

15. "Design-Build Team" means the design-build entity and major subcontractors including those entities which are responsible for completing at least the design, general construction, mechanical construction and electrical construction of a design-build project.

In addition we propose that paragraphs a. b. and i. in Section 3. 1. read as follows.

Section 3. 1. a. A list of each member of the design-build entity.

Section 3. 1. b. Evidence that the design-build team for the proposed project has completed or demonstrated the experience, competency, capability and capacity to complete a project of the size, scope, and complexity of the proposed project and that key personnel expected to be involved on the project have sufficient experience and training to competently manage and complete the design and construction of the proposed project.

Section 3. 1. i. Delete entirely

Lastly I would like to address a common concern relating to health, safety and welfare issues with the design-build delivery method. Under the traditional design-bid-build delivery system, the political subdivision contracts directly with the design professional and separately with the contractor. With the design-build delivery method, the design professional of record and the contractor combine to form a

design-build team under a single contract with the political subdivision. The concern of the health, safety and welfare of the public generally gets improperly intermixed with the issue of being a trusted advisor to the client. I will address this from the engineers' perspective by reviewing state law and the accompanying administrative code.

The practice of engineering is governed by Chapter 43-19.1 of the NDCC. The very first sentence of this chapter reads: "In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and land surveying in this state is hereby declared to be subject to regulation in the public interest, and it hereby is declared necessary that a state board of registration for professional engineers and land surveyors be established, which in the exercise of its powers is deemed to be an administrative agency within the purview of chapter 28-32." The North Dakota Board of Registration for Professional Engineers and Land Surveyors has adopted rules as outlined in Chapter 28 of the Administrative Code.

Within this administrative code, the State Board of Registration has clearly identified both of these matters and has adopted rules to clarify the difference in Chapter 28-03.1 – Rules of Professional Conduct. The opening general statement of this chapter begins as follows:

28-03.1-01-01. General statement. In order to establish and maintain a high standard of integrity, skills, and practice in the profession of engineering and land surveying, the code of ethics contained in this chapter is binding upon every person holding a certificate of registration as a professional engineer or land surveyor, and upon all agents, employees, officers, or partners.

This chapter is specifically designed to further safeguard the life, health, property, and public welfare of the citizens of North Dakota, and must be construed to be a reasonable exercise of the police power vested in the board of registration for professional engineers and land surveyors by virtue of North Dakota Century Code chapter 43-19.1, and as such the board can establish conduct, policy, and practices to be adopted.

This statement is followed by two separate paragraphs:

28-03.1-01-03. Standards of integrity. Registrants shall be guided in all their professional relations by the highest standards of integrity. The registrant will act in professional matters as a faithful agent or trustee for each client or employer.

28-03.1-01-04. Protection of public. Registrants shall be cognizant that their first and foremost responsibility is to the public welfare in the performance of services to clients and employers. The registrant:.....

The summary of all of this is that all professional registrants in North Dakota are obligated under the NDCC and the Administrative Codes to first and foremost protect the health, safety and welfare of the public. In a design-build entity relationship the design professional is still obligated to protect the public with their designs. This requirement is not in conflict with the requirement to be a faithful agent or trustee for each client or employer. Furthermore, Chapter 48-01.2-16 NDCC specifically directs the governing body to employ the services of a design professional to act as their faithful agent or trustee. This design professional simply cannot be the same design professional associated with the design-build team.

In conclusion, ACEC/ND believes the design-build delivery system is an effective way for a political subdivision to construct public improvements. We request you amend SB 2209 as outlined above and encourage this committee to give the amended bill a do-pass recommendation to the full Senate.

Thank you for considering my testimony.

Jeffrey J. Volk, PE & RLS
ND Registration # PE & LS 2524
President ACEC/ND
President & CEO
Moore Engineering, Inc.
925 10th Ave East
West Fargo, ND 58078

Attachment # 1

Design Build (D/B) Project Delivery System

- Owner selects a single entity responsible for the design and construction with a single contract
- D/B team selection based upon qualifications, price and determination of value
- Delivery contract normally for a single lump sum

