

DATE: June 9, 2008  
TO: Concerned Contractors  
FROM: Concerned Contractors  
SUBJECT: Single Prime Update

The Legislative Breakfast to stop the waivers of the Separations Act was held on 6-3-08, we would like to report all went well. Turn out was great on the side of our Legislators and members of Pennsylvania Concerned Contractors. Not only was the turnout great but one couldn't help notice how this very diverse group of associations, organizations, unions and open shops worked together for the common good of our industry and the Commonwealth of Pennsylvania.

We are hopeful that some positive change will happen in the next month. This is the time to contact your Senators and Representatives and ask them to support any legislation in the next month that eliminates the waivers of the Separation Act on school projects. We are for Multi-Prime bidding which saves money. Please reference some talking points on the issue below:

- A November 2007 PA Supreme Court decision allows the Department of Education to waive the requirements of the Separations Act on school projects under the Mandate Waiver Program enacted in 2000. Individual School Districts may now 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 the waiver applications without regard for the evidence that shows single prime bidding costs school districts significantly more money.
- **Single prime bids cost more money!** Several recent PA projects accepted both single prime and multi-prime bids (reference the attached bid results). These recent bids and the years of data from states like New Jersey, that bid the same school projects both ways, overwhelmingly prove that multi-prime bids save school districts and taxpayers money. At the North Hills School District project that was bid both ways, no GC submitted a single prime bid. The GCs didn't bother with submitting a single prime bid because they couldn't bond the whole job or because they know they can't beat the multi-prime bids. How many times do the architects have to be wrong about single prime saving money before the school districts stop asking for the waivers and the Department of Education stops granting them?
- The Department of Education responded back to us claiming that they are “committed to ensuring that publicly funded construction projects are as cost-efficient as possible with taxpayer resources while protecting the well-being of workers”. However, single prime bids, which the Department of Education endorses, cost the taxpayers more and do not benefit PA workers.
- Our state seems to want to monopolize everything for the benefit of a few politically connected people at the expense of working people. They claim to save money on the state wide purchasing system. I don't think the single source state purchasing program saved any money for the taxpayers, but it did manage to eliminate a lot of small family businesses for the benefit of a few big suppliers. The same type of fictitious savings is being sold to the school districts with single prime bids. Architects have every incentive to make up high budget numbers for a project and then claim savings if the bids come in lower. At Penn Manor's Martic Elementary the lowest single prime bid came in 8.37% over the architect's budget. They recommended approval of the project anyway. Where were the single prime cost savings?

