

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson David Adkins at 9:15 a.m. on March 8, 2000 in Room 514-S of the Capitol.

All members were present except: Representative Farmer
Representative Kline

Committee staff present: Alan Conroy, Kansas Legislative Research Department
Stuart Little, Kansas Legislative Research Department
Robert Waller, Kansas Legislative Research Department
Rae Ann Davis, Kansas Legislative Research Department
Paul West, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes Office
Dave Stallings, Assistant to the Chairman
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Clyde Graeber, Secretary, Kansas Department of Health and Environment
Phil Petty, Responsible Building & Contracting in Kansas
Dwayne Peaslee, Member, State Building Advisory Board
Dave Finley, Mechanical Contractors Association
Herbert C. Millard, Executive Director, Mechanical Contractors Assn. of Greater Kansas City
Paul Rodriguez, Rodriguez Mechanical Contractors, Kansas City
John Houlihan, Division of Purchasing, Department of Administration
Representative Shari Weber
Charles E. Simmons, Secretary, Department of Corrections
Randy Hearrell, Executive Director, Kansas Judicial Council

Others attending: See attached list

HB 3005 - Child care facilities; temporary permits; extension of

Chairman Adkins opened the public hearing on **HB 3005**.

Proponent:

Clyde Graeber, Secretary, Kansas Department of Health and Environment. Secretary Graeber noted in his testimony that this legislation would allow the Secretary of the Kansas Department of Health and Environment the ability to issue an additional 90-day temporary permit to home daycare facilities at the Secretary's discretion to facilities that are addressing compliance issues. (Attachment 1) Committee questions and discussion followed.

There being no further conferees to come before the Committee, the Chairman closed the public hearing on **HB 3005**.

HB 2850 - State purchases and contracts; bidding requirements

Chairman Adkins opened the public hearing on **HB 2850**.

Proponents:

Phil Petty, on behalf of Responsible Building & Contracting in Kansas. (Attachment 2) Mr. Petty also provided various letters from additional proponents on **HB 2850**. (Attachment 3) Copies of the Handbook on Responsible Building and Contracting in Kansas were also distributed. (Attachment 4)

CONTINUATION SHEET

Dwayne Peaslee, Member, State Building Advisory Board. (Attachment 5)

Dave Finley, Mechanical Contractors Association. (Attachment 6)

Herbert C. Millard, Executive Director, Mechanical Contractors Association of Greater Kansas City, Kansas. (Attachment 7)

Paul Rodriguez, owner of Rodriguez Mechanical Contractors, Kansas City, Kansas. Mr. Rodriguez mentioned that he supports HB 2850 because when looking at the financial capability of general or prime contractor, it is important to him for his company's growth to insure that he gets paid in a timely manner. No written testimony was received.

Written proponent testimony was received from the following:

Warren Corman, University Architect and Special Assistant to the Chancellor, The University of Kansas. (Attachment 8)

Opponents:

John Houlihan, Division of Purchasing, Department of Administration. (Attachment 9)

Thaine Hoffman, Director of the Division of Architectural Services, opposed to the bill as written. Mr. Hoffman presented a balloon amendment in his testimony. (Attachment 10)

Written opponent testimony was received from the following:

Tom Slattery, Associated General Contractors of Kansas, Inc. (Attachment 11)

Committee questions and discussion followed various testimony.

There being no further conferees to appear before the Committee, Chairman Adkins closed the public hearing on **HB 2850**.

HB 2724 - Requirements of safety, health and security standards when placing DOC inmates in local jails

Chairman Adkins opened the public hearing on **HB 2724**.

Proponents:

Charles E. Simmons, Secretary, Department of Commerce. (Attachment 12)

Representative Shari Weber. (Attachment 13)

There being no further conferees to appear before the Committee, Chairman Adkins closed the public hearing on **HB 2724**.

HB 3009 - Establishing the publications fee fund in the judicial council

Chairman Adkins opened the public hearing on **HB 3009**.

Proponent:

Randy Hearrell, Executive Director, Kansas Judicial Council. (Attachment 14)

There being no further conferees to appear before the Committee, Chairman Adkins closed the public hearing on **HB 3009**.

CONTINUATION SHEET

HB 2603 - Financing energy conservation projects for state and municipal facilities

Representative Neufeld made a motion, seconded by Representative Ballard, to remove HB 2603 from the table. Motion carried. Committee questions and discussion followed.

Representative Reinhardt made a motion, seconded by Representative Neufeld, to amend HB 2603 with the amendments as explained by the Revisor, to clean up references related to certification of an engineer on page 2, line 6, language in the next three lines, 7 through 12, is to be removed and insert "the energy conservation contractor shall also provide calculations showing the energy and operational cost savings that would result in the proposed conservation measures," and in line 27, page 2, the Secretary of Administration not "shall" provide administrative support resources, but "may" provide such resources and offer authority to fix, charge and collect reasonable fees for any such administrative support services provided by the Secretary of Administration. Motion carried.

Representative Reinhardt made a motion, seconded by Representative Stone, to report HB 2603 favorable as amended. Motion carried.

HB 2732 - High school athletic ticket tax proceeds dedicated to sports hall of fame

Representative Weber made a motion, seconded by Representative Dean, to amend HB 2732 to include a date change and a monetary amount as indicated in the balloon amendment (Attachment 15). Committee questions and discussion followed. Motion carried.

Representative Weber made a motion, seconded by Representative Dean, to pass SB 2732 favorably as amended. Motion carried. Representative Landwehr requested to be recorded as voting "No".

SB 248 - University of Kansas medical center building construction and repair from private moneys

The Committee discussed **SB 248**.

Representative Reinhardt made a motion, seconded by Representative Dean, to recommend House Sub for SB 248 (Attachment 16). Committee question and discussion followed. A vote was taken and division was requested. Motion failed.

Representative Reardon made a conceptual motion to amend SB 248 to remove the expiration date and expand the coverage of the bill to other state educational institutions and leave current law. Due to lack of time, the meeting adjourned at 11:00 a.m. until the meeting the following morning, March 9, 2000, at 9:00 a.m.

A letter from Secretary Janet Schalansky, Kansas Department of Social and Rehabilitation Services, addressed to Chairman Adkins and the Members of the House Appropriations Committee regarding a request for information was distributed (Attachment 17).

The meeting adjourned at 11:00 a.m. The next meeting is scheduled for March 9, 2000.

HOUSE APPROPRIATIONS COMMITTEE GUEST LIST

DATE March 8, 2000

NAME	REPRESENTING
Randy M. Hearrell	Judicial Council
Jamie Clauson	intern for Cindy Hermes
BARRY ORLAS	DOAS
Thane Hoffman	DOAS
Paul Rodriguez	Rodriguez Mechanical
Joe Fund	KDHE
Clyde Graeber	KDHE
Stetson Hasty	Legislative Post Audit
Phil Petty	Committee for Responsible Contracting
DAVID FINLEY	Mechanical & Sheet Metal Contractors
HERB MILHARD	Mechanical Contractors Assoc
Walter W. Rader	Retired Construction Worker
Chris Ross - Baze	KDHE
Bud Peterson	Centre High School
Jarod Beneke	Centre High School student
Rebeckah Dawis	Centre High School Student
Sara Houdyshell	Centre High School student
Jamie Miller	ACC of Kansas
Lauro Jogaca	Centre High School Lauro Jogaca



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

Testimony on HB 3005
to the
House Appropriations Committee
by
Secretary Clyde D. Graeber

March 8, 2000

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today on behalf of HB 3005. This legislation would allow the Secretary of the Kansas Department of Health and Environment the ability to issue an additional 90 day temporary permit to home daycare facilities at the Secretary's discretion to facilities that are addressing compliance issues.

KDHE requested the Attorney General to render an opinion as to whether KDHE, at the expiration of the 90 day temporary permit, can extend the permit. The Attorney General's Opinion 99-19 states, "in our opinion, neither the temporary permit nor the temporary license can be renewed."

Often times, it may take longer than 90 days from receipt of application to conduct initial facility inspections, for the facility to address every compliance issue, and for follow-up inspections in order for the daycare to receive the license or permit. Another example is a situation where the applicant has obtained most of the training requirements but has not completed all of the training. Often the applicant has signed up for the next available training but needs additional time to attend.

The language in the bill does not require the Department to extend the temporary permit. The language would allow the Department to not extend the temporary permit when environmental hazards exist or the child care provider or foster parent does not make the necessary effort to meet requirements.

This legislation would allow the Secretary the discretion of extending the temporary permit for 30, 60 or 90 days to facilities that are showing good faith in trying to obtain compliance with the applicable rules and regulations.

Thank you again for this opportunity. I would be happy to respond to questions at this time.

Appropriations Committee
9:a.m., Room 514-S
Chairman, David Adkins and Committee Members

RE: Hearing on House Bill No. 2850, March 8, 2000

My name is Phil Petty, and I am a Plumber, just like my Father, Uncle and Grandfather were until they passed away. I live in Manhattan and have worked in the construction industry as an Apprentice, Journeyman, Foreman and Job Superintendent on a host of private and public building projects. I am here with you today to discuss the system used by the State of Kansas to select contractors for State funded construction projects.

The private sector has almost universally adopted a system of pre-qualifying contractors prior to accepting bids. KDOT uses an extensive pre-qualifying procedure. The Federal Government is utilizing Contractor Evaluation and Pre-qualification more and more. Now days, almost everyone agrees that **automatically accepting low-bid for construction work is NOT always the best choice, the best value for your dollar, or the cheapest in the long run, yet the State continues to ignore important factors when awarding construction projects!**

During my career I have witnessed the **poor quality of completed government construction projects**. Roofs leaking, concrete cracking and buckling, electrical and mechanical systems that don't function properly. The handbook I provided you provides some examples of projects where the **State's bid system has failed**. Chairman Adkins told me about the Johnson County Jail that was completed and can't be used. I read about the school in LaCygne where new construction had to be almost completely demolished and started over. I believe there is ongoing litigation from poor quality work on the El Dorado Prison and tax dollars have been spent repairing much of the inferior work performed. Many projects are not completed on schedule such as the recent KU and KSU Stadiums. Many Contractors are requesting change-orders to increase the amount of tax dollars they receive for completing the projects awarded to them for low bid. Yet, most of these changes should have been included in the original bid. Some Low Bid Contractors are constantly looking for design and or equipment flaws, not to identify them and work with the State to remedy the problem in a timely manner and within budget, but to extend the job and to increase the cost of a project. The State recently stated: **Today, the total of our prayers for relief against contractors is approximately 7.5 million dollars.**

I have witnessed the large decline in apprentice training and the exodus of skilled craftsmen out of the construction industry. Many Contractors expect a skilled licensed journeymen to keep 6 or 7 unskilled workers busy and safe and than use their license to be responsible for work performed by unskilled workers they didn't supervise. I have witnessed the migration of many contractors away

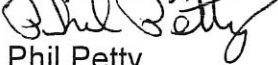
House Appropriations
3-8-00
Attachment 2

from the low bid public works system to the private industry, where their **expertise, safety record, past performance and capabilities are considered along with price.**

Practically every person and association I met with or spoke to agreed there **are major problems with the low-bid system.** After meeting with the Kansas Director of purchases, John Houlihan, Kansas Architectural Services Director, Thaine Hoffman, the Associated General Contractors, the AFL-CIO and the American Institute of Architects, I realized it may be impossible to find a solution which pleases all concerned. One thing is certain. **Kansans are being short changed** under the current system and if you send House Bill 2850 to the full House for debate, we may have taken the first step toward a solution. Referring the Bill to an interim committee for summer study could also be a positive step toward a solution.

I thank you for your time, which I know is our most valuable commodity and for your consideration.

Respectfully,



Phil Petty

P.O. Box 1417

Manhattan, Kansas 66505

(785) 776-3027

Written Testimony
Proponents for HB 2850
March 8, 2000

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Kansas City, MO

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Central Air Conditioning Co., Inc.
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Assoc. Of Mechanical & Sheetmetal Contractors of Kansas, Inc.
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Timothy E. Farnham, Vice President
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Cathy Hotujac
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Kansas City, KS

Mike Lewis, President

*House Appropriations
3-8-00
Attachment 3*

Page Two

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Page Six

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Administrative Assistant/Clerk
MINA GRUTZMACHER
Treasurer/Receptionist
JANICE DOLL
Secretary to Superintendent
TAMMY CAFFREY

Unified School District 323

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Dr. Richard Doll, Superintendent

Board of Education
VANCE BAKER
LARRY LAUER
JAMES MOORE
VIRGINIA PLUMMER
STEVEN B. SMITH
MIKE SOTELO
MIKE VAUGHAN

March 6, 2000

Phil Petty
Fax: 785-354-7090

To Whom It May Concern:

In 1989 the Rock Creek School Board entered into an agreement to build a new Jr. Sr. High School. According to state law, the lowest responsible bid was awarded for the project and the school was completed in 1991.

From the very beginning there were problems with water infiltrating the building. When I became superintendent in 1993 the problems had not been resolved and in 1997 the district was forced to file a lawsuit to correct the problem. After \$100,000 in legal fees and hundreds of hours of administrative and educators time, the district did receive an out-of-court settlement that will pay for some of the repairs that need to be made. I believe that part of the blame for this problem can be attributed to the fact that schools must take the lowest, responsible bid. In effect a school district must take the low bid, or be prepared to defend themselves in courts if they say a bid is not responsible.

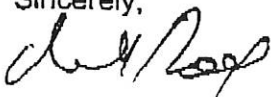
In the Rock Creek Jr. Sr. High School problem, the roof was installed improperly, flashing was installed improperly and lintels were installed improperly. This has caused repeated leaks to the interior of the building.

Many construction companies cannot get work unless it is a government job that is required to take the low bid. So, the construction companies with the worst track record end up building schools. The small savings that taxpayers may realize with a lower bid, costs much more as these facilities need repair within the first several years.

I would encourage the state to adopt a much more common sense approach to bidding. It seems impractical and not very smart to find the contractor who says they will build a building for the least amount of money. A much more responsible approach would be to simply throw out the low bid and provide more information besides the low bid as a basis for the important decision of building schools. Companies would then bid a job based on what it will truly cost to complete the project not how they can cut corners, save money, and build an inferior facility.

In the case of Rock Creek U.S.D. 323 accepting the low bid contributed to the building of an inferior facility that has cost, and will continue to cost, the taxpayers far more than the amount that was saved by accepting the low bid.

Sincerely,



Rick Doll

To: Appropriations Committee
Chairman, David Adkins and Committee Members

RE: Testimonial on House Bill No. 2850, March 8, 2000

My name is Neal Bernauer and I have worked in the construction industry for 40 years, 15 of these as a shop owner. Currently I am employed as a mechanical inspector. Construction officials responsible for public works projects have a responsibility that is very special to the public. They must make sure that the public receives the very best project, for the very best price, within a fair contracting environment and that the project be safe and efficient.

There are basically two ways of hiring a construction contractor. You can hire the contractor who offers the best project; that is the best project for the best price, *or* you can do as the State of Kansas and hire the low bidder.

Often times the low bidder costs you more by the end of the job. I deal with cost overruns, change orders, schedule delays, defective work, substandard materials and contractor claims on a daily basis. When these problems arise, we are, more often than not, charged an exorbitant cost on the change order. We are fortunate if we recover fifty cents on the dollar for any credit due back us.

Contractors often make their bids artificially low. Anything to get the job, then do whatever it takes to make up for it. This may mean cutting corners on materials, workmanship *or* both. It may mean seeking "holes" in the bidding documents or otherwise exploiting unforeseen problems on the project. Anything where they can make up for their initial "low bid". I deal time after time, job after job, often with the same contractors over the same issues.

The state often gets what I call the "least cost interpretation of the bidding documents" which means that low bid contractors will give minimal compliance with project specifications, if that, with little or no regard for quality, reliability, safety or customer satisfaction. All of this has a big impact on the final cost of a project.

In a "nutshell" Kansas citizens are not getting their monies worth. House Bill No. 2850 is a reasonable response to the problem plagued "low bid system".

