

Approved: 2/20/95
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on February 14, 1995 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Julian Efird, Legislative Research Department
Fred Carman, Revisor of Statutes
Jacqueline Breymeyer, Committee Secretary

Conferees appearing before the committee: Thomas E. Slattery, Executive Vice President
Associated General Contractors of Kansas
William A. Larson, Legal Counsel
Associated General Contractors of Kansas
Charles F. Grier, Kansas Contractors Association and
President of Utility Contractors, Inc., Wichita, KS
Dean F. Ferrell, Ferrell Construction of Topeka, Inc.
Jim Reardon, Kansas Association of Counties
Bill Curtis, Kansas Association of School Boards
Chris McKenzie, Executive Director
League of Kansas Municipalities

Others attending: See attached list

Chairman Ramirez called the meeting to order at 1:38 p.m. He welcomed those present and turned to the first order of business which was bill introduction.

The first legislation for introduction was a K-GOAL repealer.

Senator Steffes moved introduction of the bill. Vice Chairperson Reynolds gave a second to the motion.

The motion carried.

The second piece of legislation concerned school district finance; assessed valuation per pupil, applicable to USD 203. The Woodlands would be excluded from the valuation; any money that would come into The Woodlands in the future would be returned to the state and would go to Education.

Senator Papay moved the bill be introduced. Senator Harris gave a second to the motion. The motion carried.

The next order of business was the consideration of Eugene A. Bova for the State Civil Service Board.

Senator Harris moved to report consideration of Mr. Bova without recommendation. Senator Papay gave a second to the motion. The motion carried.

The Chairman asked for action on the minutes of February 7 and February 8.

Senator Reynolds moved the minutes of February 7 be approved. Senator Papay gave a second to the motion. The motion carried.

Senator Reynolds moved for approval of the February 8 minutes. Senator Papay gave a second to the motion. The motion carried.

SB 115--relating to bids and bidding; mistakes made in bids

Thomas E. Slattery, Associated General Contractors of Kansas, appeared in support of the bill. (Attachment 1) He stated the bill applies to non judgmental errors only. Most often this would be a mistake in mathematics or data input. The reason the legislation was asked for is for relief from clerical bidding errors. The bill will be in the best interest of the taxpayers, public entities and members of the construction industry.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION Statehouse, at 1:30 p.m. on February 14, 1995.

William A. Larson, Legal Counsel for The Associated General Contractors of Kansas, spoke next in support of the bill. (Attachment 2) Mr. Larson related two Kansas Supreme Court cases which held that general contractors were not entitled to any legal relief in situations where they made purely clerical errors in bids submitted on public construction projects. Both cases involved situations where there was no dispute that the error was a clerical one; neither case involved an error of judgment. **SB115** would provide relief from a bid mistake only if that mistake is a "nonjudgmental" one. Mr. Larson focused on Section 7 of the bill, adding that the language comes from the Revisor's office. He believes the procedure outlined in this section is the most efficient legal procedure for determining whether a contractor has a right to withdraw its bid.

Charles F. Grier, Kansas Contractors Association submitted his testimony in support of **SB 115** (Attachment 3) Kansas is one of a minority of states that does not have statutes in place granting bidders relief from clerical bidding error. Mr. Grier gave an example that he deemed helpful to illustrate the need for this bill. He stated that 47 states and the federal government already conduct bid procurement with the opportunity for relief from bidding mistakes. They are requesting that the public works construction industry be afforded the opportunity to seek relief to prove that a clerical bid mistake has occurred in the bid process and prevent a governmental contracting authority from taking advantage of a legal position.

Dean F. Ferrell, Ferrell Construction of Topeka, Inc., distributed copies of testimony in support of **SB115**. (Attachment 4) He stated this legislation is needed now as forcing contractors to honor bids that include bonafide, substantial errors is taking its toll on the industry. Mr. Ferrell's company, in its 19 years of existence, has asked only twice for bid withdrawal because of a bid mistake. In both instances, his company was fortunate to be dealing with agencies who allowed bid withdrawal. It would have been financially devastating to the company otherwise. The competitive process breeds mistakes. Bid days are hectic, and sometimes chaotic. Mr. Ferrell told about mental errors called "busts". If a "busted" bid is forced to be honored, the contractor may "poor boy" the project - just good enough to get by. He ended his testimony by strongly urging passage of the bill.

