

May 9, 2008

Governor Edward G. Rendell
225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Rendell:

The Department of Education is allowing school districts to waive the requirements of the Separations Act. These waivers allow school districts to bid construction projects through a single prime (general contractor/broker) instead of through the multiple prime bidding system that has served Pennsylvania well since 1913. We respectfully request that the Senate, House and Governor take action to eliminate the waivers of the Separation Act on school projects.

School districts may apply for waivers from the Separations Act if they determine that the waiver will enable the school district to “. . . operate in a more effective, efficient or economical manner”. The Department of Education is rubber stamping virtually all waiver applications they receive without regard for the evidence that shows single prime contracts cost school districts significantly more money and result in substandard construction quality. If the school districts would accept bids using both the single prime and multi prime bid methods, they would be able to see how much more single prime bids cost them.

The Department of Education and the school districts have only been fed one side of this argument from the general contractors’ associations, who have used their power, wealth and misinformation to create a virtual monopoly on single prime school projects for the large general contractor/brokers at the expense of the PA taxpayers, small businesses and working families.

The Separations Act was originally required as a result of the unscrupulous business practices of general contractors/brokers. As most subcontractors can tell you, those same general contractor/broker “business practices” run rampant today.

I am strongly opposed to the Separations Act waivers and Single Prime bids for the following reasons:

Single Prime bids add a middle man: When has adding a middle man to a process ever resulted in lowering cost? The mechanical, electrical and plumbing (MEP) contractors that bid to a general contractor/broker (GC) will submit inflated prices because they will be another mouthful away from receiving payment, because they anticipate that their bid will be shopped by the GC and because they will have to work under the thumb of the GC instead of having a prime contract with the owner. In addition, the GC will add his mark up to the MEP contractors’ bid price and all change orders.

After the GC submits his bid to the school district, it’s time for the GC to go bid shopping. Even if the GC succeeds in beating down the MEP contractors’ prices, the savings will go into the GC’s pocket and the school district and the taxpayers will not see a penny of savings.

Single Prime bids limits competition: New construction on a typical high school can cost 40 to 50 million dollars or more. Some high school projects cost as much as 80 million. There are relatively few Pennsylvania GCs that are capable of bonding even one project of this value. Even before Single Prime bids started to be allowed, typical school projects only receive 2 to 3 GC bids because of bonding limits. Some times only one bidder shows up and can name their

price. The original bid for a recent West Chester School District Middle School received no GC bids at all. Putting the MEP contracts under the GC's contract will severely limit the pool of GC's capable of bonding and bidding school projects. Limited competition will further drive up the costs of these projects.

Multi prime school projects in our area of south central PA typically have five or more MEP bidders because the contractors know that they are competing on a level playing field with a public bid opening. Fewer MEP contractors will invest the time required to prepare a competitive estimate if projects are bid single prime through a GC.

Single Prime benefits a select few at the expense of thousands of workers and all PA

taxpayers: 20-30 years ago GCs had their own workforce and performed much of their own work. They had a vested interest in coordinating the work and keeping the job on schedule or they would incur labor inefficiency costs. Many contracts used to mandate that a GC perform a minimum of 20% of the labor with their own workforce in order to guard against broker GCs. Today, a GC is typically nothing but a broker who makes their profit the day they sign all the subcontracts. Their labor costs are limited to a Project Superintendent and a few employees. Why is the whole construction industry and our long standing contracting tradition being turned on its head in order to enrich a handful of GCs that directly employ very few workers? PA's MEP contractors perform most of their contracts with their own work forces, they employ about half of the workers on a typical school project, and they employ PA residents who vote and pay taxes.

Single Prime bids increase the potential for bid collusion: With multi prime bids, there are too many parties involved for collusion and price fixing to take place without a competing interest finding out about it and blowing the whistle. With single prime, all of the MEP bids are hidden from the view of the public and the contractors and with fewer GCs capable of bidding the jobs, the potential for collusion, price fixing and bid rigging increases.

Single Prime bids go to out of area and out of state GCs: Because of the bonding issue, many of the local small and mid sized GCs that currently do school construction will be shut out of the market. The big GCs from Philadelphia, Pittsburgh and from out of state will move in to fill the vacuum and enjoy a virtual monopoly at the expense of the PA taxpayers.