Thank you for your time and consideration


Neal Bernauer, Mechanical Inspector
1738 S.W. Medford Avenue
Topeka, Kansas 66604-3148
Phone 785 232-8898
Cell 785 556-2772

**MECHANICAL CONTRACTORS ASSOCIATION OF
GREATER KANSAS CITY**



9229 Ward Parkway, Suite 27C
Kansas City, Missouri 64114
Phone (816) 523-3341
FAX (816) 333-4603

March 6, 2000

David Adkins, Chairman
Appropriations Committee
Topeka, KS

Dear Representative Adkins:

House Bill No. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction project.

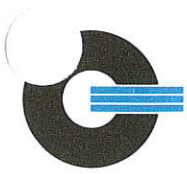
I urge all public officials to do the responsible thing and support House Bill No. 2850. Thank you for your attention to this matter.

Sincerely,

Herbert C. Millard
Executive Director
MCA of Greater Kansas City

cc: Philip R. Petty





RE: Letter of Support for House Bill No. 2850

Dear Representative,

I am a responsible contractor who is often awarded construction contracts in the private sector based on my past performance and price. The facility owners I perform work for define "performance" and usually include:

1. Construction finished on or under budget.
2. Construction finished on time.
3. Construction finished safely.
4. Construction met environmental safety laws.
5. The minimization of repair and maintenance in the expected lifetime of the work performed.
6. Facility's systems performance.
7. Construction quality is commensurate with the owner's expectations.
8. Coordination and assistance in order to meet the needs of the facility owner.
9. Fair profit.

I minimize my participation in the "low bid" process the state provides because many of my competitors use questionable methods to lower their bid. They often include:

1. Use change orders to change the scope and quality of the work.
2. Reduce the quality of construction products to meet minimum specifications.
3. Reduce the number of trained personnel on site and, when making replacements, replace with less experienced lower paid craftsmen.
4. Sacrifice safety.

I believe your support of House Bill No. 2850 will help result in the "Best Value" for each tax dollar spent on construction. Thank you for your attention to this matter.

Sincerely,

Frank Rinke
Vice President
Central Air Conditioning Co. Inc.

March 6, 2000

To the House Appropriations
Committee:

On behalf of the Association of Mechanical and Sheet Metal Contractors of Kansas, I would like to enthusiastically offer our support for House Bill 2850. As responsible contractors who continually strive to increase the quality of work in our industry and make the workplace a safer place for employees, we need a tool such as HB 2850.

The age of the low bid is dying. Even the Federal Government has realized that the low bid process has not yielded the best product for the lowest price. Many states as well are moving towards a performance based bidding system, which entails many aspects of this bill. HB 2850 would be an excellent first step in bringing Kansas up to speed with the rest of the country.

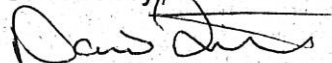
The old saying, "you get what you pay for" generally holds true. If you will look at many of the major state construction jobs, you will find very few which performed as expected.

The taxpayer is the ultimate loser when the job was not done properly and on time the first time. It is always interesting how we never seem to have the money to do it right the first time but can somehow find the money to fix it the second and third times.

We also support training in our industry. The future depends on the young people we train today. One caveat when you hear companies or groups touting their training: make them show the number of people, trained, an audited account of the total training expenditures, and the certification of the curriculum. It is easy to say one has a training program; it is very different to prove it.

Again, we strongly urge your support and passage of this very important bill. As a taxpayer, I deeply appreciate the frugal and responsible spending of my tax dollars.

Sincerely,



David Finley

DAVID M. FINLEY
EXECUTIVE DIRECTOR



320 LAURA STREET • WICHITA, KS 67211
PHONE 316-269-1181 • FAX 316-269-1192 • dfinley@feist.com

SHEET METAL &
AIR CONDITIONING
NATIONAL ASSOCIATION

KRUSE CORPORATION

February 28, 2000

House Appropriations Committee

Re: Proposed Amendments To 75-3740
(House Bill No.2850)

After reviewing the information on the above referenced amendments it looks to be a win/win proposal.

We do extensive job cost tracking at this time and see no hardship in furnishing any pre-qualification information that might be needed. We are looking for a level playing field.

If there are any questions or information the committee may need from the Association please do not hesitate to ask.

Respectfully submitted,
Kruse Corporation



Kenneth P. Kruse
President

PIPING & EQUIPMENT CO., INC.

3505 NO. TOPEKA 316-838-7511 FAX 316-838-2014

P.O. BOX 1065 WICHITA, KANSAS 67201

February 28, 2000

House Appropriations Committee:

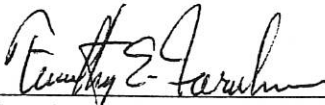
After reviewing the Information on Responsible Building and Contracting in Kansas our company believes the proposed amendments to 75-3740 (House Bill No. 2850) would not only help to protect the taxpayers from irresponsible contractors, but also the construction industry in our state.

We track and review our projects now, so we see no additional costs to any records or information for prequalification to bid, but would welcome any forms or questionnaire's that would create a level playing field for all contractors.

We would like to thank you in advance for your consideration of this bill.

Very truly yours,

PIPING & EQUIPMENT CO., INC.



Timothy E. Farnham
Vice President

K.C. MECHANICAL

P.O. Box 12157 • Kansas City, Kansas 66112 • Office Phone 813-334-1101 • Fax 913-334-1201

February 24, 2000

Philip R. Petty, Chairman
P.O. Box 1417
Manhattan, KS 66505-1417

Dear Mr Petty,

After reviewing a copy of House Bill 2850 Responsible Building & Contracting in Kansas, I would like to offer this letter of support to the committee. I believe that this Bill, if passed, would save Kansas taxpayers a great deal of money, eliminating unqualified contractors from bidding on State projects.

By receiving the bidders qualifications up front, the State will be able to make the best decision possible for spending tax dollars and protecting the taxpayers from waste.

Thank you for your attention in this matter.

Sincerely,

KANSAS CITY MECHANICAL, INC.

Cathy Hotujac
Cathy Hotujac

Eales Plumbing, Heating And Air Inc.

340 North Walnut, Hutchinson, Kansas, 67501

Phone: (316) 663-4282 Fax: (316) 662-3190

Date 2/29/2000

House Appropriations Committee:

Being a contractor in the plumbing, heating, and air condition business I would appreciate it if this committee, after reviewing the information on Responsible Building and Contracting in Kansas, would vote to move House Bill No. 2850 on to becoming law.

After reviewing the Responsible Building and Contracting in Kansas handbook I do not see anything wrong with PREQUALIFYING BIDDERS to bid on state work or have a problem with filling out any forms for the state.

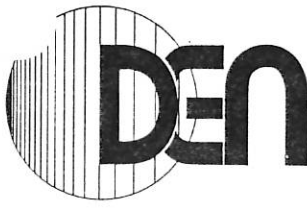
I also understand how PREQUALIFYING BIDDERS to perform work for the state will save taxpayers money.

Thank you for reviewing my letter in this matter.

EALES PLB. HTG. AND AIR INC.



Mike Lewis
President:



Dean E. Norris, Inc.
P.O. Box 47719, Wichita, Kansas 67201
(316) 688-1901 FAX (316) 681-1968

March 1, 2000

House Appropriations Committee:

After reviewing the information on Responsible Building and Contracting in Kansas our association believes the proposed amendments to 75-3740 (House Bill No. 2850) would not only help to protect the taxpayers from irresponsible contractors, but also the construction industry in our state.

We track and review our projects now, so we see no additional costs to any records or information for prequalification to bid, but would welcome any forms or questionnaires that would create a level playing field for all contractors.

If there are any questions or additional information that this committee may need from the association to show our support for this common sense legislation, please contact us.

Thank you for your time and consideration in this matter.

Sincerely,

DEAN E. NORRIS, INC.

David E. Norris
C.E.O.

DEN/skb



2016 WEST HARRY CT. • WICHITA, KANSAS 67213
(316) 262-1100 • FAX (316) 262-5983

March 6, 2000

House Appropriations Committee:

Re: House Bill No. 2850
Proposed Amendments to 75-3740

We strongly feel that this proposed amendment would help our industry from irresponsible contractors that may not fill their obligations to the fullest. Not only do we feel that this amendment will increase the positive outlook of our industry's future, but it will also protect the individuals who hire these contractors to do work for them. Therefore, we feel that everyone would benefit from this proposed amendment.

If you have any questions or would like any more information, please contact us.

Thank you for the opportunity to show our support for this amendment.

Sincerely,

Richard F. Drinnen,
President
American Mechanical, Inc.



THE WALDINGER CORPORATION

1630 S BAEHR/ WICHITA, KANSAS 67208 / PHONE 316-942-7722 / FAX 316-942-7722

March 7, 2000

To the House Appropriations Committee:

As a member of the Association of Mechanical and Sheet Metal Contractors of Kansas, I would like to enthusiastically offer our support for House Bill 2850. As responsible contractors who continually strive to increase the quality of work in our industry and make the workplace a safer place for employees, we need a tool such as H B 2850.

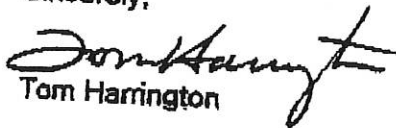
The age of the low bid is dying. Even the Federal Government has realized that the low bid process has not yielded the best product for the lowest price. Many states as well are moving towards a performance based bidding system, which entails many aspects of this bill. H B 2850 would be an excellent first step in bringing Kansas up to speed with the rest of the country.

The old saying, "you get what you pay for" generally holds true. If you will look at many of the major state construction jobs, you will find very few which performed as expected. The taxpayer is the ultimate loser when the job was not done properly and on time the first time. It is always interesting how we never seem to have the money to do it right the first time but can somehow find the money to fix it the second and third times.

We also support training in our industry. The future depends on the young people we train today. One caveat when you hear companies or groups touting their training: make them show the number of people, trained, an audited account of the total training expenditures, and the certification of the curriculum. It is easy to say one has a training program; it is very different to prove it.

Again, I strongly urge your support and passage of this very important bill. As a taxpayer, I deeply appreciate the frugal and responsible spending of my tax dollars.

Sincerely,


Tom Harrington

Appropriations Committee
9:00 a.m. Room 514-S
March 8, 2000

My name is Jim Cox and I have worked in the construction industry on numerous private and government projects. I would like to share a story with you to explain how the States low bid system is failing Kansas Taxpayers.

Suppose you were preparing to have your house re-shingled and add a new garage at your house. Two of your neighbors had re-roofed their houses a few months ago, so you ask them who they hired. Neighbor #1 received bids from Contractor #1 and Contractor #2. Both contractors offered the same warranty, were using the same material, belonged to the same Contractors Association, and hired ABC-CIO workers. Neighbor #1, much like the State of Kansas, hired Contractor #1 because their bid was one hundred and fifty dollars (\$150.00) cheaper.

Contractor #1 began working one week later than scheduled. The morning of the first day, the old shingles were torn off and thrown into a dump truck that was leaking oil on the driveway. A lot of the shingles missed the truck and landed on the flowers in the yard. That afternoon the roofers just sat around waiting for the new shingles to be delivered, but they were not delivered until the next morning. The first night Neighbor #1 hardly slept because there was a 40% chance of rain and his roof was exposed. Contractor #1 took three days to complete the job, a day and half longer than projected. After they had left the job, lots of the shingles were flapping up and down in the breeze and Neighbor #1's car had two flat tires from shingle nails left in the driveway. The first time it rained, water leaked through the roof next to the chimney and damaged the living room ceiling. Neighbor #1 paid Contractor #1 for the material, but refused to pay the entire bill and hired an attorney. The manufacturer of the shingles had visited and said their warranty was void because the shingles were improperly installed. Contractor #1 says it was not their fault because they were hired to install the new shingles on the existing plywood sheeting, and they cannot help it that the plywood was rotten around the chimney for the nails to hold, so they were suing Neighbor #1 for nonpayment and legal fees.

Next you go to Neighbor #2 and they tell you they received bids from both Contractor #1 and Contractor #2. Neighbor #2 said he asked both contractors a lot of questions about past projects and discovered Contractor #1 was lying when he said his company had never been sued, so even though Contractor #2's bid is slightly higher, Neighbor #2 believes the final cost will be lower and awards the job to Contractor #2.

Contractor #2 showed up promptly to begin work on the day scheduled. The first morning, just as they finished loading the shingles and were uncovering the flowers they had protected from being damaged, the new roofing materials were delivered. The crew was about half way done that afternoon when the foreman found a small section of rotten plywood sheeting. Neighbor #2 wasn't home, but the foreman knew the plywood had to be replaced. He didn't want the manufacturers warranty to be voided and he didn't want his crew sitting idle. The foreman decided to go ahead and replaced the 4'x4' section of plywood as needed. When the regular quitting time came around they only had about thirty minutes work left to finish, and since they knew rain was in the forecast

they stayed and completed the job. Contractor #2 showed Neighbor #2 the rotten plywood and told where to look in the attic to see the new plywood that was installed. They agreed forty dollars was a fair price for the plywood replaced and the bill was paid in full. Neighbor #2 is very happy with the work performed and has had no trouble with the roof.

Most people, including you, I hope, probably would not even ask Contractor #1 for a bid to roof your house. If we did get a bid from them, we wouldn't hire them just because they were a little lower on the bid. And we wouldn't want a General Contractor building our new garage to use Contractor #1 just so they would be low bidder.

Under current practices and policies of the State of Kansas, if Contractor #1 or even the most horrendous contractor in the world bids a State Construction Project, and is 5 cents lower than the other bidders, they will be awarded the contract.

Even if a State agency was having the same problems that Neighbor #1 was having with them, Contractor #1 would be awarded another State Project if they are low bid. Chances are Contractor #2 will even not bid future State Projects if Contractor#1 is bidding. Why, because Contractor #2 knows that quality, performance and completing the project on time and within the budget are not considerations.

This scenario I've used may sound very ridiculous, but it is exactly the type of things that happen in Kansas under low bid system. I do not want tax money going to a contractor like Contractor#1 and I hope you don't either.

Please support House Bill No. 2850, and thank you for your time.



James E. Cox
3800 Apel Road
Wamego, Kansas 66547
(785) 456-7420

Dear REPRESENTATIVE

House Bill No. 2850 will save tax dollars by significantly reducing costly litigation, change orders, poor quality construction and the number of projects not completed on time.

PLEASE SUPPORT HOUSE BILL #2850. Thank you for your consideration of this important matter.

Chris Rodriguez
1732 Red Oaks
Wichita, KS 67207

Dear Representative

House Bill No. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill No. 2850. Thank you for your attention to this matter.

Brian Geist

418 Wetmore

Wichita, KS 67209

Dear Representative

During recent years, the state and local governments have experienced quality problems and significant delays on public construction projects. House Bill NO. 2850 will help ensure that public works projects are completed on schedule and are of high quality and value.

Please support House Bill No. 2850.
Thank you for your consideration of
this important matter.

Harry L. Boyles III
5501 E Kinkaid St.
Wichita KS 67218

Dear Representative

House bill No. 2850 will save tax dollars by significantly reducing costly litigation, change orders, poor quality construction and the number of projects not completed on time.

Please support House bill No. 2850. Thank you for your consideration of this important matter.

Phillip Bradley Lynn

DEAR REPRESENTATIVE:

DURING RECENT YEARS, THE STATE + LOCAL GOVERNMENTS HAVE EXPERIENCED QUALITY PROBLEMS + SIGNIFICANT DELAYS ON PUBLIC CONSTRUCTION PROJECTS. HOUSE BILL NO. 2850 WILL HELP ENSURE THAT PUBLIC WORKS PROJECTS ARE COMPLETED ON SCHEDULE + ARE OF HIGH QUALITY AND VALUE.

PLEASE SUPPORT HOUSE BILL NO. 2850. THANK YOU FOR YOUR CONSIDERATION OF THIS IMPORTANT MATTER.

SINCERELY:
Timothy A. Drake
TIMOTHY A. DRAKE

House Bill No 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill No 2850. Thank-you for your attention to this matter.