Jim Reardon, Kansas Association of Counties, appeared in support of **SB 115**. (Attachment 5) His testimony related the difference legal jurisdictions make between a "mistake in fact" and "mistake in judgment". The Kansas courts do not make these distinctions and have allowed bid bonds to be forfeited to the contracting entity in such cases. His organization is not convinced that this furthers the goals of the competitive bidding process. KAC supports the bill with some technical amendments. Mr. Reardon directed attention to Sec. 2, line 26-after the word correct, insert "nonjudgmental".

Chairman Ramirez, seeing no other opponents on the bill, called on the opponents of **SB 115**.

Bill Curtis, Kansas Association of School Boards, submitted testimony (Attachment 6) and stated the Boards' objections focus on Section 6 of the bill. The Board believes there are instances where the bidder who withdraws a bid should be allowed to resubmit a bid. It is the Boards' recommendation that the word "shall" in line 3, Section 6, be stricken and the word "may" inserted in its place. If this change is made, there would be no objection to the bill, although there are some reservations about Sec. 7.

Chris McKenzie, League of Kansas Municipalities, submitted testimony (Attachment 7) The League recommends the Committee not endorse **SB 115** or, in the alternative, that it clarifies Sec. 3 and approve only the first four sections of the bill.

Testimony expressing concerns with **SB 115** was submitted by Willie Martin, Sedgwick County, Kansas Intergovernmental Relations, and labeled (Attachment 8)

Staff was asked about the impact on the turnpike authority and the Revisor replied that he had no opinion at this time.

After several comments from the committee and conferees, the Chairman asked all interested parties to get together with the Revisor to iron out their differences.

The Committee turned its attention to **SB 54--cosmetology** bill. Mr. Stearman, who has a salon in Topeka, made a few comments regarding the harm this bill would do to the little salons. He has received calls from Wichita, Salina, Liberal, Manhattan and Basehor, just to name a few salons in cities who are protesting the bill. Passage of this bill could close the smaller businesses who are just getting by now.

Due to time constraints, the Chairman thanked all for appearing and adjourned the meeting.

The next meeting is scheduled for February 15, 1995.

GOVERNMENTAL ORGANIZATION COMMITTEE GUEST LIST

DATE: FEBRUARY 14, 1995

NAME	REPRESENTING
Jim A. Stearns	BARBERS
Mike Meacham	Nat'l Cosmetology Assn of KS
Bill Curtis	Ks Assoc of School Bds
George Barber	Barber & associates
Nancy Shobe	Cosmetology
Chris McKeggie	League of Ks Muncip.
Judy Dacine	KDOT
Ted Mangin	SRS
Dave Umbenwood	AGC
DEAN FERRELL	FERRELL CONST. OF TOPICK
Bob Totten	Ks Contractors Association
Will Sta	ABC
Tom Slattery	AGC of Ks
Chuck Greiver	UTILITY CONTRACTORS, Inc. Wichita
FRAN ROBERTSON	BARBERS ASSOC.
Al S. Coon	Mid - Am Lumbermens Assn

TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE
SENATE BILL 115

Thomas E. Slattery, Executive Vice President
Associated General Contractors of Kansas

Senate Bill 115 is supported by the Kansas Contractors Association, The Builders Association/AGC of Kansas City and the Associated General Contractors of Kansas. These three trade associations combined represent the vast majority of highway, bridge, asphalt paving, municipal utility, and building contractors and subcontractors in the state of Kansas.

The scope of this bill covers all public works projects. It applies to non judgmental errors only. Most often this would be a mistake in mathematics or data input.

The bill would allow a contractor to notify the awarding authority within 48 hours of the bid that a non judgmental mistake had been made. The awarding authority would then permit the bidder to withdraw his or her bid without penalty if:

- a. A mistake is evident of the face of the bid; or
- b. The bidder establishes by clear and convincing evidence that a mistake was made.