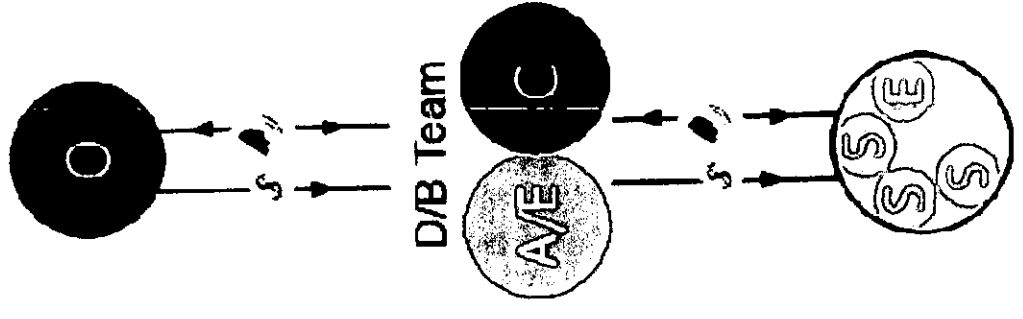
Pros

- Accountability, single source of responsibility
- Better communications
- Faster delivery
- Better budget control
- Encourages innovation

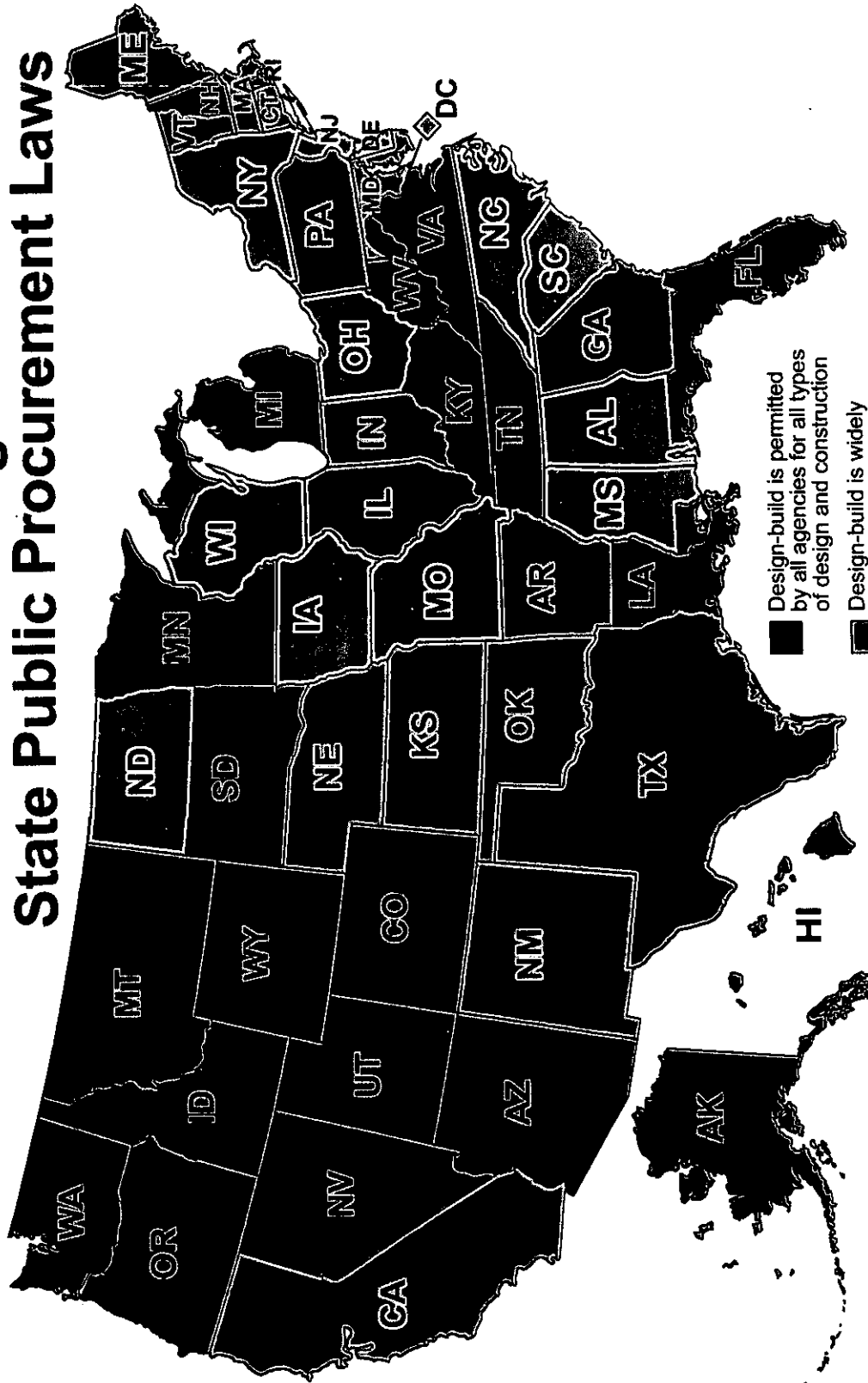
Cons





- Loss of competitive bidding to select builder
- Fewer checks and balances during construction
- Complicates regulatory issues/process
- Complicates right-of-way acquisition
- Proposal development is expensive
- Not suited for many public works projects