Mark Benson
1528 Lamar
Topeka, KS 67060

House Bill No. 2850 will significantly enhance the government ability to ensure construction tax dollars are used wisely and efficiently for public construction projects

Support House Bill No. 2850 Thank-you

Nathan Brixey
761 Westridge
Wichita, KS 67203

Dear Representative

House Bill No. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill No. 2850. Thank you for your attention to this matter

Elmer Fritch
P.O. Box 9341
Wichita, Ks. 67277

Dear Representative

House Bill NO. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill No. 2850. Thank you for your attention to this matter.

Bradley Deewall
629 Spruce
Halstead Ks 67056

RE: In Support of HB 2850

Dear Representative:

General Contractors competing for public works projects often select a poor to minimal performing sub-contractor in order to be the "low bid". Adverse results often occur due to the selection of a sub-contractor who does not have sufficient qualifications, resources or other performance capabilities to successfully perform the contract work.

Such results cause substantial increases in total contract costs of the other sub contractors on the project. Therefore more and more responsible sub contractors are turning away from bidding public works projects and concentrating on the private sector, where past performance, expertise, schedule & other important factors are considered along with the "bid price".

I urge you to help improve the quality of contractors in the bidding pool and thereby reduce the cost of construction projects, by supporting House Bill #2850.

Thank you for your immediate attention to this matter.

Philip D. Offill
220 Chestnut St.
Halstead, KS 67052

Dear Representatives:

House Bill No. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects

Dennis Barnes
834 Maus Ln
Wichita, KS 67212

Dear Representative

During recent years, State and Local Governments have experienced quality problems and significant delays on construction projects funded by public Money. This problem could be overcome by awarding projects to the most qualified companies bidding on the projects - not necessarily the cheapest. House Bill No. 2850 will help ensure public works are completed on time and are of high quality and value.

— Cheaper isn't always Better!

Please support house bill 2850

Thank you for your time.

Jesse Thomas

501 E 63rd N.

#14 Wic.

Wichita, KS 67219

Dear Representative :

House Bill No 2850 will significantly enhance the governments ability to ensure quality and efficiency for public construction projects

I urge all public officials to do the responsible thing and support House Bill No 2850. Thank You for your attention to this matter.

Johnny J. Luter
2201 E MacArthur Lot E-19
Wichita Ks 67214

Dear Representative

During recent years, the State and local Governments have experienced quality problems and significant delays on public construction projects. House Bill No 2850 will help ensure that public works projects are completed on schedule and are of high quality and value.

Please support House Bill No 2850. Thank you for your consideration of this important matter.


Thank you
Darryl Hill

Darryl Hill
Box 13
Whitewater, KS 67154

Dear Representative

House Bill #2850 will significantly enhance the governments ability to ensure construction tax dollars are used wisely and efficiently for public ~~costs~~ construction projects.

Please support House Bill #2850

Thank you,


Steve Kingsley
3902 W. 79th South
Haysville, Ks. 67060
IBEW L.U. #271

DEAR REPRESENTATIVE:

HOUSE BILL No. 2850 will significantly enhance the governments ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill No. 2850. Thank you for your attention to this matter.

Chris Decker
1600 WOODROW CT
Wichita, KS

Dear Representative

House Bill No. 2850 will save tax dollars
by significantly reducing costly
litigation, change orders, poor quality
construction and the number of
projects not completed on time.

Please support House Bill No. 2850

Thank you for your consideration
of this important matter

Jeffrey C Elliott

980 S.W. 100th

Agusta Kan. 67010

Dear Representative

General Contractors competing for public works projects often select poor to minimal performing sub-contractors in order to be the "low bid". Adverse results often occur due to the selection of a sub contractor who does not have sufficient qualifications, resources or other performance capabilities to successfully perform the contract work.

Such results cause substantial increases in total contract costs of the other sub-contractors on the project. Therefore more and more responsible sub-contractors are turning away from bidding public works projects and concentrating on the private sector, where past performance, expertise, schedule and other important factors are considered along with "price".

I urge you to help improve the quality of contractors in the bidding pool and therefore reduce the cost of construction-projects, by supporting House Bill No. 2850.

Thank you for your immediate attention to this matter.

Darren M. Edwards
11959 N. 2nd St.
Sedwick Ks. 67135

Dear Representative

House Bill NO. 2850 will save tax dollars by significantly reducing costly litigation, change orders, poor quality construction and the number of projects not completed on time.

Please support House Bill No. 2850.
Thank you for your consideration of this important matter.

Robert Hauskins
2118 N. Parkdale Ct
Wichita, KS
67212

Dear Representative

Please support House Bill
2850 This will help ensure
that public works projects are
completed on schedule and are of
high quality and value


Please support House Bill # 2850.
Thank you for your consideration
of this important matter.

Tony Naylor
822 N. Bay Country
Wichita, Ks. 67235

Dear Representative

House Bill 2850 will help ensure that public work projects are completed on schedule and are of high quality value.

Please support House Bill 2850 Thank you for your consideration of this important matter

Richard E. Powell

11010 W Jewell
Wichita Ks. 67209

PLEASE SUPPORT HOUSE BILL 2850
THANK YOU FOR YOUR ATTENTION TO
THIS MATTER

David Sturgem
8839 WOODSIDE DR
WICHITA 67233

Dear Representative

House Bill No. 2850 will save tax dollars by significantly reducing costly litigation, change orders, poor quality construction and the number of projects not completed on time.

Please support House Bill No. 2850.
Thank you for your consideration of this important matter.

Jim Fonzo

Jim Fonzo
2546 N. Old Manor
Wichita, KS
67220

DEAR REPRESENTATIVE

HOUSE BILL # 2850 WILL SIGNIFICANTLY
ENHANCE THE GOVERNMENT'S ABILITY TO ENSURE
CONSTRUCTION TAX DOLLARS ARE USED WISELY AND
EFFICIENTLY FOR PUBLIC CONSTRUCTION PROJECTS

PLEASE SUPPORT HOUSE BILL # 2850, THANK
YOU FOR YOUR ATTENTION TO THIS MATTER

BRUCE KNEIGHT
145 S ELDER
WICHITA KS

67209

Dear Representatives:

House bill #2850 will significantly enhance the govt. ability to ensure quality and efficiency for public construction projects.

I urge you public officials to do the responsible thing & support House Bill #2850. Thank you for your attention to this matter.

Sincerely yours
John R. Wilson
155 S. Belmont
Wichita Kansas 67218
316-612-7764

Dear Representative

During recent years, the State and Local Government has experienced quality problems and significant delays on public construction projects. House Bill No. 2850 will help ensure that public work projects are completed on schedule and are of high quality and value.

Please support House Bill No. 2850. Thank you for your consideration of this important matter

Thank again
William E. McKinis
9705 E Bayley
Wichita Kansas 67207

Dear Representative

House Bill No. 2850 will save tax dollars by significantly reducing costly litigation, change orders, poor quality construction and the number of projects not completed on time.

Please support House Bill 2850. Thank you for your consideration of this important matter.

Thank You
Jerry R. Steidinger
3331 S. 154th East
Wichita, Ks 67232

Dear Representative

House Bill No 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill No. 2850.

Thank you for your attention to this matter.

Thank you!
Richard W Dremstree
145 So Byron Rd
Wichita, Kansas

Dear Representative Phell Kline:

House bill # 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill # 2850. Thank you for ~~your~~ your attention to this matter.

Scott Henning

SCOTT HENNING

501 S. KEITH

WICHITA KS 67209

Dear Representative Mike Lerner

During recent years, the State & Local Governments have experienced quality problems & significant delays on public construction projects. House Bill # 2850 will help ensure that public works projects are completed on schedule & are of high quality & value.

Please support House Bill # 2850.
Thank you for your consideration
of this important matter.

Stanley J. Ford

2712 N.W. Ford Road
Benton, KS, 67017

Dear Representative

During recent years, the State and Local Governments have experienced quality problems and significant delays on public construction projects. House Bill No. 2850 will help ensure that public works projects are completed on schedule and are of high quality & value.

Please support House Bill No. 2850.
Thank you for your consideration of this important matter.

Arson A. Abramo
545 W. 20th St S
Myfield Ky. 67103

Dear Representative

House Bill No. 2850 will save tax dollars by significantly reducing costly litigation, change orders, poor quality construction and the number of projects not completed on time.

Please support House bill No. 2850. Thank you for your consideration of this important matter.

Carley Hamilton
1733 N. Joann
Wichita, KS. 67203

Dear Representative,

House Bill # 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill #2850. Thank you for your attention to this matter.

Joan R. Hanson
120 W. School
Jean Ks, 67074

Dear Representative

General Contractors competing for public works projects often select a poor to minimal performing sub-contractor in order to be the "low bid". Adverse results often occur due to the selection of a sub-contractor who does not have sufficient qualifications, resources or other performance capabilities to successfully perform the contract work.

I urge you to help improve the quality of contractors in the bidding pool and therefore reduce the cost of construction projects, by supporting House Bill # 2850

Thank you for your immediate attention to this matter

Alan Wright
4560 S. Hydraulic #725
Wichita, Ks. 67216

Dear Representative

House Bill NO. 2850 will save tax dollars by significantly reducing costly litigation, change orders, poor quality construction and the number of projects not completed on time.

Please support House Bill NO. 2850. Thank you for your consideration of this important matter.

Eric R. Page
1945 N. Rock Road Apt #1118
Wichita KS, 67206

Dear Representative

During recent years, the State & Local governments have experienced quality problems and significant delays on public construction projects. House Bill #2850 will help ensure that public works projects are completed on schedule and are of high quality and value.

Please Support House Bill #2850. Thank you for your consideration of this important matter.

Kevin L. Patton
348 Williamsburg
Andover, Ks
67002

Dear Representative

House bill no. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

I urge ~~you~~ all public officials to do the responsible thing and support House Bill No. 2850. Thank you for your attention to this matter.

Christopher P. Rockers
999 N. Silver Springs
Apt. 302
Wichita, Ks 67212

Dear Representative

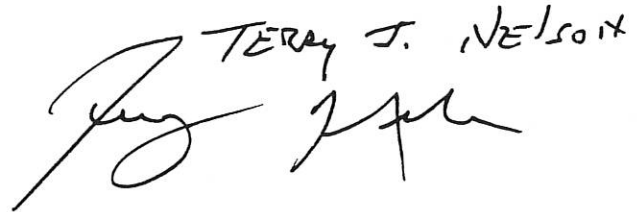
House Bill 2850 will significantly
enhance the government's ability
to ensure construction tax dollars
are used wisely and efficiently
for public construction projects

Terry Oush

DEAR REPRESENTATIVE.

DURING RECENT YEARS, THE STATE AND LOCAL GOVERNMENTS HAVE EXPERIENCED QUALITY PROBLEMS AND DELAYS ON PUBLIC CONSTRUCTION PROJECTS. HOUSE BILL # 2850 WILL HELP ENSURE THAT PUBLIC WORKS PROJECTS ARE COMPLETED ON TIME AND ARE OF HIGH QUALITY AND VALUE

PLEASE SUPPORT HOUSE BILL 2850
THANK YOU FOR YOUR CONSIDERATION
IN THIS MATTER

TERAY J. NELSON


Dear Representative

During recent years, the state and local Governments have experienced quality problems and significant delays on public construction projects. House Bill No. 2850 will help ensure that public works projects are completed on schedule and are of high quality and value.

Please support House Bill No 2850.


Gary Hawley
Gary Hawley

DEAN REPRESENTATIVE

GENERAL CONTRACTORS COMPETING FOR PUBLIC WORKS PROJECTS OFTEN SELECT A POOR TO MINIMAL PERFORMING SUB-CONTRACTOR IN ORDER TO BE THE "LOW BID". ADVERSE RESULTS OFTEN OCCUR DUE TO THE SELECTION OF A SUB-CONTRACTOR WHO DOES NOT HAVE SUFFICIENT QUALIFICATIONS, RESOURCES OR OTHER PERFORMANCE CAPABILITIES TO SUCCESSFULLY PERFORM THE CONTRACT WORK. SUCH RESULTS CAUSE SUBSTANTIAL INCREASES IN TOTAL CONTRACT COSTS OF THE OTHER SUB-CONTRACTORS ON THE PROJECT. THEREFORE MORE & MORE RESPONSIBLE SUB-CONTRACTORS ARE TURNING AWAY FROM BIDDING PUBLIC WORKS PROJECTS AND CONCENTRATING ON THE PRIVATE SECTOR, WHERE PAST PERFORMANCE, EXPERTISE, SCHEDULE AND OTHER IMPORTANT FACTORS ARE CONSIDERED ALONG WITH "PRICE".

I URGE YOU TO HELP IMPROVE THE QUALITY OF CONTRACTORS IN THE BIDDING POOL AND THEREFORE REDUCE THE COST OF CONSTRUCTION PROJECTS, BY SUPPORTING HOUSE BILL # 2850.

THANK YOU FOR YOUR IMMEDIATE ATTENTION TO THIS MATTER,

 "BO" MICH.

Dear Representative

House Bill No. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects. I urge all public officials to do the responsible thing and support House Bill No 2850. Thank you for your attention to this matter.

Randall K. Slusser
311 South H.
Wellington Kansas
67152

Dear Representative

House Bill No. 2850 will greatly enhance The government's ability to ensure construction tax dollars are used wisely and efficiently for public construction projects.

Support House Bill No. 2850. Thank you for your attention to this matter!

Bryan Zesch

Dear Representative George Dean:

House Bill 2850 will significantly enhance the governments ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill No. 2850. Thank you for your attention to this matter.



Jonathan Cashion

6456 A' Street

Wichita KS. 67217

Dear Representative,

House bill No. 2850 will significantly enhance the Government's ability to ensure quality and efficiency for public construction projects.

I urge all public officials to do the responsible thing and support House Bill No. 2850. Thank you for your attention to this matter.

Brady King
532 Redbarn
Wichita, KS 67212

Dear Representative :

During recent years the State and Local Governments have experienced quality problems and significant delays on public construction projects. House Bill No. 2850 will help ensure that public works projects are completed on schedule and are of high quality and value.

Please support House Bill no. 2850.

Thank you for your consideration of this important matter.

Jim Doeshen

Dear Representative,

I believe that House Bill #2850
will save us a lot of tax dollars
by reducing costs of litigation,
poor construction ethics, and the
number of jobs that are not completed
on time.

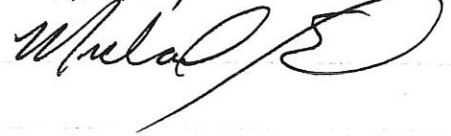
Support House Bill 2850.

Thank You,
Ben Pol

Dear Representative

House Bill No. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction projects.

THANKS,

A handwritten signature in cursive script, appearing to read "M. J. ...".

Dear Representative

House Bill No 2850 will significantly enhance the governments ability to ensure construction tax dollars are used wisely and efficiently for public construction projects

Support House Bill No 2850 Thank you for your attention to this matter

Sincerely
Billy Houser
2650 So 208th W Goddard Ks

Dear Representative

During recent years, the State and local Governments have experienced quality problems and significant delays on public construction projects. House Bill #2850 will help ensure that public works projects are completed on schedule and are of high quality and value

Jeff Kemp
2450 Porter
Wichita, KS 67209

Dear Representative,

House Bill No. 2850 will help ensure that public works projects are completed in a timely and high quality manner. I believe in and support Bill No 2850 and ask you to support it as well.

Thank You

Jason Ashcraft
7301 N. Hillside # 44
Valley Center KS 67147

Dear Representative

House Bill No. 2850 will significantly Enhance the governments ability to ensure quality and efficiency for public construction projects. I urge all public officials to do the responsible thing and support house bill no. 2850. Thank you for your attention to this matter.

Troy Bowen
340 CLARK ST.
Augusta, KS 67010

Dear Representative

House Bill NO. 2850 will significantly enhance the government's ability to ensure quality & efficiency for public construction projects.

I urge all public officials to do the responsible thing & support House Bill NO. 2850. Thank you for your attention to this matter.