Although in many cases this practice is followed as a matter of common sense, and is an acceptable practice in federally funded work, it is not specifically provided for by Kansas law.

Why have we asked for this legislation? The competitive bid system in construction is unlike any other form of determining who will get to perform a job or service. This will be explained by other conferees. But, because of the unique nature of competitive bidding on construction projects most all states allow for some form of relief from clerical bidding errors. As a reference I offer the Construction Bidding Law, a Wiley Law publication, 1990 edition, Section 4.12, page 94. "A few states, however, have limited the relief for bid mistakes. The courts in Kansas, Ohio,

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Pennsylvania and Virginia narrowly restrict relief from bid mistakes." Also, I have attached information from Recommended Competitive Bidding Procedures for Construction Projects which supports the concept of Senate Bill 115.

The bill does not provide for any correction and resubmittal of bids after the bid opening, only withdrawal. We believe passage of this bill will be in the best interest of the tax payers, public entities and members of the construction industry.

Thank you for your consideration.

Recommended Competitive Bidding Procedures for Construction Projects

by

ROBERT J. SMITH, P.E., ESQUIRE



Prepared for
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and
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CONSTRUCTION SPECIFICATIONS INSTITUTE

This document has been prepared in cooperation with

The Associated General Contractors of America



Mistakes; Correction and Withdrawal of Bids

If, after bids are opened, the low bidder claims a serious and honest error in bid preparation, and can support such claim with evidence satisfactory to the owner and engineer, withdrawal of the bid should be permitted, subject to the requirements of applicable laws. Any bid guarantee should be returned. Action on remaining bids should proceed as though the withdrawn bid had not been received.

After bid opening, a bidder should not be permitted to alter a bid and resubmit it based on a claim of error, or otherwise. Court decisions in some states have permitted correction in certain circumstances.

Dealing With an Unusually Low Bid

If one bid seems unusually low, say more than ten to fifteen percent below the nearest competing bid, it is a good practice to ask the bidder to verify its bid. Many times the bidder will confirm that it is ready, willing and able to do the project for the bid price. However, a bidder may also sometimes find a mistake and be able to establish that it is entitled to withdrawal.

Awarding to an unusually low bidder without seeking verification is usually not the bargain, it may initially appear to be. If the bidder does not have enough money in the bid to do the job properly, there may be incentive to skimp or otherwise cut corners. In some instances, the bidder may begin performance but end up defaulting. On occasion the courts have refused to enforce such contracts on the theory that the owner was taking advantage of an unconscionable or unfair situation.

**TESTIMONY OF WILLIAM A. LARSON
LEGAL COUNSEL FOR
THE ASSOCIATED GENERAL CONTRACTORS OF KANSAS**

**SB 115
COMMITTEE ON GOVERNMENTAL ORGANIZATIONS
February 14, 1995**

Tom Slattery of the Associated General Contractors of Kansas has asked that I briefly discuss some of the legal aspects of SB 115.

SB 115 was introduced to alter the result of two Kansas Supreme Court cases which held that general contractors were not entitled to any legal relief in situations where they made purely clerical errors in bids submitted on public construction projects.

The first case was *Triple A Contractors, Inc. V. Rural Water District No. 4*, 226 Kan. 626. In the *Triple A Contractors* case, the contractor submitted a bid which was approximately \$170,000 lower than the next lowest bid and considerably lower than the rural water district's consulting engineer's estimate. The contractor immediately suspected a mistake had been made. On reviewing the bid it was quickly determined that only 6,000 lineal feet of sheetrock had been figured into the bid when the actual figure was 36,000 lineal feet.

The rural water district refused to release the contractor from the bid and demanded that the contractor either forfeit its bid bond in the approximate amount of \$40,000 or enter into a construction contract for the amount of its bid. The contractor brought suit seeking equitable relief from the court.