Design/Build



2010 Design-Build State Public Procurement Laws

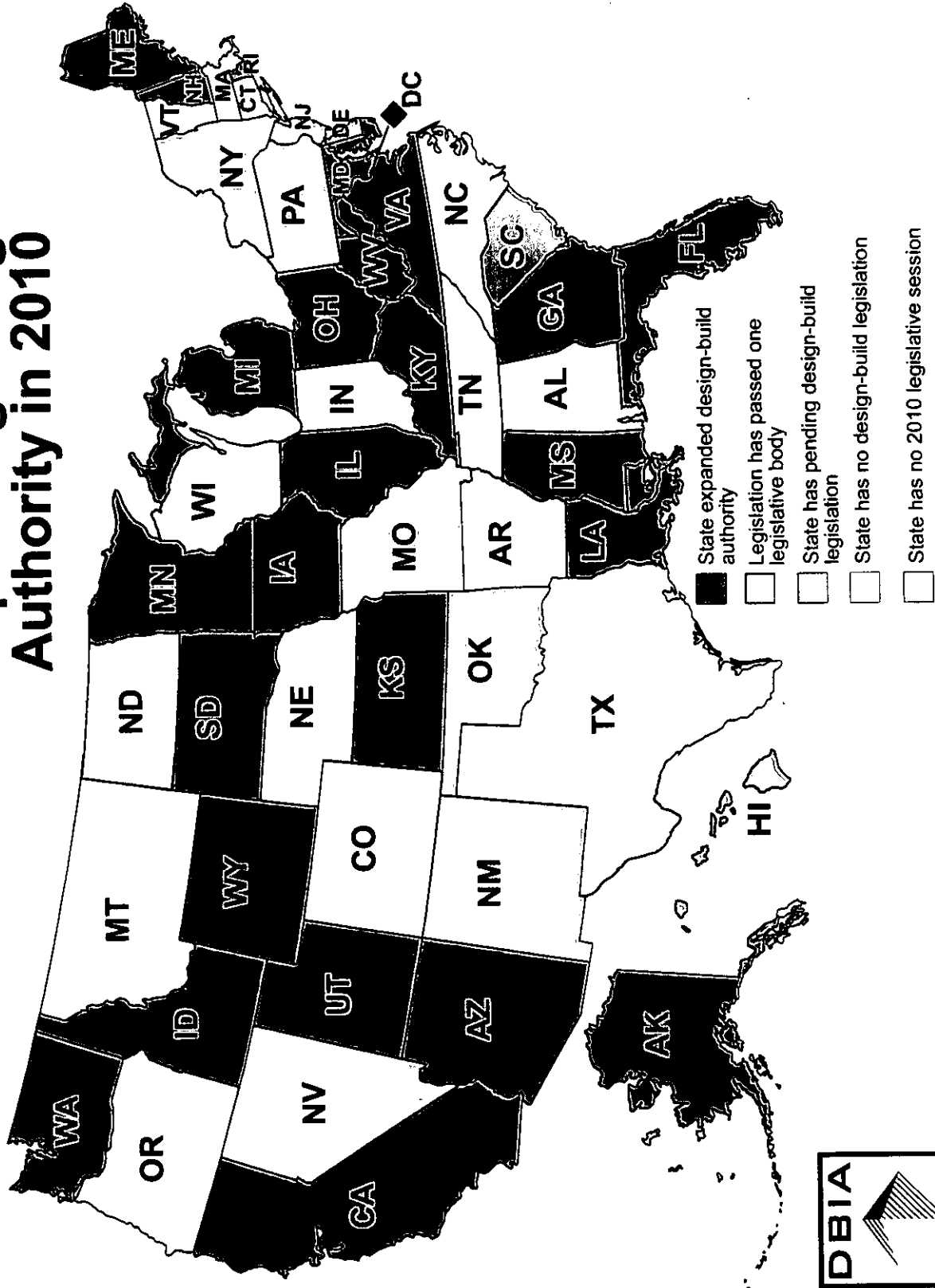


-  Design-build is permitted by all agencies for all types of design and construction
-  Design-build is widely permitted
-  Design-build is a limited option
-  Design-Build is not specifically authorized for public agencies *

* Certain states allow design-build procurement by case law



States Expanding Design-Build Authority in 2010



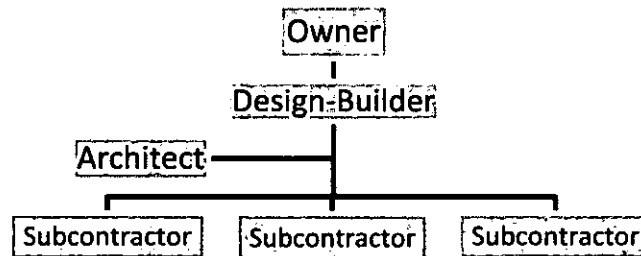
Design-Build

Design-build is the oldest form of project delivery, evolving from the master builder approach used to design and build the palaces and cathedrals of medieval Europe.

Benefits of Design-Build

- ◆ Single source responsibility for design and construction of total project.
- ◆ Construction cost, schedule, methods are controlled by a single entity.
- ◆ The fastest method for completing design and construction.
- ◆ Reduces owner's responsibility for managing design and construction team.
- ◆ High quality design can be delivered economically.
- ◆ Best opportunity to obtain subcontractor expertise in design process.
- ◆ Adversarial relationships eliminated because projects are built using a team approach.
- ◆ Design-Build team selection based on qualifications.

Typical Design-Builder



North Dakota Projects in Process or Recently Completed Using Design-Build

<u>Project</u>	<u>Amount</u>	<u>Size</u>	<u>Owner</u>
Urban Plains Office Facility Fargo, ND	\$6,000,000	40,000 SF	Urban Investments
Tioga Office Complex & Dining Facility Tioga, ND	\$12,624,000	60,000 SF	Hess Corporation