Paul Crawford
714 Spruce
Halstead KS 67056

Handbook on
Responsible Building and
Contracting in Kansas

Common Sense Legislation To Protect Taxpayers
From Irresponsible Construction Contractors

Committee for Responsible Building and Contracting
January 7, 2000. Phil Petty, Chairman 785 776-3027

House Appropriations
3-8-00
Attachment 4

I. Introduction

This handbook explains Kansas' use of "self disclosure" and "conditions to bid" as devices to avoid unwittingly awarding a state contract for construction of buildings or for major repairs or for improvements to buildings for state agencies to an irresponsible contractor. Kansas officials and agencies, as well as the taxpayers they represent, have a myriad of interests in not awarding a public works contract to an irresponsible contractor. Those interests include receiving competent services and a quality product, enjoying timely completion of a project, and avoiding entanglement or association with any legal or financial problems concerning a particular contractor's irresponsibility. "Self disclosure" and "conditions to bid" are efficient uses of the state's resources and authority to insure competent and timely completion of state projects.

Once an irresponsible contractor fails to dutifully perform a project, a public entity's legal recourse is often insufficient to remedy all of the problems. The contractor's bond and the contractor's assets can be insufficient to cover the public entity's monetary loss caused by the contractor's irresponsibility. The public entity also incurs legal fees in prosecuting such actions. Moreover, the public is denied benefits due to the delay in the completion of the project. It is said that an ounce of prevention is worth a pound of cure. Any party that has contracted with an irresponsible party that fails to perform on the contract, especially if the irresponsible party lacks the solvency to cover the losses, can attest to this reality. "Self disclosure" and "conditions to bid" are preventative devices for a public entity to avoid such problems. Because they are preventative measures, "self disclosure" and "conditions to bid" are superior to any legal action that the public entity might take after an irresponsible contractor has failed to properly perform on a public works contract. The use of "self disclosure" and "conditions to bid" for this purpose is neither new or novel. They are common sense, practical devices that have been used for decades to prevent the problems associated with awarding a public works contract to an irresponsible contractor.

II. What is "self disclosure"?

"Self disclosure" is information that a public entity can require bidders on a public works project to provide fully and accurately as part of the bid or prior to bidding.

III. What is "Conditions to bid"

"Conditions to bid" is a specific criteria or specific obligations the contractor must meet in order to be eligible to bid. "Conditions to bid may include a Prequalification Questionnaire.

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IX. Claims Involving Contractors.....Attachment

X. Court Cases Defining and/or involving “Lowest Responsible Bidder”.....Attachment

XI. Information on Skilled Workforce Shortage and Training.....Attachment

XII. Appendix.....

IV. Existing Kansas Statute

The Division of Purchases oversees state purchases by establishing state purchasing contracts, soliciting bids for agency purchases, and controlling the delegation of local purchasing authority to individual state agencies.

The statutory authority for state procurement is found in K.S.A. 75-3737 et seq. Generally, all state contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competitive bids need not be required when: (1) no competition exists; (2) experimental materials must be purchased for laboratories; or, (3) an emergency exists requiring immediate delivery or some other statutory exception exists. (A number of statutory exceptions exist)

When competitive bids are required, the contract must be "awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." (K.S.A. 1994 Supp. 75-3740.)

The term "lowest responsible bidder," as used in provisions relating to competitive bidding, has been defined as one who is responsible and lowest in price on the advertised basis; and, one whose offer best responds in quality, fitness and capacity to the particular requirements of the proposed work. In determining the lowest responsible, the state need not be guided solely by the question of pecuniary responsibility of a bidder, but may consider the bidders ability to respond to the requirements of the contract and the bidder's general qualifications to execute the contract properly. The word "responsible," as used in the statute, applies not only to pecuniary ability, but also to the integrity, judgement and skill of the bidder.

The key provision of the statute is language which allows the state to consider "other conditions imposed in the call for bids." This language allows the state to account for other factors than merely price in awarding a given bid. These conditions can be specified in such a way as to account for performance, durability and other factors.

1. Subsection (c) of K.S.A. 753740 provides added credence for the state to account for other factors than merely price. "Prior to determining the lowest responsible bidder on contracts for construction of buildings or for major repairs or improvements to buildings for state agencies, the director of purchases shall consider: (1) The criteria and information developed by the secretary of administration, with the advice of the state building advisory commission to rate contractors on the basis of their performance under similar contracts with the state, local governmental entities, in addition to other

criteria and information available, and (2) the recommendations of the project architect.”

Thus, although there appears to be a requirement to award contracts to the lowest priced bidder, a bidder may receive the award if his or her bid best responds to these “non-price” criteria.

V. Existing Procurement Policy

When state contracts are awarded to the lowest responsible bidder, often no allowance is made for qualitative or value-based decisions. Although purchasing decisions based upon qualitative factors are permissible within existing purchasing authority, the state does not always purchase goods and services that represent the highest quality for the lowest price, or the “best value.”

The response to a recent information request involving problems with construction projects included, “Since all our construction contractors are selected by low bid, we have no basis for deciding which problems we would have encountered with a contractor selected by some other means.”

VI. Findings and Recommendations

(1) FINDING

Low bid awards of construction projects can lower quality and encourage contractors to cut corners. Because the construction industry is a service industry, the practice of “low price” with no consideration of performance based factors may actually result in higher costs over an extended period of time and reduce the standard of living of the local economy. The taxpayers must insure they receive the “best value” for their construction dollar and support responsible decisionmaking.

(1) RECOMMENDATION

Amend K.S.A. 75-3740c as follows:

(g) Contracts for construction of buildings or for major repairs or improvements to buildings for state agencies shall be awarded to the lowest responsible bidder that provides, best value, taking into consideration conformity with the specifications, terms of delivery, other conditions imposed in the call for bids and the financial responsibility, accountability, past performance, operational responsibility, reliability, skill, capacity, ability, judgement and integrity of the bidder.

(2) FINDING

It is recognized that decisions should be based on available information and the more reliable information available, the less risk of making an incorrect decision. A "Responsible Contractor" that consistently performs above "minimum" requirements will continually collect information on their company's construction projects, and strive to improve. These responsible contractors will feel very comfortable providing their information to the bid solicitor.

(2) RECOMMENDATION

Amend 75-3740 as follows:

(h) All bidders and subcontractors of bidders for contracts for construction of buildings or for major repairs or improvements to buildings for state agencies shall submit the following information with the bid for a project, or if stated on an annual basis, in addition to any other information the bidder may be required to provide prior to award of a contract; failure to provide any requested information shall cause the bid to be considered incomplete and disqualified.

(1) A description of the bidder's experience with projects of comparative size, complexity and cost within recent years, including documentation that demonstrates the bidder's ability to perform a substantial portion of the project with the bidder's own forces;

(2) annual documentation of all projects in the previous three years under written contract exceeding fifty thousand dollars with a government entity, on which the bidder performed work, disclosing:

(A) Timeliness of the bidder's performance;

(B) quality of the bidder's work;

(C) any fines and penalties imposed and paid by the bidder with respect to such projects, including an explanation of each such fine or penalty;

(D) a history of the bidder of claims for extra work requiring payment above the original contract amount, including an explanation of each such instance of a claim for extra work by the bidder with respect to such projects; and

(E) contract defaults by the bidder with respect to such projects, including an explanation of

each such default;

(3) annual documentation identifying and describing any projects within the previous three years for which the bidder was determined by a government entity not to be a responsible bidder. The reason given by such government entity for such determination and an explanation of such determination;

(4) annual documentation setting forth an adequate demonstration of financial responsibility, which shall include a certified financial statement prepared by a certified public accountant, to assure the bidder possesses adequate financial resources, availability of credit and the means and ability to procure insurance and bonds for the project;

(5) annual documentation disclosing any suspensions or revocations of any professional license of any director, officer, owner or managerial employee of the bidder, to the extent that any work to be performed by the bidder for the project is within the field of such licensed profession;

(6) annual documentation disclosing all violations of the federal occupational safety and health act (OSHA) within the previous three years, all notices of OSHA citations filed against the bidder in the same three-year period and a description and explanation of remediation or other steps taken regarding each such violation or notice of violation;

(7) annual documentation disclosing all violations within the previous five years pertaining to unlawful intimidation or discrimination against any employee by reason of race, creed, color, disability, sex or natural origin or to violations of an employee's civil rights or equal employment opportunities;

(8) annual documentation disclosing any litigation related to any project in which the bidder has been engaged within the previous five years; such documentation shall include copies of pleadings, in which the bidder has been named as a defendant or third-party defendant in any action involving a claim for personal injury or wrongful death arising from performance of work for any such project;

(9) annual documentation disclosing all violations within the previous five years of any labor law or any other provision of federal or state law regulating or relating to labor or employment,

including, but not limited to, child labor violations, failure to pay wages, unemployment insurance tax delinquencies or unfair labor practices;

(10) annual documentation disclosing all violations of the workers compensation act of Kansas or the workers compensation law of any other state or federal jurisdiction, including but not limited to the failure to provide proof of workers compensation insurance or other proof of ability to meet the obligation to provide workers compensation that is imposed by any such law, and any lapses thereof;

(11) annual documentation disclosing all criminal convictions or criminal indictments within the previous five years that are related to company operations, involving the bidder or the bidder's officers, directors, owners or managerial employees;

(12) annual documentation disclosing all violations or pending charges within the past five years concerning violations of federal, state or municipal environmental or health laws, codes or rules and regulations;

(13) annual documentation disclosing all violations or pending charges within the past five years related to violations of federal immigration and naturalization laws;

(14) identify the sources from which the bidder intends to provide the necessary workers to complete the project in a satisfactory manner;

(15) documentation identifying all work for the project that the bidder intends to subcontract to other firms and identify each firm to which the work will be subcontracted, all work not identified as being subcontracted, shall be performed by the bidder; and

(16) documentation providing the same information for each subcontractor submitted with the bid, as is prescribed for the bidder under subsections (h) (1) through (h) (14), which shall be obtained by the bidder from each such subcontractor.

(i) All subcontractors that are submitted by a bidder are subject to the approval of the director of purchases. The approval of the subcontractors, as provided in the general conditions, shall be subject to the same conditions and criteria for evaluation of responsibility as the bidder.

(3) FINDING

It is noted that there is reasonable risk to the recommended improvements of the procurement system. The system must be accountable for its decisions and safeguard against corruption.

(3) RECOMMENDATION

Amend K.S.A. 75-3740 as follows:

(j) Prior to a final determination that the apparent Lowest bidder will not be awarded a contract for construction of buildings or for major repairs or improvements to buildings for state agencies, the director of purchases shall provide written notice to such bidder that such bidder may not be awarded such contract. The written notice shall set forth the reasons for not awarding the contract to such bidder and shall set forth a time, date and place for such bidder to appear and be heard, prior to a final determination being made to not award the contract to such bidder.

(k) All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the proposed award of a contract for construction of buildings or for major repairs or improvements to buildings for state agencies, shall be made a part of a file or record by the director of purchases and such file or record shall be open to public inspection at all reasonable times for a ten-day period prior to award of the contract, in addition to any requirements under the open records act applicable thereto.

(4) FINDING

The construction industry is a growing industry that requires trained craftsmen. Craftsmen trained properly in their trade, safety, other areas and with more experience demand a higher salary. When a contractor is forced to cut costs by reducing training, stop offering quality incentives and pay trained craftsmen the same salary as relatively untrained craftsmen, the skilled, properly trained craftsmen will be eliminated from the marketplace along with the more responsible contractors. Kansas is one of many areas in the nation experiencing shortages of skilled craftsmen. Many project the shortages to be

long term due to the lack of incentives, length of time and commitment it takes for youth to learn a trade.

A great many economic development programs largely focus on training a skilled workforce, for manufacturing, industrial, commercial and other service employers. Other programs focus on retraining these same employees to keep the same jobs in Kansas, but the construction industry has been vastly neglected. Construction projects may cause an influx of nonresident, unskilled and uninsured workers to an area. This influx may cause undo burden on local healthcare providers and residents.

(4) RECOMMENDATION

Amend K.S.A. 75-3740 as follows:

(1) The director of purchases shall require all bidders and each subcontractor under the bidder as a condition for bidding on contracts for construction of buildings or for major repairs or improvements to buildings for state agencies for which competitive bids are required, to agree in writing that such bidder or subcontractor shall comply with the following obligations:

(1) The bidder and each subcontractor under the bidder shall ensure that all employees on the job site have appropriate training, including safety training and that all such employees have all applicable state, county, city and other local governmental licenses for licensed trades or professions;

(2) the bidder and each subcontractor under the bidder shall maintain or participate in an apprentice training program for each apprenticeable trade or occupation represented in the workforce of the bidder or subcontractor; as used in this subsection, "apprentice training program" means an apprenticeship program that is registered through the Kansas apprenticeship council and recognized by the bureau of apprenticeship training of the United States department of labor and under which program (A) when an apprentice is employed on a project, the apprentice must be registered with the Kansas apprenticeship council to be considered an apprentice;

(3) the bidder and each subcontractor under the bidder shall properly classify employees and treat them as provided by law for purposes of workers compensation coverage, unemployment taxes, social security taxes and income tax withholding; No contract employees will be allowed; and

(5) FINDING

Contractors must be held accountable for their responsibility, and a general contractor's responsibility is only as good as their worst subcontractor. Contractors have been involved in litigation with the state and being awarded more and more projects during litigation. A recent information request included the question "What is the dollar value of lawsuits or litigation the State of Kansas has against contractors?" The answer provided was "Today the total of our prayer for relief against contractors is approximately 7.5 million dollars."

(5) RECOMMENDATION

Amend K.S.A.75-3740 as follows:

(4) the bidder (A) shall provide, upon application for payment under any such contract, a certified employment sheet for all employees, including employees of all subcontractors, for each day on which work is performed on the site, upon a form acceptable to the secretary of administration containing job classification, hours of employment, wage rate and supplements, employer identification information and all other such information the secretary of administration deems appropriate, and (B) shall maintain a current record of the information prescribed for the certified employment sheet at a location designated by the project architect, or, if there is no project architect, by the secretary of administration or the agency architect for the project.

(m) Any bidder or subcontractor under the bidder who fails to comply with any one of the obligations specified in subsection (1) for any period of time during the term of a contract shall be, at the discretion of the secretary of administration subject to one or more of the following penalties

and sanctions, in addition to any other penalties prescribed by law:

(1) Cessation of work on the project until compliance is obtained with no extension of project time requirements; and

(2) withholding of payment due under any contract or subcontract until compliance is obtained;and

(3) permanent removal from any further work on the project; and

(4) penalty payable to the state in the amount of 5% of the dollar value of the contract.

(n) In addition to the penalties and sanctions specified in subsection (m), a general or other contractor shall be equally liable for the violations of a subcontractor of such contractor. Any contractor or subcontractor who has been determined to have violated any of the obligations specified in subsection (1) shall be barred from performing any work on any future projects for construction of buildings or for major repairs or improvements to buildings for state agencies for a period thereafter of six months for a first violation and for a period thereafter of three years for a second violation. Any such contractor or subcontractor who has been determined to have committed a third such violation shall be barred permanently from performing any work on any such future projects.

(6) FINDING

It is recognized this type of change to the procurement system may be slower to achieve in some areas of Kansas, and the private sector will need time to adjust.

(6) RECOMMENDATION

Amend K.S.A. 75-3740 as follows:

(o) The provisions of paragraph (2) of subsection (1) shall not apply to rebids of projects for which the state received fewer than two bids in response to the original request for bids.

VII. Conclusion

The procurement process is very flexible and should remain flexible. However, due to individuals and agencies interpretation of "lowest responsible bidder," the ease of determining the low price bidder, past practices and lack of useful information, the flexibility is not being utilized to award contracts to obtain the "Best Value." Not all information gathering and conditions to bid should be at the discretion of administration, but should be by statute to reduce risk and support good decision making.

EXISTING 75-3740

75-3740.

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 37.--DEPARTMENT OF ADMINISTRATION

75-3740. Competitive bids; price preferences; building contracts; bid records. (a) Except as provided by K.S.A. 75-3740b, all contracts and purchases made by or under the supervision of the director of purchases or any state agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids.