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The district court ruled that the contractor was not entitled to relief and was absolutely bound by its bid. The Supreme Court affirmed the district court. Justice Praeger and Justice Miller dissented noting that the position of the court was inequitable and in fact a minority position among the other jurisdictions that had considered the issue.

The *Triple A Contractors* case was upheld in the 1983 case of *Anco Construction Co. V. City of Wichita*, 233 Kan. 132. In the *Anco* case, the contractor made a purely mathematical error of \$95,794. The contractor in the *Anco* case was given the same choice as the contractor in the *Triple A* case. It could either forfeit its substantial bid bond or agree to perform the contract at an even more substantial loss.

Both the *Triple A* and *Anco* cases involved situations where there was no dispute that the error was a purely clerical error. Neither case involved an error of judgment. Both cases demonstrate the harsh and inequitable result of Kansas law. SB 115 would remedy this inequity.

It must be stressed that SB 115 does not provide relief from a bid mistake unless it can be shown that the mistake was a “nonjudgmental” mistake. In other words, it must be a mistake similar to that made in the *Triple A* and *Anco* cases. Furthermore, SB 115 allows a contractor to withdraw a bid only in situations where there is a clear clerical error made on the face of the bid document itself, or where a nonjudgmental mistake is proven by “clear and convincing” evidence. While the Kansas court has stated on many occasions that the exact standard of “clear and convincing” evidence varies with the factual situation of any

particular case, it is evident from the Court's decisions that the "clear and convincing" standard is significantly more stringent than what is required in the normal civil case.

I have been asked to comment specifically on section 7 of SB 115. Section 7 provides authority for a contractor to initiate a lawsuit to enjoin the enforcement of a contract based on a bid in which a nonjudgmental mistake has been made. The language of Section 7 comes from the Revisor of Statutes' office. It was added to the original draft of the bill to ensure that there would be an adequate and relatively quick means for determining whether a contractor should be allowed to withdraw a bid.

From both the contractor's and the bidding authority's point of view, it is important that they be able to resolve a dispute concerning whether there has been a nonjudgmental mistake as contemplated under SB 115 as rapidly as possible. I believe that Section 7 provides a procedural mechanism for doing just that.

Under Section 7, if a contractor believes he should be allowed to withdraw his bid on the basis of a nonjudgmental mistake, and the bidding authority disagrees, the contractor can request a temporary restraining order, restraining the bidding authority from attempting to enforce the contract based on the bid. If the court issues a restraining order the bidding authority is entitled to demand a hearing which under case law is to be held as soon as practical to determine whether the contractor is entitled to withdraw its bid.

Technically the hearing is a hearing on the temporary injunction, but as a practical matter, the hearing on the temporary injunction is usually combined with a hearing

on the request for a permanent injunction which allows the court to accelerate the determination as to whether the bid may be withdrawn.

I believe the procedure outlined in Section 7 is the most efficient legal procedure for quickly determining whether a contractor has a right to withdraw its bid.



**STATEMENT BEFORE THE COMMITTEE
ON
GOVERNMENTAL ORGANIZATION
CONCERNING SENATE BILL 115
February 14, 1995
by Charles F. Grier**

Mr. Chairman and Members of the Committee, my name is Chuck Grier. I appreciate the opportunity to speak to you concerning the merits of Senate Bill No. 115 which would provide relief from unilateral clerical bid mistakes. I am here today representing the public works construction industry as a member of the Board of Directors of the Kansas Contractors Association and also as a member of the AGC of Kansas.

I am also here to represent my personal concerns as President of Utility Contractors, Inc. in Wichita, Kansas. Utility employs approximately 175 people and has been in business 44 years. We engage primarily in public works projects for municipal, state, and some federal contracting authorities. In the process of obtaining work this past year, we assembled bids on over 200 individual projects. This is not uncommon in our industry. Very seldom do we encounter problems with errors in the bidding process. However, when a problem does occur and a mistake is made, current state law penalizes the contractor and can have the effect of unjustly enriching the contracting authority.