PumpCo Business Complex Minot, ND	\$8,513,000	55,250 SF	PumpCo Energy Services
Northern Border Patrol Station Grand Forks, ND	\$8,118,000	34,000 SF	U.S. General Services Administration
Robinson Lake Field Office New Town, ND	\$6,670,765	32,000 SF	Whiting Oil & Gas Corporation
Consolidated Security Forces Facility Grand Forks Air Force Base, ND	\$9,180,000	31,900 SF	US Army Corps of Engineers

SB 2209
Testimony (4)



5525 1st Avenue North
Grand Forks, ND 58203
www.customaire.net

January 18, 2011

John Eickhof
Construction Engineers
PO Box 13378
Grand Forks, ND 58208-3378

RE: SB 2209

John,

Thank you for the invitation to accompany you to the legislative hearing concerning the proposed "Design Build" legislation, SB 2209. I support this legislation and see it as a benefit to the state in delivering quality construction projects by quality contractors in a cost effective and timely manner.

Sincerely,

Scott Boettner
President

MEMO

TO: North Dakota Senate Subcommittee

FROM: John Perry, PE

DATE: January 17, 2011

SUBJECT: Design Build in Construction
Senate Bill No. 2209

Goals:

What do we want the procurement of design and construction services to provide for our public agencies?

- A project that lives within it's the budget.
- A project that meets its schedule.
- A completed building that meets the needs of its occupants.
- A building that meets applicable Federal, State, and local codes.
- A completed building that is innovative and energy efficient.

Now what really happens with Design Bid Construction Projects?