(b) The director of purchases shall have power to decide as to the lowest responsible bidder for all purchases, but if:

(1) The dollar amount of the bid received from the lowest responsible bidder from within the state is identical to the dollar amount of the bid received from the lowest responsible bidder from without the state, the contract shall be awarded to the bidder from within the state;

(2) in the case of bids for paper products specified in K.S.A. 75-3740b, the dollar amounts of the bids received from two or more lowest responsible bidders are identical, the contract shall be awarded to the bidder whose bid is for those paper products containing the highest percentage of recyclable materials; and

(3) in the case of bids for paper products specified in K.S.A. 75-3740b, the dollar amounts of the bids received from two or more lowest responsible bidders are identical, the contract shall be awarded to the bidder whose bid is for those paper products containing the highest percentage of recycled materials.

(c) Any or all bids may be rejected, and a bid shall be rejected if it contains any material alteration or erasure. The director of purchases may reject the bid of any bidder who is in arrears on taxes due the state, who is not properly registered to collect and remit taxes due the state or who has failed to perform satisfactorily on a previous contract with the state. The secretary of revenue is hereby authorized to exchange such information with the director of purchases as is necessary to effectuate the preceding sentence notwithstanding any other provision of law prohibiting disclosure of the contents of taxpayer records or information. Prior to determining the lowest responsible bidder on contracts for construction of buildings or for major repairs or improvements to buildings for state agencies, the director of purchases shall consider: (1) The criteria and information developed by the secretary of administration, with the advice of the state building advisory commission to rate contractors on the basis of their performance under similar contracts with the state, local governmental entities and private entities, in addition to other criteria and information available, and (2) the recommendations of the project architect, or, if there is no project architect, the recommendations of the secretary of administration or the agency architect for the project as provided in K.S.A. 75-1254, and amendments thereto. In any case where competitive bids are required and where all bids are rejected, new bids shall be called for as in the first instance, unless otherwise expressly provided by law.

(d) Before the awarding of any contract for construction of a building or the making of repairs or

improvements upon any building for a state agency, the director of purchases shall receive written approval from the state agency for which the building construction project has been approved, that the bids generally conform with the plans and specifications prepared by the project architect, by the secretary of administration or by the agency architect for the project, as the case may be, so as to avoid error and mistake on the part of the contractors. In all cases where material described in a contract can be obtained from any state institution, the director of purchases shall exclude the same from the contract.

(e) All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the director of purchases for five years, unless reproduced as provided in K.S.A. 75-3737, and amendments thereto, and shall be open to public inspection at all reasonable times.

(f) As used in this section and in K.S.A. 75-3741, and amendments thereto, "project architect" shall have the meaning ascribed thereto in K.S.A. 75-1251, and amendments thereto.

History: L. 1953, ch. 375, § 40; L. 1978, ch. 337, § 12; L. 1986, ch. 328, § 1; L. 1990, ch. 319, § 14; July 1.

**PROPOSED AMENDMENTS
TO 75-3740**

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*Session of 2000***HOUSE BILL No. 2850**

By Committee on Local Government

2-3

9 AN ACT concerning purchases by and contracts entered into by the di-
10 rector of purchases; amending K.S.A. 75-3740 and repealing the ex-
11 isting section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 75-3740 is hereby amended to read as follows: 75-
15 3740. (a) Except as provided by *this section and K.S.A. 75-3740b, and*
16 *amendments thereto*, all contracts and purchases made by or under the
17 supervision of the director of purchases or any state agency for which
18 competitive bids are required shall be awarded to the lowest responsible
19 bidder, taking into consideration conformity with the specifications, terms
20 of delivery, and other conditions imposed in the call for bids.

21 (b) The director of purchases shall have power to decide as to the
22 lowest responsible bidder for all purchases, but if:

23 (1) The dollar amount of the bid received from the lowest responsible
24 bidder from within the state is identical to the dollar amount of the bid
25 received from the lowest responsible bidder from without the state, the
26 contract shall be awarded to the bidder from within the state;

27 (2) in the case of bids for paper products specified in K.S.A. 75-
28 3740b, *and amendments thereto*, the dollar amounts of the bids received
29 from two or more lowest responsible bidders are identical, the contract
30 shall be awarded to the bidder whose bid is for those paper products
31 containing the highest percentage of recyclable materials; and

32 (3) in the case of bids for paper products specified in K.S.A. 75-
33 3740b, *and amendments thereto*, the dollar amounts of the bids received
34 from two or more lowest responsible bidders are identical, the contract
35 shall be awarded to the bidder whose bid is for those paper products
36 containing the highest percentage of recycled materials.

37 (c) Any or all bids may be rejected, and a bid shall be rejected if it
38 contains any material alteration or erasure.

39 (d) The director of purchases may reject the bid of any bidder who
40 is in arrears on taxes due the state, who is not properly registered to collect
41 and remit taxes due the state or who has failed to perform satisfactorily
42 on a previous contract with the state. The secretary of revenue is hereby
43 authorized to exchange such information with the director of purchases

1 as is necessary to effectuate the ~~preceding sentence~~ *provisions of this*
2 *subsection* notwithstanding any other provision of law prohibiting disclo-
3 sure of the contents of taxpayer records or information.

4 (e) Prior to determining the lowest responsible bidder on contracts
5 for construction of buildings or for major repairs or improvements to
6 buildings for state agencies, the director of purchases shall consider:

7 (1) The criteria and information developed by the secretary of ad-
8 ministration, with the advice of the state building advisory commission to
9 rate contractors on the basis of their performance under similar contracts
10 with the state, local governmental entities and private entities, in addition
11 to other criteria and information available, ~~and (2);~~

12 (2) *the information that is required to be provided by the bidder un-*
13 *der subsections (h) through (n); and*

14 (3) the recommendations of the project architect, or, if there is no
15 project architect, the recommendations of the secretary of administration
16 or the agency architect for the project as provided in K.S.A. 75-1254, and
17 amendments thereto.

18 (f) In any case where competitive bids are required and where all
19 bids are rejected, new bids shall be called for as in the first instance,
20 unless otherwise expressly provided by law.

21 (g) *Contracts for construction of buildings or for major repairs or*
22 *improvements to buildings for state agencies shall be awarded to the low-*
23 *est responsible bidder that provides, best value, taking into consideration*
24 *conformity with the specifications, terms of delivery, other conditions im-*
25 *posed in the call for bids and the financial responsibility, accountability,*
26 *past performance, operational responsibility, reliability, skill, capacity,*
27 *ability, judgment and integrity of the bidder.*

28 (h) *All bidders and subcontractors of bidders for contracts for con-*
29 *struction of buildings or for major repairs or improvements to buildings*
30 *for state agencies shall submit the following information with the bid for*
31 *a project, or if stated on an annual basis, in addition to any other infor-*
32 *mation the bidder may be required to provide prior to the award of a*
33 *contract, failure to provide any requested information shall cause the bid*
34 *to be considered incomplete and disqualified.*

35 (1) *A description of the bidder's experience with projects of compar-*
36 *ative size, complexity and cost within recent years, including documen-*
37 *tation that demonstrates the bidder's ability to perform a substantial por-*
38 *tion of the project with the bidder's own forces;*

39 (2) *annual documentation of all projects in the previous three years*
40 *under written contract exceeding \$50,000 with a government entity, on*
41 *which the bidder performed work, disclosing:*

42 (A) *Timeliness of the bidder's performance;*

43 (B) *quality of the bidder's work;*

1 (C) *any fines and penalties imposed and paid by the bidder with*
2 *respect to such projects, including an explanation of each such fine or*
3 *penalty;*

4 (D) *a history of the bidder of claims for extra work requiring payment*

5 above the original contract amount, including an explanation of each such
6 instance of a claim for extra work by the bidder with respect to such
7 projects; and

8 (E) contract defaults by the bidder with respect to such projects, in-
9 cluding an explanation of each such default;

10 (3) annual documentation identifying and describing any projects
11 within the previous three years for which the bidder was determined by
12 a government entity not to be a responsible bidder. The reason given by
13 such government entity for such determination and an explanation of such
14 determination;

15 (4) annual documentation setting forth an adequate demonstration of
16 financial responsibility, which shall include a certified financial statement
17 prepared by a certified public accountant, to assure the bidder possesses
18 adequate financial resources, availability of credit and the means and
19 ability to procure insurance and bonds for the project;

20 (5) annual documentation disclosing any suspensions or revocations
21 of any professional license of any director, officer, owner or managerial
22 employee of the bidder, to the extent that any work to be performed by
23 the bidder for the project is within the field of such licensed profession;

24 (6) annual documentation disclosing all violations of the federal oc-
25 cupational safety and health act (OSHA) within the previous three years,
26 all notices of OSHA citations filed against the bidder in the same three-
27 year period and a description and explanation of remediation or other
28 steps taken regarding each such violation or notice of violation;

29 (7) annual documentation disclosing all violations within the previous
30 five years pertaining to unlawful intimidation or discrimination against
31 any employee by reason of race, creed, color, disability, sex or natural
32 origin or to violations of an employee's civil rights or equal employment
33 opportunities;

34 (8) annual documentation disclosing any litigation related to any pro-
35 ject in which the bidder has been engaged within the previous five years.
36 Such documentation shall include copies of pleadings, in which the bidder
37 has been named as a defendant or third-party defendant in any action
38 involving a claim for personal injury or wrongful death arising from per-
39 formance of work for any such project;

40 (9) annual documentation disclosing all violations within the previous
41 five years of any labor law or any other provision of federal or state law
42 regulating or relating to labor or employment, including, but not limited
43 to, child labor violations, failure to pay wages, unemployment insurance

1 tax delinquencies or unfair labor practices;

2 (10) annual documentation disclosing all violations of the workers
3 compensation act of Kansas or the workers compensation law of any other
4 state or federal jurisdiction, including, but not limited to, the failure to
5 provide proof of workers compensation insurance or other proof of ability
6 to meet the obligation to provide workers compensation that is imposed
7 by any such law, and any lapses thereof;

8 (11) annual documentation disclosing all criminal convictions or
9 criminal indictments within the previous five years that are related to
10 company operations, involving the bidder or the bidder's officers, direc-
11 tors, owners or managerial employees;

12 (12) annual documentation disclosing all violations or pending

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13 *charges within the past five years concerning violations of federal, state*
 14 *or municipal environmental or health laws, codes or rules and regulations;*

15 *(13) annual documentation disclosing all violations or pending*
 16 *charges within the past five years related to violations of federal immi-*
 17 *gration and naturalization laws;*

18 *(14) identify the sources from which the bidder intends to provide*
 19 *the necessary workers to complete the project in a satisfactory manner;*

20 *(15) documentation identifying all work for the project that the bidder*
 21 *intends to subcontract to other firms and identify each firm to which the*
 22 *work will be subcontracted. All work not identified as being subcon-*
 23 *tracted, shall be performed by the bidder; and*

24 *(16) documentation providing the same information for each subcon-*
 25 *tractor submitted with the bid, as is prescribed for the bidder under sub-*
 26 *sections (h) (1) through (h) (14), which shall be obtained by the bidder*
 27 *from each such subcontractor.*

28 *(i) All subcontractors that are submitted by a bidder are subject to*
 29 *the approval of the director of purchases. The approval of the subcon-*
 30 *tractors, as provided in the general conditions, shall be subject to the same*
 31 *conditions and criteria for evaluation of responsibility as the bidder.*

32 *(j) Prior to a final determination that the apparent lowest bidder will*
 33 *not be awarded a contract for construction of buildings or for major re-*
 34 *pairs or improvements to buildings for state agencies, the director of pur-*
 35 *chases shall provide written notice to such bidder that such bidder may*
 36 *not be awarded such contract. The written notice shall set forth the rea-*
 37 *sons for not awarding the contract to such bidder and shall set forth a*
 38 *time, date and place for such bidder to appear and be heard, prior to a*
 39 *final determination being made to not award the contract to such bidder.*

40 *(k) All bids with the names of the bidders and the amounts thereof,*
 41 *together with all documents pertaining to the proposed award of a con-*
 42 *tract for construction of buildings or for major repairs or improvements*
 43 *to buildings for state agencies, shall be made a part of a file or record by*

5

1 *the director of purchases and such file or record shall be open to public*
 2 *inspection at all reasonable times for a ten-day period prior to award of*
 3 *the contract, in addition to any requirements under the open records act*
 4 *applicable thereto.*

5 *(l) The director of purchases shall require all bidders and each sub-*
 6 *contractor under the bidder as a condition for bidding on contracts for*
 7 *construction of buildings or for major repairs or improvements to build-*
 8 *ings for state agencies for which competitive bids are required, to agree*
 9 *in writing that such bidder or subcontractor shall comply with the follow-*
 10 *ing obligations:*

11 *(1) The bidder and each subcontractor under the bidder shall ensure*
 12 *that all employees on the job site have appropriate training, including*
 13 *safety training and that all such employees have all applicable state,*
 14 *county, city and other local governmental licenses for licensed trades or*
 15 *professions;*

16 *(2) the bidder and each subcontractor under the bidder shall maintain*
 17 *or participate in an apprentice training program for each apprenticeable*
 18 *trade or occupation represented in the workforce of the bidder or sub-*
 19 *contractor. As used in this subsection, "apprentice training program"*
 20 *means an apprenticeship program that is registered through the Kansas*

21 apprenticeship council and recognized by the bureau of apprenticeship
 22 training of the United States department of labor and under which pro-
 23 gram when an apprentice is employed on a project, the apprentice must
 24 be registered with the Kansas apprenticeship council to be considered an
 25 apprentice;

26 (3) the bidder and each subcontractor under the bidder shall properly
 27 classify employees and treat them as provided by law for purposes of
 28 workers compensation coverage, unemployment taxes, social security
 29 taxes and income tax withholding; no contract employees will be allowed;
 30 and

31 (4) the bidder shall: (A) Provide, upon application for payment under
 32 any such contract, a certified employment sheet for all employees, includ-
 33 ing employees of all subcontractors, for each day on which work is per-
 34 formed on the site, upon a form acceptable to the secretary of adminis-
 35 tration containing job classification, hours of employment, wage rate and
 36 supplements, employer identification information and all other such in-
 37 formation the secretary of administration deems appropriate; and (B)
 38 maintain a current record of the information prescribed for the certified
 39 employment sheet at a location designated by the project architect, or, if
 40 there is no project architect, by the secretary of administration or the
 41 agency architect for the project.

42 (m) Any bidder or subcontractor of the bidder who fails to comply
 43 with any one of the obligations specified in subsection (1) for any period

6

1 of time during the term of a contract, at the discretion of the secretary of
 2 administration, shall be subject to one or more of the following penalties
 3 and sanctions, in addition to any other penalties prescribed by law:

4 (1) Cessation of work on the project until compliance is obtained with
 5 no extension of project time requirements;

6 (2) withholding of payment due under any contract or subcontract
 7 until compliance is obtained;

8 (3) permanent removal from any further work on the project; and

9 (4) penalty payable to the state in the amount of 5% of the dollar
 10 value of the contract.

11 (n) In addition to the penalties and sanctions specified in subsection
 12 (m), a general or other contractor shall be liable equally for the violation
 13 of a subcontractor of such contractor. Any contractor or subcontractor
 14 who has been determined to have violated any of the obligations specified
 15 in subsection (1) shall be barred from performing any work on any future
 16 projects for construction of buildings or for major repairs or improve-
 17 ments to buildings for state agencies for a period thereafter of six months
 18 for a first violation and for a period thereafter of three years for a second
 19 violation. Any such contractor or subcontractor who has been determined
 20 to have committed a third such violation shall be barred permanently
 21 from performing any work on any such future projects.

22 (o) The provisions of paragraph (2) of subsection (l) shall not apply
 23 to rebids of projects for which the state received fewer than two bids in
 24 response to the original request for bids.

25 (p) Before the awarding of any contract for construction of a
 26 building or the making of repairs or improvements upon any building for
 27 a state agency, the director of purchases shall receive written approval
 28 from the state agency for which the building construction project has been

29 approved, that the bids generally conform with the plans and specifica-
 30 tions prepared by the project architect, by the secretary of administration
 31 or by the agency architect for the project, as the case may be, so as to
 32 avoid error and mistake on the part of the contractors. In all cases where
 33 material described in a contract can be obtained from any state institution,
 34 the director of purchases shall exclude the same from the contract.