Currently, Kansas is one of a minority of states that does not have statutes in place granting bidders relief from clerical bidding error. The Federal Government also grants this form of relief. While some responsible public agencies in Kansas do not enforce the current Kansas law, others take advantage of their enviable position. If a public agency chooses to enforce current Kansas case law, the contractor is left with two negative choices:

- o Accept the contract for the project and proceed knowing there was a substantial portion of the costs of the work left out of the bid, or
- o Forfeit its bid security which in most cases amounts to 5% of the total bid price.

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An example might be helpful to illustrate the need for Senate Bill 115. Assume a contractor submitted a bid for a project of \$2,000,000.00. When the bids were opened and read in public, the next higher bid was \$2,250,000.00. The size of discrepancy between the two low bids should indicate that a problem may exist. The low bidder reviews the bid work sheets and computer printouts and discovers that during the final assembly of the numbers someone has inserted \$20,000 where \$200,000 should have been inserted. At this point, the contractor must choose to either "eat" the \$180,000 difference ("mistake") and proceed with the project or forfeit its bid security (\$100,000 in this example) to admit a mistake was made and walk away from the project. Neither of these options are very attractive.

A typical argument for bid security forfeiture from the irresponsible owner's perspective is that they have somehow been damaged by not having the project completed for what was the initial low bid price as read. In other words, some public owners believe it is appropriate to take advantage of a financial windfall at the expense of a contractor who is laboring under a mistake in its bid. From the contractor's view point, this perspective is exceedingly unfair. Assembling a bid is an expensive process for the contractor and if he/she chooses to withdraw his bid due to an error, how can an owner be any more damaged than had they not had access to the faulty bid originally. If time allows at the conclusion of this statement and the committee wishes me to, I will speak about my personal experiences concerning mistakes.

As an industry, we are not asking for something that is untried. It is my understanding that at this time, only Kansas, Oklahoma, and Pennsylvania do not allow for some measure of relief from bid mistakes that can be proved to be of clerical origin. Forty seven states and the federal government already conduct bid procurement with the opportunity for relief from bidding mistakes. We are not asking for Kansas to jump into untested waters. We are requesting that the public works construction industry be afforded the opportunity to seek relief, through the courts if necessary, to prove that a clerical bid mistake has occurred in the bid process and prevent a governmental contracting authority from taking advantage of a legal but self serving position in order to enhance their financial situation.

This concludes my statement. I would be happy to answer any questions you might have.

**Statement Supplement
Charles F. Grier
February 14, 1995**

Personal Experience

This has personally happened to me and our company. Approximately three years ago, the argument that the owner would be damaged by not having access to the lowest bid was used to force UC into settlement of a lawsuit over a bid security for \$85,000. The contracting agency was not interested in whether we had made a mistake in the bid. They were only interested in performing the work at the lowest quoted price. When we tried to tell them there was a mistake in our bid, they were only interested in receiving the bid security in order to mitigate the cost of awarding to the second bidder (next higher bidder). If the contracting agency had not been prejudiced by reading our bid with the mistake included, they would have been very satisfied to award to the apparent lowest bidder.

You might ask how those types of errors occur when there is so much money on the line. It is not uncommon to receive hundreds of thousands of dollars of final subcontract and material prices less than 30 minutes before the bid is due to be turned in. In the process of reading and recording these prices, mistakes can occur due to factors such as:

- o Miscommunications
- o Transposition errors
- o Problems with computer spreadsheets
- o Math errors, etc.

FERRELL

CONSTRUCTION OF TOPEKA, INC.

Testimony Presented to the
Senate Governmental Organization Committee
February 14, 1995

By
Dean F. Ferrell

Mr. Chairman and Members of the Committee

My name is Dean Ferrell, and I thank you for the opportunity to appear before you today. I am President and Owner of Ferrell Construction of Topeka, Inc., and am a past president of the Associated General Contractors of Kansas. My company specializes in commercial building construction and at the present time our work load includes one project with the State of Kansas and one with a local school district, both publicly funded.

I am here today to encourage your approval of SB 115 because it is legislation that is needed now. Forcing contractors to honor bids that include bonafide, substantial errors is taking its toll on our industry.