- A need is defined and an appropriation made for the construction of a new building.
- A Request for Proposal (RFP) is tendered to several design firms and a firm selected.
- The design professionals work with the owner's representatives to define the needs of the project and render those needs into a design. *This is where the needs and desires of the users group are really identified. Watch for mission creep at this stage of the project that may not become apparent until after bids are received.*
- A Bid Solicitation (advertisement) is made and contractor pricing is received. Selection of the Contractor is generally made by selection of the lowest responsible bidder. *This is where you find out what the real cost of the project is and also who you are going to work with. Are you always happy with the selections made for you?*
- If your bid exceeds the budget, do you have to revisit the appropriation process or the design, or is the project shelved? *This impacts the project schedule if redesign is required or another funded project may have to be curtailed to fund this project.*
- The project is constructed and turned over to the users group.

Anyone who has ever redone a kitchen or bathroom in their house knows exactly how control of the budget can get out of hand. Once the demolition is started, it's difficult or impossible to stop the budgetary steam roller.

There has to be another way to procure these services and still meet our goals.

What are our Options?

Compare the previous scenario to construction using Design Build.

Design Build: A request for proposal is sent out for design build services. The proposal identifies the location of the project, the type of construction desired, the time of occupancy, the order of magnitude of price, and any other criteria the owner wishes to provide concerning the design build proposal. Design Build teams compete to submit a proposal that meets budget, schedule, and identified needs of the user group. Upon selection of the construction design build team the design professional(s) works for the construction team who in turn works for the owner.

What advantages does the Design Build Option offer:

- Selection of a professional team not solely limited to price considerations.
- An acceleration of the procurement schedule. This is because of the opportunity for overlapping of the procurement of equipment and materials while completion of the details for the design. This is particularly important on long lead time items.
- An expectation of total project cost with feedback provided throughout the project stages that convey any changes in that cost. Often design proposals offer an "à la carte" menu of base proposal with priced options. The owner can match their desires to their financial needs early in the project.
- Input from bidding contractors and subcontractors throughout the process that permits incorporation of systems and construction techniques that benefit pricing and schedule.
- Continuity between the designer and contractor. On design build projects it is critical for the contractor/subcontractors and designer to understand the technology and processes employed in building construction and transfer that expertise within the design build team.
- One source of responsibility for performance because the design and construction is procured from one source. *The blame game stops because the designer and the contractor are the same entity. This also minimizes claims and changes.*

Some arguments against using the Design Build Process:

1. That the process does not allow for competitive bidding. *Competitive bidding does occur as part of the Design Build process. Contractors solicit their subtrade pricing from several subcontractors who in turn solicit pricing from many suppliers.*
2. The process does not allow for competitive bidding of the general contractor. Selection of the general design build contractor may be made on a group of criteria one of which is price. *It has been our experience that price is predominant in the selection of a contractor.*
3. Lack of checks and balances between the owner, design team, and contractor. *Most design build teams welcome the owner's involvement early in the project. As a design build professional we want the owner to be on board with the design as early as possible.*

Summary:

The Design Build process is not applicable for every project or in every situation but it is a useful tool in a Procurements Teams 'tool box'. When properly applied it has the ability to save procurement process time and money while providing a quality and innovative product. The members of the AGC of North Dakota welcome the opportunity to provide education to implement this process.

Testimony on SB 2209

Bill Kalanek
National Electrical Contractors Association, Dakotas Chapter
North Dakota Association of Plumbing, Heating & Mechanical Contractors

Senate Industry Business and Labor Committee
Senator Jerry Klein, Chairman
January 19, 2011

Good Morning Chairman Klein and members of the Senate Industry Business and Labor Committee, my name is Bill Kalanek here today on behalf of the Dakotas Chapter of the National Electrical Contractors Association and the North Dakota Association of Plumbing, Heating and Mechanical Contractors. I appear before you in opposition to Senate Bill 2209 for a number of reasons that I will detail during my testimony today.

The legislation as it is written allows for the use of Design Build as a method of delivery for public projects if it is determined that Design Build will "Reduce the cost of the project, expedite the completion of the project, or provide design features not achievable through the design-bid-build method". Members of the groups I represent would contend that Design Build is not a cost savings to the owner. Estimations from one member contractor indicated a 7% increase in cost for projects involving Design Build. With regard to expediency, the faster you want it done the more expensive the project becomes regardless of the method. These are publicly funded projects and there is an emergency provision in law for natural disasters and the like, administrators at all levels have no reason to rush to build unless such an emergency occurs.