35 ~~(e)~~ (q) All bids with the names of the bidders and the amounts
 36 thereof, together with all documents pertaining to the award of a contract,
 37 shall be made a part of a file or record and retained by the director of
 38 purchases for five years, unless reproduced as provided in K.S.A. 75-3737,
 39 and amendments thereto, and shall be open to public inspection at all
 40 reasonable times.

41 ~~(f)~~ (r) As used in this section and in K.S.A. 75-3741, and amendments
 42 thereto, "project architect" shall have the meaning ascribed thereto in
 43 K.S.A. 75-1251, and amendments thereto.

7

- 1 Sec. 2. K.S.A. 75-3740 is hereby repealed.
- 2 Sec. 3. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

CLAIMS INVOLVING CONTRACTORS

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- I. Report to the Joint Committee on State Building Construction on the Status of Construction Claims Made on Behalf of the State
- II. Response to Request for Information From the State
- III. Turning Up the Heat on Benefit Cheats
- IV. Too Many Severe Injuries in Kansas
- V. Library Takes a Soaking

Report to the Joint Committee on State Building Construction on the
Status of Construction Claims Made on Behalf of the State

The following matters have been referred to the Secretary of Administration in order to effect an informal or formal resolution:

- 1) Department of Human Resources - 401 Topeka. A claim against the mechanical subcontractor for improper piping of an air conditioning compressor resulted in a settlement with the mechanical subcontractor, in which he paid the State the amount paid by the Department of Human Resources to another firm to correct the problem.
- 2) Kansas State University - King Hall - Fume Hoods. There was a design discrepancy for asbestos abatement in the above building. The plans and specifications showed different areas to be abated. This resulted in additional abatement costs which were absorbed by the designers.
- 3) Kansas State School for the Blind. The contractor has failed to return and complete punch list items on the above project. The remaining items will be completed by others and deducted from his contract. Liquidated damages of \$22,500 were previously assessed against this same contractor.
- 4) University of Kansas - Robinson Gymnasium - Dance Floors. New dance floors were installed in two rooms and have begun to come apart. A warranty claim has been made to the contractor and manufacturer. To date no resolution is in sight. The matter may have to be referred to the Attorney General's office for litigation.
- 5) University of Kansas - BioSciences Building - Simons Hall. The parties to the long-standing problem with the boilers at this new facility have entered mediation in an effort to resolve the matter. Failure of this effort could result in the matter being referred to the Attorney General's office for litigation.

- 6) Kansas State University - Power Plant - Replacement of Boiler #7 Stack. The original stack installation was unacceptable. The stack moved excessively during moderate winds. The contractor has returned to correct the deflection problem. The stack is now braced to the main stack. The contractor has requested additional funds, but they were denied. Litigation is possible.
- 7) Kansas Department of Transportation - Equipment Wash Buildings - Osborne, Hill City, Hoxie, Atwood, Tribune. The contractor on all these projects failed to complete them on time, liquidated damages were assessed against the contractor.
Equipment Wash Buildings - Kinsley, Washington, Clay Center, Bucklin. Liquidated damages were assessed against the contractor on these projects for failure to complete the projects on time.
- 8) Regents Center - Overland Park. Water infiltration through the walls of this building has been experienced since this building was opened. A recent engineering study showed problems in numerous areas. A claim has been filed with the contractor and project architect.
- 9) Hutchinson Correctional Facility - Tuckpoint Perimeter Wall. Liquidated damages were assessed against the contractor on this project for failure to complete the project on time.
- 10) Department of Wildlife and Parks - Prairie Spirit Trail. Liquidated damages were assessed against the contractor for failure to complete the project on time.
- 11) University of Kansas Medical Center - Emergency Room Drive. Liquidated damages were assessed against the contractor for failure to complete the project on time.
- 12) Kansas State School for the Deaf - Electrical Service Improvements. Liquidated damages were assessed against the contractor for failure to complete the project on time.

9, 10, 11, 12

13) University of Kansas - Budig Hall. Nine large projection screens were installed at the facility. One screen has a faint "grid" pattern on the optical surface, believed to be caused by extended outside storage prior to installation. Also, all the screens exhibit a "mottling" effect which causes a cloudy appearance on some images projected on the screen. Discussions continue with the general contractor and screen manufacturer. Complicating factors are the extent of the imperfections and the cost of replacement. The screens are so large significant building modifications would have to be made to remove and replace the screens. The manufacturer indicates "mottling" is an inherent problem with all screens of this size. The University is considering a cash settlement offered by the contractor.

Investigation continues into the cause of the electrical fire that did minor damage to the building. The fire was caused by an inverter that is part of the battery backup system for emergency lighting in the building. This inverter over-heated causing the fire. The contractor has replaced the inverter but concerns about over-heating remain. The equipment room has now been air-conditioned to cool the equipment. A temporary generator was used to power the emergency lights when the inverter was not operational.

August 3, 1999

Jamie Karasek,

Refer to your request for information on problems with contractors when selected by low bid. I did find the request. Paul West had directed the request to Dan Carroll, the D of A Legal Section attorney assigned to this office. He in turn requested information from several people including the Attorney General's office and myself. The following includes the information he had gathered plus some I assembled.

I am convinced that we would have far fewer problems with contractors if we were allowed to make the selection based upon ability, attitude and past performance as well as price. However:

- The present state statutes indicate that we are to take the lowest responsible bidder. Low bid is very objective and easy to determine. If we are to make the selection based upon qualifications, we must find a system of selection that is very objective to avoid criticism from those not selected. I think I have a lead on such a system, but I'm still investigating it.

- Since all of our construction contractors are selected by low bid, we have no basis for deciding which problems are because of low bid, and which problems we would have encountered with a contractor selected by some other means.

- We do not keep the type of statistics you have requested. We are presently in the selection process for new project management software that hopefully would make such statistics more available. Unfortunately we are not finding a program that has all the features we want, and we do not care to spend the funds required to develop a custom program.

The information currently available is shown on the attached sheets.

Thaine Hoffman
Director

Encl:

cc: John Houlihan
Art Griggs
Paul West
Dan Carroll
Chris Berger

1. What are the cost overruns, delayed schedules, poor quality, law violations, excessive claims, and the administrative costs associated with the low bid systems that the state of Kansas now has?

Since all of our construction contractors are selected by low bid, we have no basis for deciding which problems are because of low bid and which problems we would have encountered anyway with a contractor selected by some other means. (Thaine Hoffman)

2. What are the number of lawsuits or litigation's that Kansas has with the Attorney General's office against general contractors, sub contractors, bonding companies, and related items that pertain to the low-bid process?

No lawsuit is directly related to the low bid system. Such actions would be to enforce a bid, or perhaps debar a contractor. Whether other actions relate to the low bid process, I cannot say. (Chris Berger)

3. What is the total dollar value of lawsuits or litigation's the State of Kansas has against contractors?

Today, the total of our prayers for relief against contractors is approximately 7.5 million dollars. (Chris Berger)

4. Has there ever been any contractors removed or replaced from the state funded construction projects? For what reason?

Four contractors have been removed for not meeting the completion date, poor quality work, going out of business, and not paying subcontractors and suppliers (see question 2 below for specifics). (Dan Carroll)

Lists of specific contracts

1. List all Contract Construction and/or maintenance projects that have caused the State of Kansas to become party involved in Court Action since Jan. 1, 1990. Please list the Project name, Project dollar amount, location, contracting agency, parties and court name with case number.

- State v Reliance Surety et al, 97 C 380, Butler County (EDCF Construction, Project A-6112d);
- State v Amwest Surety et al, 99 C 292, Douglas County (Robinson Center Dance Floors, Project A-8126);
- State v Watertite Construction, 95 C 576, Sedgwick County (Roofing at HCF);
- Central Mechanical Construction Co. et al v State et al 97 CV 1061, Shawnee County (Farrell Library renovation, Project A-7075);
- MLK v KU et al, 92 CV 318, Shawnee County (Pearson Scholarship Hall renovation).

Others exist.

2. List all Contract Construction and/or maintenance projects that were not completed by the original contractor. since Jan. 1, 1990. Please list the Project name, Project dollar amount, location, contracting agency, parties and court name with case number.2)

- Project A-5951, Renovation of Pearson Hall, University of Kansas, Lawrence, \$497,532, Shawnee County District Court ~92 CV 318, MLK Inc. dba Metro Construction Assoc.
- Project A-6460, Control Building and Staff Parking Lot, Youth Center at Topeka, \$330,868, Kietzman Companies.
- Project A-6429, Resurface and Seal Coat Asphalt Roads and Parking Lots, Larned State Hospital, \$372,079.60, Westhoff Sand Company
- Project A-593 1, Warehouse for University Press of Kansas, Lawrence, \$322,414, RLB-Heritage Companies Inc.

3. List all Contract Construction and/or maintenance projects that were not completed by the Contract completion date since Jan. 1, 1990. Please list the Project name, Project dollar amount, location, contracting agency, parties and court name with case number.

See enclosed list of projects and completion dates. Note this list only goes back to 1993, obtaining more information may require a lot of work. Let me know if you feel we need to provide more information.)

4. List all Contract Construction and/or maintenance projects that exceeded the contract dollar amount since Jan. 1, 1990. Please list the Project name, Project dollar amount, location, contracting agency, parties and court name with case number.

- Central Mechanical Construction Co. et al v State et al.
There may be others.

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- Central Mechanical Construction Co. *et al* v State *et al*.
There may be others.

Turning Up the Heat on Benefit Cheats

Government cites firms for wage and hour law violations

Misclassifying craft workers to avoid payment of lawfully-mandated benefits is a scheme now epidemic in construction.

Unfortunately, enforcement of laws on the federal and state levels is notoriously lax (see April issue). But "now and then" violators pay the price.

Such was the case with three Connecticut drywall firms, owned by Gerald Levasseur, Sr., which were recently cited by the U.S. Department of Labor (DOL) for "willfully and repeatedly" violating federal wage and hour laws.

The charges include failure to pay overtime and to keep adequate payroll records — laws violated in the course of misclassifying employees as so-called "independent subcontractors."

(Alexis Herman, Secretary of Labor v. Ellington Drywall, Ellington Drywall & Framing, Inc., Gerald Levasseur, Sr., D/B/A Jerry's Drywall, U.S. District Court for Connecticut No. 399CV00264.)

In a separate action, DOL disbarred these firms from federal procurement programs for three years.

Contractor charges cheating 'wreaks havoc on our industry'

Anthony J. Minervini of Nutmeg Interiors, a large Connecticut drywall firm explains why such enforcement is sorely needed:

"By misclassifying employees, unscrupulous contractors avoid paying social security taxes, workers' comp, unemployment insurance and overtime.

"These employers can illegally shave their labor costs by up to 40%. Against such cutthroat competition, it is virtually impossible for a legitimate contractor to survive. This practice wreaks havoc on our industry."

Adds Bill Callahan, director of organizing for the Connecticut Carpenters union:

"Hopefully, DOL's crack-down in the Levasseur case will send a badly-needed message that cutting costs by breaking the law doesn't pay."

The Carpenters' legal counsel, Matthew Capece, also praised DOL's action in this case. But he admits being "frustrated at times" by the plethora of misclassification scams and spotty enforcement.

"To get relief on these type of cases," Capece told us, "we often have to seek help from our elected representatives. This is what happened in the Levasseur case."

Appealing to lawmakers for help when laws are being violated sounds like a very effective remedy strategy to COCKSHAW's.

The many victims of benefit bandits in this industry might want to give that approach a try. ☒

Safe & Secure

FAX #6

Improving Workers Compensation in Kansas

Volume 1, Number 6

Thursday, March 11, 1999

A FAX NEWSLETTER PUBLISHED BY THE KANSAS COALITION FOR WORKPLACE SAFETY. © 1999

WORKERS COMP INJURY RATES

Too Many Severe Injuries in Kansas

Kansas' workers do not only suffer from an above-average rate of occupational injury and illness (see S&S #5); they suffer from injuries and illnesses that are more severe than average. The severity of injuries—as measured by cases with lost workdays—was 4.0 cases per 100 full-time workers in Kansas in 1996, compared with a national average of 3.4 for all industries.

While in recent years most states have been able to push down their lost workday rates by one full point or more, Kansas' rate has remained basically steady at above-average levels. The U.S. average rate for lost-workday cases fell from 3.8 per 100 full-time workers in 1994 to 3.4 in 1996. But Kansas' rate of cases with lost workdays only declined from 4.2 in 1994 to 4.0 in 1996.

If employers in Kansas reduced their number of lost-workday injuries to the national average, 8,000 fewer serious workplace injuries would occur in the state each year.

Also, while the overall on the job injury rate has been declining for the U.S. as a whole, in Kansas the rate has been stable or increasing in most industries. Most notably, the injury rate in Kansas for retail trade rose from 7.8 in 1994 to 8.9 in 1995, and for nondurable goods manufacturing the rate rose from 15.5 to 16.4.

If employers in Kansas reduced the overall incidence of injuries from the 1995 state rate of 9.7 per 100 full-time workers to the 1995 national average of 8.1, 21,000 fewer workplace injuries would occur in Kansas each year.

22 Lives Could Be Saved in Kansas

Kansas ranks above the national average for serious occupational injuries and illnesses and for workplace fatalities.

According to the U.S. Bureau of Labor Statistics, the occupational fatality rate in Kansas is 6.3 per 100,000 workers, significantly higher than the U.S. average rate of 4.6 fatalities. Many of the fatalities in Kansas could be prevented through standard safety measures.

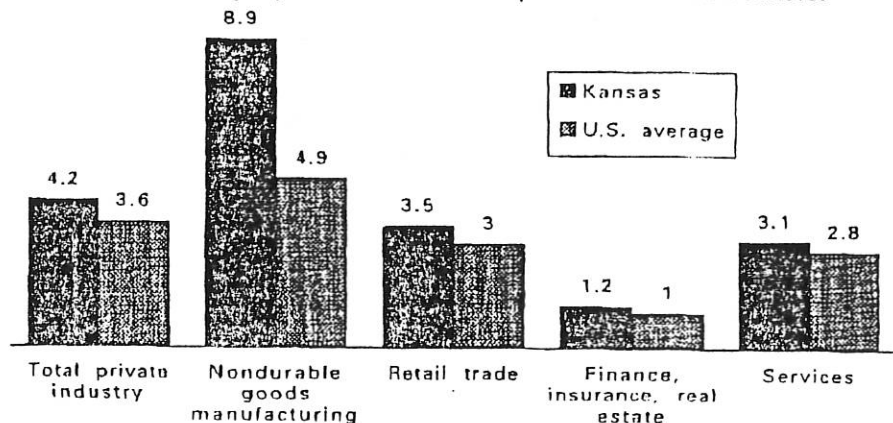
Given the current size of the work force in Kansas, if employers in Kansas improved safety and brought Kansas' fatality rate down to the national average, the lives of 22 workers in Kansas would be saved each year.

Safe & Secure: Improving Workers Compensation in Kansas is a regular newsletter published by the Kansas Coalition for Workplace Safety promoting family security through workplace safety.

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Phone: (316) 262-6800

SEVERE INJURY RATES: KANSAS V. U.S.

Lost-workday injuries and illnesses per 100 full-time workers.



Source: Kansas Department of Health and Environment, 1995

Library takes a soaking

D.L. Whitson
Staff Writer

Ever heard of "freeze-dried" goods?

You might think of coffee or fruit — something edible, anyway.

Probably not books. But that's exactly what had to be done to a significant portion of the children's reference collection at Manhattan Public Library.

After a main water pipe joint came loose and flooded the brand new section of the library Tuesday with several hundred gallons of water, hundreds of books were taken to Manhattan Ice and Cold Storage.

"They have to be frozen to stop the mildewing process," said library director Fred Atchison. "They are wrapped in absorbent paper and frozen, then later thawed, with absorbent paper between the pages."

Atchison said he was notified at home at about 8:30 a.m. of a water leak, and by the time he got to the library, two of the librarians were soaked with water.