- The Department of Education claims that they will only approve waivers requesting the use of single prime contracts if the school district: (1) demonstrates that there will be savings to the taxpayer through the use of a single prime contractor; (2) has a third party validate those cost savings; and (3) competitively bids the single prime contract. All the school district has to do is send the Department of Education a waiver application claiming that single prime will save the school district money and then the Department of Education rubber stamps the applications. The architects use anecdotal stories like single prime will save money because all the trades can share one backhoe. Gee, Daddy GC do you think I can borrow the backhoe today? This type of statement only illustrates their ignorance of the construction process. There is only one way to demonstrate which bid method is cheaper and that is to bid the projects both ways, single prime and multi-prime. Bidding it both ways shows the school districts how much less multi-prime bids cost.
- School districts have been led to believe that single prime projects don't have any problems. What happened on the few jobs that were built single prime in PA after the mandate waiver program was implemented and before litigation stopped single prime bids? The Central Bucks North HS was a single prime project that missed project deadlines and had litigation. The bonding company had to step in and take over the work of one of the MEP trades at the end of the job. On the Spring-Ford Middle School that was also bid single prime one of the MEP trades went out of business and another went out of business shortly after the job was completed. The point is that bid shopping takes its toll. The contractors that went out of business as a result of the Spring-Ford project had never performed work on projects this large before. It is very rare to hear about an MEP contractor going out of business on a multi-prime project, but on just two single prime jobs we have three MEP subcontractors go bankrupt. Any bankruptcy severely disrupts the lives of workers, and suppliers get stuck.
- Single prime bids add a middleman to the process. Today most general contractors (GCs) on school projects are nothing more than brokers. GCs directly employ only a few people on the job and subcontract out most of their work. Subcontractors inflate their prices when bidding to a GC because they have to wait longer for their money, because they anticipate that their bid will be shopped by the GC and because of unscrupulous business practices of GCs. The GC will also add a mark up to the mechanical, electrical and plumbing (MEP) contractor's bid price and all change orders throughout the project. After the GC submits his bid to the owner, any buyout squeezed out of the subcontractors goes into the GC's pocket and the owner does not see a penny of savings.
- Single Prime bids limit competition. New construction on a typical high school cost 40 to 50 million dollars. There are relatively few GCs capable of bonding one single prime school project. Putting the MEP contracts under the GC's contract will severely limit the pool of GCs capable of bonding and bidding school projects and limited competition will drive up the cost over time.
- Single prime bids will open the door to out-of-area and out-of-state GCs, subcontractors and workers. Local GCs will be shut out of the school work market as large GCs capable of bonding the jobs move in and enjoy a monopoly on single prime projects. These GCs will utilize their own out-of-area and out-of-state subcontractors.
- Single prime bids will result in more foreign rotation workers. The construction industry has been losing jobs to foreign workers who are here for a short period and then take their earnings, our PA tax dollars, out of the state. We have been seeing a steady increase in GCs on public works projects using lowball subcontractors that employ non-resident rotation workers. Single prime bids will spread this practice to the MEP trades. PA residents should be the ones working on the school projects that their tax dollars fund.
- Single prime bids will result in substandard construction quality and building safety. Because of the Separations Act, Pennsylvania has cultivated numerous financially healthy, experienced, bondable MEP contractors. On single prime jobs the GC will select the subcontractor who gives the lowest price regardless of the subcontractor's financial condition or experience level. The GC may want to only use experienced and qualified subcontractors, but he will be forced by the market to use the "low" subcontractor's bid day price if he wants to get the job.
- With single prime, the GC's MEP subcontractors may not employ competent workmen duly trained and skilled in their craft through a bona fide apprentice program. Also, they may not have AutoCAD coordination drawings, quality control, safety programs, etc. These omissions may contribute to the subcontractor's ability to offer a lower price than the competition, but what are the long term maintenance and repair costs associated with MEP systems that don't function properly or fail prematurely because they were installed by workers who don't know what they are doing?

- Furthermore, on multi-prime contracts, the MEP contractors are required by the contract to police the quality of the GC's work. In addition, the MEPs don't want the GC's corner cutting and shoddy work to cost them extra money to deal with. If the MEPs are now subcontractors instead of prime contractors, they will be told to keep their mouth shut about the GC's quality and safety problems if they want paid or if they want work in the future.
- These schools house our kids for 9 months out of the year. Do we want to leave their quality and safety entirely in the hands of GCs who line their pockets with every corner they cut and every subcontractor they bankrupt?
- Recent newspaper articles report Chinese earthquake victims protesting in the rubble of schools that they claim collapsed due to the corner cutting, cheap substitutions and shoddy work by the builders while nearby well built buildings withstood the earthquake (reference the attached news articles). One article also blamed corrupt government officials that were paid off to look the other way during construction. School districts are naïve if they think these things can only happen in China? We see GC corner cutting and shoddy workmanship on nearly every school job we are on and we report it.
- Giving GC Brokers full control with single prime jobs is like letting the fox guard the hen house. School districts should not trust a general contractor with a profit motive to monitor the quality of the project and to look out for the interests of the school district and taxpayers. School districts should never allow this to happen. Single prime projects waste our tax dollars and risk the safety of our kids, our workers and our buildings. A prudent school district must employ an experienced third party construction manager or clerk of the works to monitor the quality, safety, progress schedule and the owner's responsibilities under the contract.
- The GC should be forced to strictly adhere to the project schedule published with the bidding documents or established afterward with the agreement of all the contractors. Failure to enforce the project schedule is a major cause for claims. A GC on a school project subcontracted the site work to a small excavating contractor who told the GC it would take them several months longer than the scheduled timeframe to do the job. The GC stated he knew the subcontractor would delay the job, but he just couldn't turn down the \$300,000.00 buyout he would make by using this unqualified subcontractor. In reality, it took the subcontractor six months longer to do the site work when he was the only one on the jobsite. The other follow-on contractors bid the job based on the schedule in the bid documents. This delay forced contractors to work outside in the elements during the winter because the building was not enclosed on schedule, severely stacked all trades and compressed the actual construction time frame for all the trades. The \$300K savings that the GC stuck in his pocket cost the 20 plus follow on trade contractors significantly more money in labor inefficiencies and was the cause of many claims against the school district for not enforcing the requirements of the contract schedule. The owner did not see a penny of the GC's savings, in fact, the school district spent money on legal fees to defend the actions of the GC. Owners should have someone representing and protecting the interest of the school district and also the subcontractors working on the project in order to prevent the occurrence of claims that result from greedy broker GCs.
- Single prime bids take away a fair and open MEP bidding process. With single prime the school district and taxpayers don't know the MEP bid results. This deprives them of the opportunity to re-bid individual bid packages if competitive prices were not received. The GC will surely re-bid them and keep the savings. Single prime also deprives the MEP contractor of knowing where their bid stands in comparison to the other bidders. This information can alert a contractor to a bid error or it can help them plan for the future with or without the job. With multi-prime, the school district, taxpayers and contractors know the value of the MEP bids and everyone benefits from the information.
- General Contractors are not qualified to coordinate the work of the MEP contractors. MEP trades have numerous technically complex systems and equipment to procure, schedule, coordinate, install, test and balance in accordance with the specifications, all applicable codes, standards and manufacturer's instructions.
- The typical GC's Superintendent, who spent 20 years as a carpenter is not qualified to successfully coordinate the MEP trades. No one person can be an expert in all the trades. The responsibility to oversee coordination and scheduling is often in the GC's scope of work on multi-prime jobs and they fail at it miserably because they don't have the experience or qualifications.