Where design availability is concerned my members would contend that regardless of the delivery method skipping the "bid" step does not eliminate the availability of any design feature.

Lastly, I would like to discuss transparency of process. Under the current method of delivery (Design Bid Build) the contracting entity evaluates proposals from design professionals, selects a designer and prepares the bid specifications for contractors to examine and submit bids.

As the owner you can then select the lowest bids for general, electrical and mechanical contractors.

You can be assured that you as the owner are putting together the best and least costly combination of contractors to complete the project.

When considering Design Build proposals the owner receives multiple all-inclusive bids from eligible "Design Builders" which contain all costs pertaining to design and construction of the project. There is no mechanism in place to ensure that the project owner and the taxpayers are getting the best price for services rendered as there are no provisions to prevent bid-shopping of contractors and padding of the bid package. With the current delivery methods we have that transparency and we can assure the public that the desired outcome is achieved at the best price.

On behalf of NECA and the North Dakota Association of Plumbing, Heating and Mechanical Contractors I thank you for the opportunity to speak today and encourage you to give Senate Bill 2209 a **Do Not Pass** recommendation. I'd be open to any questions you have at this time.

SB 2209
Testimony (7)

Testimony on SB 2209
Brent Michelsen, Member
National Electrical Contractors Association, Dakotas Chapter
Senate Industry Business and Labor Committee
January 19, 2011

Good Morning Chairman Klein and members of the Senate Industry Business and Labor Committee, my name is Brent Michelson, I'm an electrical contractor and member of the Dakotas Chapter of the National Electrical Contractors Association.

I'm here today in opposition to Senate Bill 2209 which would establish a new delivery system for publicly funded projects. "Design build" as suggested by the bill would in my estimation create more inequities and be less transparent than the current method known as "Design bid build". The bill as drafted would create a cumbersome process of selection by which candidates who would normally be able to fully participate in the process are excluded from participation or potentially "bid-shopped" out of the process. Either way the proposed change encourages less transparency and competition when it comes to public entities publicly bidding taxpayer funded projects.

As an electrical contractor I look forward to opportunities to compete for work at the local and state levels as part of my business. It is those opportunities that ensure I'm able to employ quality people who do great work. I cannot support a bill that would create a system in which myself or my colleagues in the contracting business are shut out and unable to compete because of a cumbersome and expensive process. Under the current system the process is open and honest and you don't get to pick and choose who you work with but I respect the job and do what I can to make sure things are done on time and within budget. The proposal before you will only serve to complicate and create inequities in the public project world.

These are just some of the issues that I have with regard to design build in the public arena, I would ask the committee in its wisdom to give SB 2209 a Do Not Pass and leave the current fair and open process unchanged as we look to prudently spend taxpayer dollars.

Thank you for the opportunity to testify today, I'd be open to any questions you have.



SB 2209
Testimony (8)

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January 19, 2011

SB 2209 – Design Build Legislation

Industry, Business & Labor Committee

Senator Jerry Klein – Chairman

Senator George L. Nodland – Vice Chairman

Senators John M. Andrist, Lonnie J. Laffen, Oley Larson,

Philip M. Murphy & Mac Schneider

Mr. Chairman and members of the committee, my name is Dave Romine from Bismarck. I am an employee of HA Thompson & Sons (a mechanical contractor) and also a member of the North Dakota Association of Plumbing, Heating and Mechanical Contractors. I have been asked by our members to attend today and convey that the majority of our membership is opposed to this legislation because:

- We believe this method of procurement will exclude a majority of the Mechanical Contractors in the state from being a part of the process. Design-Build lends itself to the large, well established firms which would come to light in the Request for Qualifications. In the traditional Design-Bid-Build method used on all current public projects, all licensed contractors who have the ability to obtain a bond from a surety company, are eligible to bid the project.
- One of the claims of Design-Build is that it has a fixed price and consequently is cheaper. The cost of a traditional Design-Bid-Build project is not known until the bids are received. Both are based on budgets and estimates and frequently, the Design-Bid-Build method comes in less than the estimate and consequently saves tax dollars. An example would be the Heritage Center. The Design-Build method would have been based upon the budget and the traditional Design-Bid-Build bids came in well under the estimates.
- Design-Build claims to expedite a project because of the fact it can be constructed and designed simultaneously. The time savings is only as good as the team and that can't be measured in a request for qualification.