Single Prime bids will result in more non-resident workers: The construction industry has been losing jobs to foreign rotation workers who work here for six months and then take their earnings, our PA tax dollars, out of the state. Foreign rotation workers undercut the standard of living we need to live here and while the foreign rotation workers are employed on PA construction sites, the PA resident workers are left without jobs and without the ability to pay our property taxes.

America's claim to fame is the rule of law that is supposed to protect us against tyranny and injustice. Our government is turning its head to companies who violate the immigration laws, and by granting mandate waivers, the government is turning its back on the MEP contractors, their workers, their families, their suppliers, and the PA taxpayers. We have been seeing a steady increase in GCs on public works projects using lowball subcontractors that employ non-resident rotation workers. Many of the workers do not even speak the English language and cannot communicate as is necessary to coordinate the work on these large and complex projects. Our jobsites become like the Biblical Tower of Babel. Single Prime bids will only increase this problem by spreading it to the MEP trades. How do we know if all these

rotation workers are U.S. citizens or have proper work visas. Furthermore, how do we know if they are being paid the required wage rates?

PA residents that pay their property taxes, support the schools, roads, infrastructure and local communities in every way should be working on school jobs funded by our taxes. These jobs and our tax dollars should not be going to take-the-money-and-run rotation workers.

Single Prime bids result in substandard construction quality: Because of the Separations Act, PA has a stable full of financially healthy, experienced, **bondable** MEP contractors that have structured their businesses around bidding and building multi prime construction projects. PA is nationally known for its quality public works construction and skilled Mechanics, Electricians and Plumbers. There are an estimated 600 union and non-union MEP contractors that perform on public works projects in PA.

On single prime jobs, the GC will select the MEP subcontractors who give them the lowball price regardless of their financial condition or qualifications. The lowball MEP subcontractors typically do not employ competent workmen duly trained and skilled in their crafts though a state bona fide apprentice program.

With multi prime bids, the MEP contractors police the quality of construction on a project. If a predecessor activity is not fit and sufficient to receive the next work activity in the sequence then it is the job of the MEP contractor to point out the problems and get them resolved before continuing. The MEP contractor does not want the poor workmanship of another trade to cost them money. This is something that happens regularly on multi prime projects, but if the MEP contractors are now subs to the GC then the MEPs will keep their mouth shut about a GC's substandard work because the GC is the one signing the MEP's paycheck. If the MEPs do point out problems that cost the GC money to address then the MEP contractor will be told to eat the cost and may find themselves blackballed from future projects of that GC and other GCs because they talk to each other. With single prime bids, subcontractors will end up working for the best interest of the GC and not the end user.

Single Prime bids takes away a fair and open MEP bidding process: The fair and open bid process that MEP contractors and school districts have benefited from for nearly 100 years will be lost with single prime bidding. In general, there is ample competition bidding the MEP contracts on multi prime school projects. Multi prime bids generate lower prices because the MEP bid results are known on bid day. With Multi Prime bids, MEP contractors submit their sealed bid proposals to the school district on bid day and then at the appointed time the bids are publicly opened and all the bid amounts and alternate prices are read off. The owner knows the value of each contract and the number of bidders. With a public multi prime bid opening, the MEP contractor knows instantly if they are low and the low bidder can start planning, securing material price protection and allocating resources such as management and manpower for the project. Conversely, if they are not the low bidder their bonding capacity is freed up and they can move on to the next bid.

In addition, on multi prime bids the school district can re-bid a MEP package if the competition wasn't adequate. With single prime, the owner and the MEP contractors are left in the dark about who else bid a project and how the bid prices came in.

The open bid process can also alert the MEP contractor to a possible bid error if their price is out of line. If a bid error was made by the MEP contractor, they have the right, under certain circumstances, to withdraw their bid within 48 hours which could save the company from financial harm or bankruptcy and the school district from having a bankrupt contractor disrupting their project. With Single Prime bids, the MEP contractor may not know they have the job until months later when the GC calls back at the last minute and says you need to get started on the

job immediately. It is doubtful that the GC will inform an MEP contractor with a bid error that his price is too low. In order to survive, a subcontractor in financial trouble will cut corners on the job. If the MEP contractor fails, the project will still be disrupted, but the GC won't care because they will pay the delay costs out of retainages and payments withheld from the failing subcontractor. The GC will then deduct a high fee for their time spent stringing out and bankrupting the subcontractor. Many GCs are taught "how to manage subcontractor payment for protection and profit".