"They were scrambling, trying to save the collection," he said today. "In fact, the majority of the staff spent a good portion of the day yesterday working in that area."

Apparently, there had been a

See No. 4, back page

Library gets soaked

④ Continued from Page A1

small leak that had shown up in the basement of the building, Atchison said. There were workmen in the children's area trying to trace the source of the leak when the pipe came loose.

He said the workmen hadn't shut off the water yet because they were only searching for the source.

"We have no idea yet how this happened," Atchison said. "It just puts a blemish on this wonderful new room. One of the staff said, 'Well, it's not new anymore.'"

The section involved is part of the \$3.7 million library expansion that was completed only a few weeks ago. Neither Atchison nor Jerri Garretson, head of children's services for the library, would speculate whether the leak was related to the construction on the new part of the library.

Garretson was one of the first people on the scene.

"When I got to work at about 8 a.m.," Garretson said, "there were two workmen on ladders. I was in the office next to the area when one of them said 'Oh, my God,' and went running, presumably to turn off the water.

"I looked, and there was water pouring down one of the walls, and I and the other librarian started moving the books away from that area. Then the water started coming faster, and suddenly the ceiling gave way and water just crashed down on us."

Garretson said they threw several books at a time across the room trying to save them, but that

the water was coming too fast to save much of the collection.

"Most of the children's reference books were soaked, and the rest of them were very damp," she said. "It's amazing how fast bindings begin to warp and pages shrivel."

Garretson said she thought the incident only lasted a few minutes, but that it seemed "a lot longer."

The children's area was closed until about 2 p.m., Atchison said, but all the summer reading programs and story times went on as scheduled in other parts of the library.

"We blocked off the area and worked out the back door," he said. "We had cars right there to take the books to the freezer. Very little was actually disrupted."

He said it would take a while to assess the damage and find out how much was lost.

"Some of the books are completely ruined," he said. "Others may be able to be salvaged. I think the carpet will be OK, unless it stains, but other than that ... it's mostly the books."

Garretson said the collection on the "parent shelves" of the section are largely irreplaceable.

"These are used by teachers, home school programs," she said. "Some of them are no longer in print."

She said the section is now completely accessible except for two computer terminals and shelves containing a collection of fiction.

"The staff may have to go get things for the customers," she said. "But it's all still there."

COURT CASES DEFINING and/or INVOLVING
“LOWEST RESPONSIBLE BIDDER”

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- III. Prote Contracting v. School Authority, 670 N.Y.S.2d 562 (A.D. 2 Dept. 1998)
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- V. Pages 499 – 503 Words & Phrases, Volume 25a, Lis - Lysol
All Judicial Constructions and Definition of Words and Phrases by the
State and Federal Courts from the Earliest Times, Alphabetically Arranged
and Indexed. Copyright, 1961 by West Publishing

- I. In *Crest Construction Corp. V. Shelby Cty. Bd. Of Educ.*, 612 So.2d 425 (Ala. 1992), the court upheld a prequalification criteria as consistent with the Alabama's "lowest responsible bidder" statute. The court explained that whether to use prequalification as a tool was discretionary, but determining contractor responsibility was mandatory under the statute. *Id.* At 430. The court noted that the prequalification criteria at issue asked about work experience, size, net worth, equipment, etc., all of which were encompassed in the broad notion of responsibility. The court stated that, in addition to the criteria included in the prequalification at issue, responsibility also entailed "less quantitative considerations, such as determining which bidders' in point of skill, ability and integrity would be most likely to do faithful, conscientious work, and to fulfill the terms of the contract." [Citation omitted.] *Id.* This case indicates that prequalification criteria related to ability to competently complete a given project, as well as criteria related to lawful and conscientious business practices, would fall within the broad scope of contractor responsibility for purposes of the Iowa public bidding statutes.

- II. In *John Carlo, Inc., v. Corp of Engineers, Etc.*, 539 F. Supp. 1075, 1077 (N.D. Tex. 1982), the contracting public entity used a Prequalification Questionnaire to determine that a contractor was not responsible because of its relationship with a subcontractor that lacked integrity. The court did not discuss the specific basis of determination that the subcontractor lacked integrity. Nonetheless, the court specifically approved of both the entity's use of a Prequalification Questionnaire and the entity's determination that the contractor was not responsible and therefore could not bid on the project. *Id.* At 1077.

- III. In *Prote Contracting v. School Authority*, 670 N.Y.S.2d 562 (A.D. 2 Dept. 1998), the defendant, New York School Construction Authority (NYCSCA), awarded a contract to the plaintiff, Prote Contracting, for improvements on a high school based on the plaintiff's answers to a prequalification questionnaire. Prior to Prote's completion of the work, NYCSCA discovered that Prote had failed to answer truthfully questions on the prequalification questionnaire regarding any prior criminal investigations, arrests or indictments or other accusatory instruments involving Prote. *Id.* at 563. Based on the discovery, NYCSCA refused to pay the balance due on the contract; Prote sued NYCSCA for the unpaid balance, and NYCSCA defended against Prote's claim alleging that Prote induced the contract through fraud. *Id.* At 563. The court affirmed a lower court's grant of summary judgment to NYCSCA based on NYCSCA's defense that Prote fraudulently induced the contract, holding that Prote's failure to answer the prequalification questionnaire truthfully prevented NYCSCA from properly determining which contractor was the "lowest responsible bidder." *Id.* At 564

IV. In *H.V. Collins Co. V. Tarro*, 696 A.2d 298 (R.I. 1997), court was not Faced with an issue of a bidder's inability to prequalify as "responsible" for Purposes of bidding on a public works contract. The court held that even Absent a finding before the bidding that certain bidders were not Responsible, the public entity had the discretion to award the contract to a Bidder whose bid was not the lowest based on certain factors regarding the Bidders' respective responsibility. Id at 303. The lower court determined That a school district improperly awarded a contract for improvements on a High school to the third-lowest bidder based on information the school District had collected in Request For Proposals from bidders. Id. At 300-01. The Rhode Island Supreme Court reversed, finding that in awarding the Contract the school district had properly considered certain criteria regarding the bidders, such as overall experience in performing public school improvements, prior dealings with local awarding authorities, the experience and credentials of the bidders' employees, the details of the bidders' community-relations programs regarding referendum approval of the project, and the bidders' respective experience with a construction-management team approach. Id. At 302, 305-06. Although the court acknowledged that the school district had not established specific criteria that would disqualify certain bidders from consideration, the court held that statutes such as the one requiring the contract to be awarded to the "lowest responsible bidder" did not require the contract to be awarded to the lowest bidder, and the school district had the discretion to consider other measurable factors which were included in the request for proposals from the bidders. Id. At 303.

LOWEST RESPONSIBLE BIDDER

mission. *Southern Ry. Co. v. U. S.*, Ct.Cl., 64 S.Ct. 869, 872, 322 U.S. 72, 88 L.Ed. 1144.

Under freight land grant equalization agreement wherein railroad agreed to accept for transportation of government property same net rates which a land-grant carrier would be entitled to receive for such transportation service, "lowest net rate lawfully available" as used therein did not mean land grant distance or mileage in particular route having lowest tariff rate but rate could be determined by making deduction from gross tariff rate on one route on basis of number of land grant miles in another route. *Union Pac. R. Co. v. U. S.*, 87 S.E.2d 957, 960, 115 Ct.Cl. 321.

LOWEST REASONABLE RATE

The "lowest reasonable rate" within Natural Gas Act authorizing Federal Power Commission to order a decrease in rates where existing rates are unjust, unlawful, or are not the lowest reasonable rates, is one which is not confiscatory in the constitutional sense. *Federal Power Commission v. Natural Gas Pipeline Co. of America*, 62 S.Ct. 736, 742, 315 U.S. 575, 86 L.Ed. 1037.

LOWEST RESPONSIBLE AND ELIGIBLE BIDDER FOR THE COMPLETE WORK

Under statutes requiring public construction contracts to be awarded to the "lowest responsible and eligible bidder for the complete work" and requiring bids from general contractors to be for the complete work as specified, where one general contractor's bid was lowest only because one of his subcontractor's bids was for acoustical plaster mechanically applied rather than for acoustical tile as specified, it was not the "lowest responsible and eligible bidder for the complete work", and awarding authority was required to reject such bid. *Grande & Son, Inc. v. School Housing Committee of North Reading*, 135 N.E.2d 6, 8, 334 Mass. 252.

LOWEST RESPONSIBLE BID

Though discretion vested in board of public instruction of county in respect to letting of contracts for construction of public school buildings may not be exercised arbitrarily, no mandatory obligation is imposed

on the board to consider the lowest dollars and cents bid as being the "lowest responsible bid", to exclusion of all other pertinent factors. *Culpepper v. Moore, Fla.*, 40 So.2d 366, 370.

LOWEST RESPONSIBLE BIDDER

In general—p. 499

Ability, experience, reputation—p. 500

Discretion—p. 502

Cross References

Responsible Bidder

In general

In determining who is the "lowest responsible bidder" the county authorities may take into consideration the quality of materials as well as their adaptability to particular use required. *Mitchell v. Walden Motor Co.*, 177 So. 151, 154, 235 Ala. 34.

Term "lowest responsible bidder" within statute requiring that fresh water supply districts let improvement contracts to such bidders involved compliance with statutory requirements relating to competitive bidding. *Niles v. Harris County Fresh Water Supply Dist. No. 1A, Tex.Civ.App.*, 336 S.W.2d 637, 638.

Laws 1875, c. 634, declaring that all contracts for certain work should be awarded to the lowest bona fide "responsible bidder," meant that the successful bidder should be one "able to respond or to answer in accordance with what is expected or demanded." *People v. Dorsheimer, N.Y.*, 55 How. Prac. 118, 120.

"Lowest responsible bidder," as used in Act May 23, 1874, P.L. 230, 53 P.S. § 1001, directing municipal contracts to be awarded to the lowest responsible bidder, refers, not to pecuniary ability only, but also to judgment and skill. *Douglass v. Commonwealth*, 108 Pa. 559, 563, 42 Leg.Int. 337.

In the requirement that public work should be let to the lowest responsible bidder, the term "lowest responsible bidder" means one who complies with all the requirements of the statute, specifications, etc., not merely one whose bid is less than his competitors'. *Boseker v. Wabash County Com'rs*, 88 Ind. 267.

LOWEST RESPONSIBLE BIDDER

In general—Cont'd

Section 12 of said act, Laws 1923-24, c. 48, 69 Okl.St. Ann. § 48, provides: "All contracts for construction work upon the state highway system shall be let to the lowest responsible bidder, or bidders." Held, this language contemplates and implies competitive bidding. *Flynn Const. Co. v. Leininger*, 257 P. 374, 378, 125 Okl. 197.

Charter provision requiring competitive bidding for city's contracts, and that contract be let to "lowest responsible bidder," means one who is responsible and offers the lowest price on the advertised basis; bids being measured by standard of advertised proposal. *Pascoe v. Barlum*, 225 N.W. 506, 507, 247 Mich. 343, 65 A.L.R. 833.

The requirement of the charter of the city of Cleveland that contracts be let to the "lowest responsible bidder" is not violated by the award of a contract to the lowest responsible bidder on an alternative of material and method of construction adopted after all bids have been duly considered. *L. & M. Properties Co. v. Burke*, 86 N.E.2d 768, 774, 152 Ohio St. 28.

Where one whose bid for county road work was the lowest as to part of the work failed to submit samples of material to be tested as reasonably requested and the bid of the one to whom the contract was awarded was the lowest on all the work, such latter bid could be regarded and accepted by the county commissioners as the "bid of the lowest responsible bidder," as required by statute. *Suburban Inv. Co. v. Hyde*, 55 So. 76, 78, 61 Fla. 809.

Ability, experience, reputation, etc.

Selection of lowest "responsible bidder" by federal officers requires that not only the pecuniary ability but also the judgment, skill, capacity, and integrity of bidder be considered. *O'Brien v. Carney*, D.C.Mass., 6 F. Supp. 761, 762.

In awarding a contract for the construction of a drainage ditch, the county auditor, in determining who is the lowest responsible bidder, is not limited to an inquiry as to financial responsibility, but may, in the exercise of the discretion vested in him, inquire also as to the fitness and ability of the bidders to do and perform the particular work.

Ability, experience, reputation, etc.—C't'd
Kelling v. Edwards, 134 N.W. 221, 223, 116 Minn. 484, 38 L.R.A., N.S., 668.

The board of county commissioners in accepting the lowest responsible bid exercise a discretion which may consider the ability, capacity, experience, efficiency, and reputation of the bidders. *Chaffee v. Crowley*, 190 N.W. 308, 49 N.D. 111.

The phrase "lowest responsible bidder," as used in the Local Improvement Act, does not mean the lowest bidder financially only, but the bidder who by experience and otherwise is most capable of doing the work in a satisfactory manner. *People v. Omen*, 124 N. E. 860, 865, 290 Ill. 59.

"Responsible," as used in Act 23d May, 1874, P.L. 230, declaring that all work to be done for the city shall be performed under contract, to be given to the lowest responsible bidder, means not only pecuniary ability to make a good contract by security for its faithful performance, but means the one who, under all the circumstances, will probably best perform the work. *Commonwealth v. Mitchell*, 82 Pa. 343, 349.

The word "responsible" in the phrase "lowest responsible bidder," as used in Gen. St. 1909, § 1017, providing for competitive bids before awarding contracts for public improvements, implies skill, judgment, and integrity necessary to a faithful performance of the contract, as well as sufficient financial resources and ability. *Williams v. City of Topeka*, 118 P. 864, 866, 85 Kan. 857, 38 L.R.A., N.S., 672, Ann. Cas. 1913A, 497.

"Lowest responsible bidder" to whom contracts for transportation of pupils shall be awarded, means more than amount of bid; it comprehends bidder's fitness in every respect, his equipment, his morals, his skill and care as a driver, his faithfulness and regularity in the discharge of his duties, his ability to control a group of children and to properly protect them at all times, etc. *Hutto v. State Board of Education*, 162 S.E. 751, 753, 165 S.C. 37.

The term "lowest responsible bidder" in provisions of New York City Charter that award of contracts on public letting must be made to lowest responsible bidder does not mean one who is only pecuniarily responsible, but one who also possesses moral worth, and

LOWEST RESPONSIBLE BIDDER

Ability, experience, reputation, etc.—C't'd implies skill, judgment and integrity as well as sufficient financial resources. *Picone v. City of New York*, 29 N.Y.S.2d 539, 541, 176 Misc. 967.

St.1881. p. 59, § 5, providing that the board of commissioners having charge of the erection of an insane asylum may adopt or reject any or all bids for the erection of such asylum not being responsible or satisfactory, but in determining bids for the same work or material the "lowest responsible bid" shall be taken, means not only the bid by the one whose pecuniary ability to perform the contract is best, but the one in point of skill, ability, and integrity who is most likely to do faithful, conscientious work, and fulfill the contract promptly, according to its letter and spirit. *Hoole v. Kinkead*, 16 Nev. 217, 220.

"Responsible," as used in a corporate charter providing that contracts for public improvements shall be let to the lowest responsible bidder, is not limited to financial, but means ability to perform all the conditions of the contract; and the commissioner of public works may reject a bid notwithstanding it is the lowest made, and the bidder is able to give the required bond, if in the judgment of that official, after due investigation, the materials customarily used, and the workmanship exhibited by the bidder in the performance of the kind of work required, are poor and unsatisfactory. *People v. Kent*, 43 N.E. 760, 761, 160 Ill. 655.

Contractor employing union labor which bid \$17,700 on state project was "lowest responsible bidder, taking into consideration the location of the institution," within statute providing that contracts made by state purchasing agent must be awarded to such lowest bidder notwithstanding another contractor employing nonunion labor bid \$17,400, where there was urgent need for early completion of work, and to award contract to contractor employing nonunion labor might result in delay and interference. *Pallas v. Johnson*, 68 P.2d 559, 561, 100 Colo. 449, 110 A.L.R. 1403.