As the years have passed, so have the profit margins. Because of the markets, contractors today are having to bid projects, utilizing unit pricing that seemed too low five years ago. Temper the tight pricing with the low markup that it takes to be the low bidder, and you have a bid with no room for error.

You may be thinking - "Why should we feel sorry for the contractors? Why don't they do a better job of preparing their bids? Most contractors work feverishly to cut down the chance for error and in most cases succeed. However, even with checks and balances, no one is perfect. My company, in its nineteen years of existence, has been fortunate in that it has asked only twice to withdraw its bid because of a bid mistake. We were also fortunate to be dealing with agencies who allowed bid withdrawal - because in both instances it would have been financially devastating.

The competitive bid process breeds mistakes. Bid days are extremely hectic and, in many cases, chaotic. For a 2:00 p.m. bid letting, we're still receiving sub-bids right up until bid time. All sub-bids must be analyzed, tabulated, and inserted into our estimate, with very little time to check or double check - or we'll miss the 2:00 deadline.

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The types of mistakes that cause us the most problems are not judgmental. They're simply called "busts". Mistakes like punching the wrong key on a calculator or computer - you know the saying "Garbage In - Garbage Out". Mistakes like mental transpositions of numbers like thinking \$2,520,000 but writing down \$2,250,000.

Another example would be failing to fill a blank in the estimate. Say there is a line item for paving actually worth \$400,000, but the contractor fails to "plug" the number. These types of mistakes are easy to make when you're under the extreme pressure of bid day time restraint. And they're a contractor's worse nightmare.

In the past few years I have witnessed public agencies who force a contractor to take a contract, even though they knew the contractor had serious problems with its bid. There appears to be a growing lack of compassion by public boards when it comes to bid mistakes, and that's unfortunate.

What intrigues me most is that public agencies, until bids are received, have no real idea of what their project will cost - it's what the market will bear. If no mistakes are made, they will pay what the project is actually worth. Why should they and the taxpayers receive a "windfall" at the unfortunate contractor's expense?

A contractor forced to honor a "busted" bid will react accordingly. More than likely, he'll attempt to "poor boy" the project... meaning he'll underman it and be extremely frugal in the use of equipment. This could lead to potential delays and a reduction of quality - just good enough to get by. Also the funding agency can expect an inordinate amount of claims and change order requests. The project will have potential to be in constant conflict. So who wins? Nobody, really.

In my opinion SB 115 is right for our industry and it is right for the taxpayer. The Kansas legislature has an opportunity now to help preserve the quality of standards of public funded projects, while at the same time ensure integrity in the competitive bid process.

I strongly urge you to recommend passage of SB 115.



"Service to County Government"

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Executive Director
John T. Torbert, CAE

Date: February 14, 1995

To: Senator Al Ramirez, Chairman
Senate Governmental Organization Committee

From: Jim Reardon, Director KAC Legal Services

RE: **S.B. 115 Bid Bond: Mistake in Fact**

Thank you for the opportunity to appear in regard to this proposed legislation.

On occasions a bid is submitted on a public works project that contains a material mistake in fact (as opposed to a mistake in judgement). The non-judgmental mistake is frequently due to an obvious mathematical error. As a result of this obvious mistake the contractor is usually unable to perform the work as contracted. As a result, the contractor's performance bond can be forfeited to the contracting entity.

In some legal jurisdictions, the courts will differentiate between the "mistake in fact" and "mistake in judgement" in determining whether specific performance can be required. The Kansas courts do not make these subtle distinctions and have allowed bid bonds to be forfeited to the contracting entity in such cases.

Since contractors survive and compete on their "bonding capacity," a contractor can become insolvent or non-competitive as the result of a decimal point error. While this may result in a slight compensating windfall for the public entity; we are not convinced that such a result serves the public purpose or furthers the goals of the competitive bidding process.

KAC supports S.B. 155 with some technical amendments.