- Another potential advantage for Design-Build procurement is the idea that it can provide design features not achievable through the traditional Design-Bid-Build method. I am not sure what this actually means. Current public projects within the state have design teams attached to them and anything that can be done through Design-Build should be able to be achieved through traditional methods.

The Design-Build process from the Request for Qualifications to the Selection of the Design-Build team is very subjective.

- The integrity of the procurement process would be in question.
- The Agency may not get the building it thought it was paying for.
- The subjective nature of the process could far outweigh any conceived benefits.

The traditional Design-Bid-Build process under which public projects now are procured allows for competitive bidding based upon a complete set of drawings and specifications. All contractors are required to bid per the specifications and these result in integrity in the bid process. This process provides an avenue for more contractors to attempt the bid process resulting in a better opportunity for the state to save taxpayer dollars.

In summary, we have a tried and proven system in place for the procurement of public buildings and HA Thompson & Sons as well as the North Dakota Association of Plumbing, Heating and Mechanical Contractors oppose Senate Bill #2209

Sincerely,



David M. Romine

Construction Manager

HA Thompson & Sons

Nodland, George L.

From: Jim Fristad [jimf@lunseth.com]
Date: Wednesday, January 19, 2011 8:32 AM
Klein, Jerry J.; Nodland, George L.; Andrist, John M.; Laffen, Lonnie J.; Larsen, Oley L.;
Murphy, Philip M.; Schneider, Mac J.
Cc: David Romine
Subject: SB 2209

Dear Committee Members;

I am writing to voice objections to the language in this proposed bill. I am a Mechanical Contractor and an active member of the North Dakota Plumbing Heating Cooling Contractors (NDPHCC). I was also active in the interim Construction Coalition Leaders group. I was not able to travel to Bismarck this morning to testify at the hearing.

My objections are as follows:

1. SEC 2.1: The dollar limits are too low. They should be \$15M to \$20M. With no track record on how well the Design/Build process will work for governmental projects, we should start slowly to see how the process benefits the ND citizens. Do this by allowing fewer projects to reach the qualifying size. If, in fact, the process works well and saves the ND citizens money, then expand it to include smaller projects.
2. SEC 2.3: There are no provisions for how the 'governing body' should write their Request for Qualifications (RFQ). Most governmental bodies have no experience or expertise in writing a clear and precise RFQ. This will be a point of legal contention. The Selection Committee should be designated to write the RFQ.
3. In the 1980's, the Legislature passed the "Multiple Prime" bid law for governmental construction projects. Since then, hundreds of thousands of dollars of ND taxpayer dollars have been saved due to more competitive bidding and not having the general contractors adding their markup to the subcontractors. It has cost the ND AGC a lot of money and that is why they have worked to defeat it nearly every session since. AGC members pay 1% of their contracts for Association Dues and the Multiple Prime contracts has cut into their Association Dues. This bill is another attempt by AGC to regain some of their lost dues money.

Personally, my company does a significant amount of Design/Build work in the Private and Federal Sectors. My company would likely benefit from the Legislature passing SB 2209, but I am not convinced that this is in the best interest of the citizens of North Dakota. I think it is in the best interest of the ND AGC and their members.

Respectfully,

Jim Fristad, P.E.
Lunseth Plumbing and Heating
Grand Forks, ND

Dave Romine, Exec VP, NDPHCC

SB 2209 1b
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Testimony on Senate Bill 2209
Senate Industry, Business & Labor Committee
January 19, 2011

Doreen Riedman, Executive Officer
North Dakota Association of Builders

Chairman Klein and members of the Senate Industry, Business & Labor Committee, the North Dakota Association of Builders (NDAB) suggests an amendment to Senate Bill 2209.

To ensure that this process is used only on the largest public projects, we encourage you to increase the threshold for when the design-build delivery method is used to \$15 million.

Our contractors believe in the public bidding process, and want to be aware of such projects so they can have the opportunity to bid on them and potentially be involved in them.

We respectfully ask this committee to amend Senate Bill 2209 to have a \$15 million threshold, ensuring it gets used only on very large projects here in our state.

The NDAB represents nearly 2,000 members statewide with employees numbering 46,589. We are affiliated with six local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, Minot, and Williston; and are all part of a larger federation, the National Association of Home Builders (NAHB), which has over 160,000 members.