Single Prime bids will cause irreparable harm to hundreds of MEP construction

companies: An estimated 600 MEP contractors have built their business models around the multi prime bidding of public works projects. These MEP contractors support numerous employees and their families throughout PA. Many long standing, reputable MEP contractors will disappear because the GC bids will go to the lowest common denominator. The prices of MEP contractors, who take the time to prepare an estimate, will be shopped out by GCs to unqualified, lowball contractors who will undercut the legitimate contractors' prices. The lowballing contractors will not have the same overhead costs as the legitimate contractors that prepare detailed estimates, maintain an autocad department for coordination, conduct safety programs, etc., etc.

Can you name a MEP contractor that has survived much less thrived over a period of years by bidding exclusively to GCs in the shop-til-you-drop arena? A GC accepts a price from a legitimate contractor then gives that number away in the next breath to a lowball sub and asks if he can do the job for less. The lowball sub may not have even looked at the plans or called the suppliers for prices. How can a reputable professional MEP contractor survive as a free estimating service for others?

Single Prime will push vendors that supply MEP contractors further down the food chain:

Single prime bids will negatively affect a multitude of vendors and service providers that currently sell to MEP contractors doing multi prime school projects. Everyone will have to wait longer for their payments because of the added GC middleman. The vendors and service providers will factor the longer wait for payment into their prices to the MEP subcontractors. Prompt payment is a high priority to everyone and single prime contracts are a step in the wrong direction.

Single Prime will not reduce the overall cost of school construction: Proponents of single prime claim that it will save the school district administration costs. There is always going to be management fees associated with any type of construction. A school district can save some of the costs of the construction manager or clerk of the works by using single prime contracts, however, these savings do not come close to equaling the savings that result from multi prime bidding. Single prime steps over dollars to pick up pennies. Studies on both sides of the argument acknowledge that multi prime bids save 3 to 10% on bid day. On a 50 million dollar project, if multi prime saves 6% over single prime on bid day, then the owner would have 3 million left over. Three million would be more than enough to pay for 40 qualified people to administer and over see the project for a year. Or the owner could hire the few people that are needed to oversee a project and save the rest of the money. Furthermore, the owner is liable for the finished project. Why wouldn't the school districts want people who are looking out for their interests overseeing the day to day progress, quality and safety of their projects?

Single Prime will not fix design problems or the occurrence of claims and change orders:

One argument that has been made for single prime projects is that it will reduce the occurrence

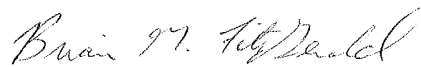
of claims and change orders. This is a fallacy. Claims or change orders typically result from one or more of the parties not fulfilling their responsibilities under the contract. The majority of change orders are caused by the architects' or engineers' failures on drawings or specifications, unforeseen conditions or by the end-users making changes after bid day. These costs will be incurred regardless of which bid method is employed. Change orders are typically not a result of failure by a contractor and, in cases where a contractor is responsible, then they are held accountable for the extra costs. If anything, single prime construction projects will exacerbate and compound claims and change orders because of the middleman added to the process and the additional GC mark up.

In closing, bidding school projects through a single prime is nothing more than a money grab by a handful of large general contractors/brokers at the expense of the taxpayers and hundreds of small and mid-sized businesses.

On 4-26-08, my employer met with 200 determined and passionate representatives from the Mechanical Contractors Association, IBEW, NECA, SMCA, union and open shop Mechanical, Electrical and Plumbing contractors who are united in their opposition to single prime bidding on school projects. The level of cooperation and communication between the unions and open shop contractors on this issue is unprecedented and powerful. This group of concerned contractors is mobilizing their employees, families and friends to address this issue with their school districts, the legislature and the Governor.

Please stand up for the PA taxpayers, small businesses and working families and support legislation to prohibit the PA Department of Education from granting mandate waivers to the Separations Act. Thank you for taking the time to understand this issue. Studies and reports showing evidence to support the above information are available upon request. If you have the opportunity, I would appreciate hearing your position on this issue.

Respectfully,



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