*Senate Governmental Organization
Attachment 5
2-14-95*



Testimony on SB 115
before the
Senate Committee on Governmental Organization

by

Bill Curtis
Assistant Executive Director
Kansas Association of School Boards

February 14, 1995

Mr. Chairman and members of the committee, we appreciate the opportunity to testify today on SB 115 on behalf of the Kansas Association of School Boards. KASB opposes SB 115 as it was introduced.

Our objections focus on Section 6, which requires that the bidder who withdraws a bid be disqualified from rebidding on that project. We believe there are instances where the bidder who withdraws a bid should be allowed to resubmit a bid. Therefore, it is our recommendation that the word "shall" in line 3, Section 6, be stricken and the word "may" inserted in its place. That wording would permit the awarding authority the discretion to disqualify the bidder or allow them to resubmit. If that change were made, we would have no objections to the bill although the association has some reservations about Section 7. It is possible that Section 7 may result in unnecessary delays and litigation.

*Senate Governmental Organization
Attachment 6*

2-14-95



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

LEGISLATIVE TESTIMONY

TO: Senate Committee on Governmental Organization
FROM: Chris McKenzie, Executive Director
DATE: February 13, 1995
RE: SB 115, Concerning Bids and Withdrawal of Bids

Thank you for the opportunity to appear today and offer some comments concerning SB 115 on behalf of the 543 member cities of the League of Kansas Municipalities. SB 115 has been reviewed by the League's Legislative Committee, comprised of municipal officials who are involved in the day-to-day governance and administration of municipal governments. That committee instructed me to provide the following comments on SB 115:

- ① In general, most cities follow the provisions of Sections 1 through 5 of SB 115, based on the principle that it is better to allow the withdrawal of a bid containing an error than to experience the difficulties related to strict enforcement of that bid.
- ② The League would recommend against the adoption of the provisions of Sections 5, 6 and 7, however, because of the following reasons:
 - Section 5 is unnecessary since it embodies the current practices of most cities and it would remove the discretion of the city governing body to hold a bidder to a bid which contains a nonjudgmental error of an immaterial amount.
 - Section 6 would be unworkable in many smaller cities since it would have the effect of preventing what may be the only other qualified contractor in the city from participating in a community project. If anything, this should be discretionary with the awarding authority.
 - Section 7 provides yet another cause of action to sue city governments. The amount of money being devoted to litigation against governmental entities is already significant without adding yet another opportunity.
- ③ There appear to be some questions about the drafting of certain parts of the bill. For instance, Section 3 (line 28) contains an outright prohibition against the withdrawal of bids based upon an error in judgment while Section 2 provides for the withdrawal of all bids before the time and date set for the bid opening.

RECOMMENDATION: The League recommends the Committee not endorse SB 115 or, in the alternative, that the Committee clarify Section 3 and approve only the first 4 sections of the bill.

*Senate Governmental Organization
Attachment 7
2-14-95*



SEDGWICK COUNTY, KANSAS

INTERGOVERNMENTAL RELATIONS

WILLIE MARTIN

COUNTY COURTHOUSE • 525 N. MAIN • SUITE 315 • WICHITA, KANSAS 67203 • TELEPHONE (316)383-7552

TO: SENATE GOVERNMENTAL ORGANIZATION
FROM: WILLIE MARTIN
SUBJECT: SENATE BILL 115
DATE: FEBRUARY

Mr. Chairman and members of the Committee I would like to share Sedgwick County's concerns about Senate Bill 115.

We do not believe that the bill as drafted will benefit government procurement. While it does allow vendors to withdraw bids when determining that an error has been made, refusing to allow them to participate in a sub-contractors role, or in any re-bids may unfairly penalize an honest vendor.

A secondary concern has to do with the issue of penalizing an awarding authority should that awarding authority attempt to enforce a bid which may or may not be a mistake. The potential exists for any low bid vendor to attempt to withdraw their bid should they determine that the disparity between their bid and the next bid is too great. We believe that Section 7 would then allow them to scream, "bloody murder" if they feel they have left too much money on the table. If nothing else it would cost the County a lot of time arguing with a contractor about the definition of a non-judgmental mistake.

We respectfully request your consideration of our concerns.

*Senate Governmental Organization
Attachment 8
2-14-95*