- Single prime bids will not correct coordination problems, it will only conceal them from the view of the owner while they snowball and fester resulting in financial harm to subcontractors and suppliers and claims against the school district.
- Projects benefit when the major trade contractors have a contract with the owner and when they can communicate their problems and concerns directly to the owner and professionals. When information is filtered through inexperienced GCs, poor decisions are frequently made and the subcontractors become the convenient scapegoats for construction problems that are the responsibility of the GC's ignorance or greed and the architect's errors and omissions.
- Single prime will not fix design problems or the occurrence of change orders. The majority of change orders are caused by the architect's or engineer's failures on the drawings or specifications, unforeseen conditions or by the owner making changes after bid day. These costs will be incurred regardless of which bid method is employed. In cases where contractors are responsible for change orders, the responsible parties should be held accountable for the costs. Unfortunately, many school districts don't care how much more construction projects cost the taxpayers as long as they don't have to deal with the headaches that accompany construction and they have someone else to blame when a project fails.
- The bid day savings from multi-prime bids far exceed any administrative savings from single prime. Architects have less work with a single prime project, but they don't lower their fees. This is one reason some architects support single prime contracting. Under the Separations Act, architects must prepare 4 separate bid packages and administer each contract throughout the project's duration. Single prime only requires one bid package. We are unaware of architects lowering their fees in single prime contracts. If a 50 million dollar multi-prime bid saves just 6% over single prime, then the owner would save 3 million dollars. Three million dollars would be enough money to pay 40 qualified people to oversee the project for a year. In reality the project might only need a few people to administer and oversee the project, the saved money could go back to the school district.
- Architects are paid a percentage fee based on the overall value of the project. They have every incentive to drive up the cost with unnecessary bells and whistles. This is a big reason why some schools cost so much and look like the Taj Mahal. The school districts end up with more than they need and the taxpayers have to pay more for it. For years the architects have been providing the school districts with less comprehensive plan documents, shifting their traditional responsibilities to the contractors and charging a higher percentage for less service. One way to achieve savings on design fees would be to have architects bid for architectural contracts. Architectural contracts are not currently required by law to be bid by school districts.

We need you to get involved. We need your help. We can't do it alone. The time is now. Please write another letter, make a phone call, and send an email to your legislators and school board. They are hearing us up at the Capitol. Please copy us on letters you send out and send in any responses that you receive.

Thank you,

Pennsylvania Concerned Contractors

Enclosures

\* Associated Builders & Contractors Members

\* American Subcontractors Association of Central PA

- \* American Subcontractors Association of Delaware Valley
- \* American Subcontractors Association of Western PA
- \* Independent Electrical Contractors Association Members, Central PA
- \* I.B.E.W. International Unions
- \* Iron Workers Local # 401
- \* Mechanical Contractors Association of Central PA
- \* Mechanical Contractors Association of Eastern PA
- \* National Electrical Contractors Association
- \* PA State Building and Construction Trades Council
- \* Plumbers Local # 690
- \* Sheet Metal Workers Local # 19
- \* Steamfitters Local # 420