Act 1874, requiring all public work and materials which are capable of being contracted for to be awarded to the "lowest responsible bidder," means the bidder lowest in amount and pecuniarily responsible. The word "responsible," as defined by Webster,

Ability, experience, reputation, etc.—C't'd means liable to accounting, accountable, answerable, able to discharge an obligation, or having an estate adequate to the payment of a debt. As used in the statute, it refers to the pecuniary ability of the bidder to answer to the undertaking, so that the interest of the city should suffer no damage. Lowest in price and responsibility, in the sense of being accountable, able to discharge the obligation, so as to save the city from pecuniary loss, is what is intended by the act of 1874. *Gutta Percha Co. v. Stokely*, Pa., 11 Phila. 219-221.

The phrase "lowest responsible bidder", in statute requiring all municipal contracts for work, supplies or material, for which must be paid a sum exceeding \$500, to be let to "lowest responsible bidder" after advertisement for bids, does not merely mean lowest bidder whose pecuniary ability to perform contract is deemed to be best, but rather means the bidder who is most likely in regard to skill, ability and integrity to do faithful, conscientious work, and promptly fulfill contract according to its letter and spirit. *Koich v. Cvar*, 110 P.2d 964, 965, 111 Mont. 463.

The fact that construction company submitted lowest bid for city sewer construction contract did not, as matter of law, establish such company as "lowest responsible bidder", to which New York City Charter requires award of contract on public letting, but acting borough president, as awarding agency, was charged with judicial duty to determine whether such company possessed integrity and moral worth or was actually a front for discredited and disqualified contractor and was authorized to investigate and consider company's background before making award. *Picone v. City of New York*, 29 N.Y.S.2d 539, 541, 176 Misc. 967.

The term "lowest responsible bidder" as used in city charters with respect to competitive bidding means the lowest bidder whose offer best responds in quality, fitness and capacity to the particular requirements of the proposed work, and that where by the use of such term the council has been invested with discretionary power as to which is the lowest responsible bidder having regard to the quality and adaptability of the article to the particular requirements of its

LOWEST RESPONSIBLE BIDDER

Ability, experience, reputation, etc.—C't'd Discretion—Cont'd

use, such discretion will not be interfered with in the absence of direct averment and proof of fraud. *Hodgeman v. City of San Diego*, 128 P.2d 412, 415, 53 Cal.App.2d 610.

The term "lowest responsible bidder," used in section 7623, par. 6, General Code, does not mean the lowest bidder. A bidder is not necessarily a responsible bidder because he can give a construction bond. The term "responsible" is not limited to pecuniary ability, but pertains to many other characteristics of bidder, such as his general ability and capacity to carry on the work, his equipment and facilities, his promptness, and the quality of work previously done by him, his suitability to particular task, and other qualities which are found necessary to consider in order to determine whether contract could be performed strictly. A board of education has a right in determining his responsibility to consider the character of work done by such bidder on other contracts performed for the same board. *Hudson v. Board of Education of Wheelersburg Rural School Dist.*, 179 N.E. 701, 703, 41 Ohio App. 402.

The word "responsible," in the phrase "lowest responsible bidder," in section 1356, which provides that "no contract except for teacher's salary, professional services, janitors' wages, or school text-books involving the expenditure of school funds or money appropriated for any purpose relating to the educational system of this state, or any county, district or school corporation therein, when the amount exceeds one hundred dollars, shall be let until proposals are advertised for a period of ten days, and after such advertisement, only to the lowest responsible bidder, * * *" means something more than mere financial responsibility. It means responsibility as regards the duty to be assumed by the contractor under the particular contract, and includes all the various elements that bear on that question, such as the integrity of the bidder, his skill, ability, and capacity to perform the particular work. *Ellingson v. Cherry Lake School Dist.*, 212 N.W. 773, 775, 55 N. D. 141.

Discretion

The board of directors of a school district could not let a contract for the con-

struction of a new building to the fourth lowest bidder without making any investigation of the responsibility of the three lower bidders, under School Code, § 617, Act July 10, 1919, P.L. 889, 24 P.S. § 763, directing the contract to be let to the lowest responsible bidder, though that section does not require a letting to the lowest bidder if in the discretion of the board he is not deemed responsible. *Hibbs v. Arensberg*, 119 A. 727, 729, 276 Pa. 24.

Act May 23, 1874, directing municipal officers to award certain contracts to the lowest responsible bidder, applies not to pecuniary ability only, but also to judgment and skill. The duties imposed on the city authorities are not merely ministerial, limited to ascertaining whose bid was the lowest and the pecuniary responsibility of the bidder and his sureties, but it calls for the exercise of duties which are deliberative and discretionary. *Interstate Vitrified Brick & Paving Co. v. City of Philadelphia*, 30 A. 383, 164 Pa. 477; *Douglass v. Commonwealth*, 108 Pa. 559, 563, 42 Leg.Int. 337.

"Lowest responsible bidder" does not mean that such bidder is merely pecuniarily responsible to carry on work, but word "responsible" contemplates promptness, faithfulness, and capacity and ability to do work according to plans and specifications. One assailing municipal contract not let to lowest bidder must show lowest bidder is "responsible," and that municipal officers abused discretion. *Wilson v. City of New Castle*, 152 A. 102, 103, 301 Pa. 358.

The "lowest responsible bidder" within section of General Municipal Law providing that certain contracts shall be awarded to lowest responsible bidder does not necessarily mean the lowest dollar bidder and awarding agency has duty and discretion to investigate integrity and moral worth of various bidders and examine their background and, in absence of any factual showing of dishonesty, fraud, collusion, corruption or bad faith, the determination of appropriate municipal authority should not be overturned by courts. *Application of Limitone*, 189 N.Y.S.2d 738, 740, 21 Misc.2d 376.

Where lowest bidder for construction of public school building was already engaged

LOWEST SECURE BID

Discretion—Cont'd

in constructing another school building which was about the largest building he had ever built, second lowest bidder had agreed to construct building in 120 days less time, and architect for county board of public instruction had informed board that error made by lowest bidder in an earlier bid indicated irresponsibility, board did not abuse its discretion in determining that second lowest bidder was the "lowest responsible bidder" to whom contract should be awarded. *Culpepper v. Moore*, Fla., 40 So.2d 366, 370.

General Municipal Law imposing obligations on public officers requires the awarding of purchase contracts there described to the "lowest responsible bidder" which means truly competitive bids where there are more than one, and not bids which deceptively seem to be competitive but which are in fact rigged or fixed by agreement between the bidders, and such an agreement, if corruptly made and acted upon, could prevent the public officer from following the mandate of the statute and could constitute an obstruction of the due administration of the statute requiring the award to the lowest responsible bidder. *People v. Bareika*, 195 N.Y.S.2d 97, 99, 9 A.D.2d 1002.

The statute requiring that contracts for public improvements shall be let to the lowest responsible bidder does not require the letting of contracts to the lowest bidder, on ascertaining his financial responsibility only, but the term "responsible" includes the ability to respond by the discharge of the contractor's obligations in accordance with what may be expected or demanded under the contract, and where the board of local improvements has exercised its discretion in the award of a contract for a public improvement, the presumption arises that its action was legal, and the party asserting the contrary has the burden of overcoming the presumption by proof that the board acted without jurisdiction or fraudulently. *Hallet v. City of Elgin*, 98 N.E. 530, 532, 254 Ill. 343.

Under Oakland City Charter, §§ 126, 130, requiring the city council to award a contract to the lowest bidder, except as otherwise provided in the charter, allowing rejection of any and all bids, and requiring rejection of bid of any party who has been delinquent or unfaithful in a former con-

Discretion—Cont'd

tract with the city, and all bids other than the lowest regular bid, and providing for public work, when costing over \$500, to be done by contract, let to "lowest responsible bidder," the term "lowest responsible bidder" does not mean in every case the lowest bidder who has not been delinquent or unfaithful in a former contract with the city; but where the character of work or materials required calls for the exercise of sound discretion by city officials in determining the lowest bidder whose offer best responds to the requirements of the work, the council may use such discretion and award the bid to such bidder. *West v. City of Oakland*, 159 P. 202, 204, 30 Cal.App. 556.

The expression "lowest bidder" necessarily implies a common standard by which to measure respective bids, which standard must necessarily be previously prepared specifications of work to be done and materials to be furnished; specifications freely accessible to all who may desire to compete, on which alone their respective bids must be based. By the phrase "lowest responsible bidder," as used in a statute relating to school buildings, it was not intended to limit the power of the board to the simple examination of the different bids tendered without reference from whom they came, and that they should blindly select one solely from the consideration that it was lowest in price, but it required the board to select that bidder who, all things being considered, had ability to respond to the requirements of the contract having full regard to the subject-matter. The word "responsible," as employed in the act when applied to contracts requiring for their execution not only pecuniary ability, but also judgment and skill, imposes not merely a ministerial duty on the city authorities, but also duties and powers deliberate and discretionary. *Hannan v. Board of Education of City of Lawton*, 107 P. 646, 650, 654, 25 Okl. 372. 30 L.R.A., N.S., 214, citing *Mazet v. City of Pittsburgh*, 20 A. 693, 137 Pa. 548; *Commonwealth ex rel. Snyder v. Mitchell*, 82 Pa. 343.

LOWEST SECURE BID

The phrase "lowest secure bid" in the statute relating to municipal improvements

INFORMATION ON SKILLED WORKFORCE SHORTAGE AND TRAINING

TABLE OF CONTENTS

- I. The November, 1997 issue of Cockshaw's Construction Labor News + Opinion reported on "The Business Roundtable's 14-page study titled, "Confronting the Construction Workforce Shortage." The following excerpts are from Cockshaw's article, "Blueprint for Future?", and are copied with the permission of Cockshaw's.
- II. "Builders have more work than workers" published in the Wichita Eagle Newspaper.
- III. The February 1997 issue of Cockshaw's Construction Labor News + Opinion reported on the Falls Management Institute's "1996 - 1997 U.S. Markets Construction Overview" report and a study by the Construction Labor Research Council. The following article "Construction's No. 1 Challenge" is copied in its entirety with the permission of Cockshaw's.
- IV. "Wanted: Skilled help" published in the Manhattan Mercury newspaper.
- V. How stressful are these jobs?
- VI. A few excerpts from the Executive Summary of "Kansas and Prevailing Wage Legislation" by Peter Philips, Ph.D. Professor of Economics, University of Utah.

COCKSHAW'S

Construction Labor News+Opinion

THE LEADER IN LABOR ANALYSIS SINCE 1971

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Blueprint for Future?

Owners recommend ways to deal with skilled craft shortages

A chemical company experienced delays on a \$60 million project — even after paying overtime and per diem money to attract craft workers.

A paper mill expansion required special wage rates, scheduled overtime and recruiting outside normal areas to reduce the effects of worker shortages. Despite these measures, the mill still experienced cost overruns and schedule delays.

A utility company had problems attracting electricians pipefitters, boilermakers and insulators for a \$3 million boiler outage.

“These examples are only a small sample of the real problems being experienced by present-day owners,” concludes The Business Roundtable, an association comprised of the country’s largest corporations.

In a revealing new 14-page study titled, “Confronting the Skilled Construction Work Force Shortage: Blueprint for the Future,” BRT exposes industry’s skills’ shortfall problems and offers specific recommendations to deal with them.

Before examining the proposed solutions, let’s first look at key challenges the Roundtable uncovered in a recent membership survey.

Over sixty percent of the owner-user respondents experienced shortages of skilled craft workers. Seventy-five percent said the trend had increased over the past five years.

Hardest hit by worker scarcities is the chemical and petrochemical industry. Nearly nine out of ten companies in

Blueprint for Future?... (Continued from page 1)

this sector had problems attracting skilled craft workers to their projects. (See accompanying graph.)

And one of every four owner-users hit by shortages encountered "serious project impacts in cost overruns and/or schedule delays."

Electricians, pipefitters and welders were trades most frequently reported as scarce, but every craft covered in survey experienced some level of shortfalls.

A region-by-region analysis indicated that all areas face worker shortages but such problems are most acute in the Southwest and Southeast Gulf Coast.

The survey also found that "special incentives" are now being used extensively to attract skilled workers.

These include the most popular incentive — overtime — along with other inducements like special recruiting, special wage rates, completion bonuses, signing bonuses and special bonuses.

The graph on page three illustrates the percentage of survey respondents offering each type of incentive.

(Note: An article next month will explore the growing practice of using "special incentives" to recruit skilled craftsmen and its impact on craft pay.)

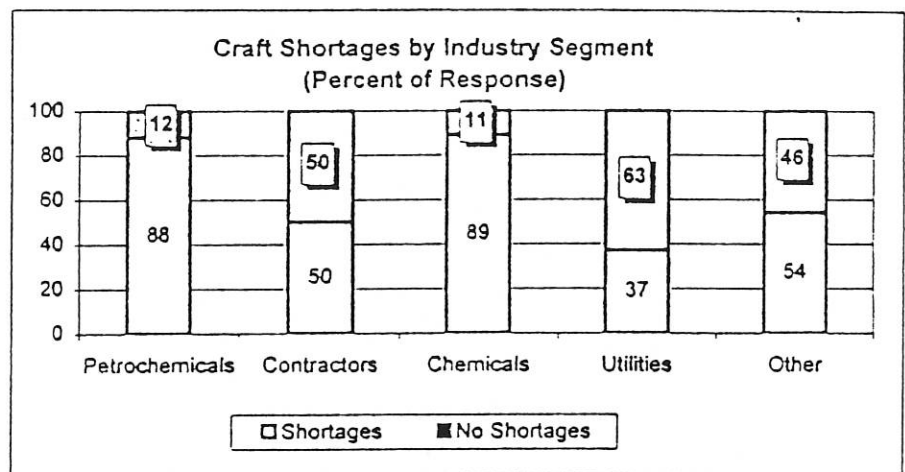
In analyzing the skills shortage dilemma, BRT's report echoed many of the points that COCKSHAW's made in its recent four part series titled "Construction's Number One Challenge" (see February, March, April and May issues).

A central point the Roundtable made was that "a major problem facing construction is the industry's inability to attract new people."

It added: "The image of the skilled craft worker has fallen on hard times. It does not command the respect that it once did."

Keeping skilled workers in industry begins with training

Although image may be the driving force behind recruitment problems the industry faces, career path is the driver for retention.



Solving the retention problem — keeping skilled craft workers in the industry — begins with craft training and development. If retention rates can be improved, some pressure will be relieved from the recruitment challenge.

Will owners make training a condition for winning work?

BRT's report also suggested that, like safety, construction users could make training a condition for bid qualification. It explained:

"Not many years ago, safety on construction sites was a matter of choice. Contractors either chose to invest in it or not.

"Those who recognized the moral obligation and the financial rewards from performing work safely were also the more successful.

"When owners took the initiative to drive the process and remove the 'choice' — making safety a condition of employment — everyone benefited.

"There were no discussions of how to pay for it. The owners knew (and those who didn't, learned quickly) that any cost they incurred and added to their pricing, was more than offset by savings in such areas as insurance and productivity.

"Training should be treated the same. Maintaining a skilled work force is mandatory. It is necessary to provide cost-effective construction."

BRT's bottom line recommendation:

"Owners should only do business with contractors who invest in training and maintain the skills of their work force."

One way to do this is for owners and contractors to develop a "training metric" — a prequalification index like the experience modification rating for safety performance.

BRT endorses the creation of just such a standard to measure the effectiveness of industry training programs.

Make commitments to training a factor for evaluation in pre-qualification

The Roundtable report also recommends that owner-users "make contractor commitments to craft training a factor for evaluation in pre-qualification."

To accomplish this objective, users should make contract documents require:

- A description of the contractor's overall

program, investment in training, and any specific training planned for the proposed project;

- A work force staffing plan and craft skill level breakdown by journeymen, helper and apprentice categories; and
- Proposed methods to access skill proficiencies such as skills assessment testing, rework measurement, repairs, weld rejection rate, etc.

Moreover, BRT wants owners to "create a level playing field" when contractors bid for their work.

This can be done by "establishing expectations in the areas of work force training and development, work force recruitment and worker retention."

The report adds that developing criteria in these areas for contractor proposal evaluations will provide the necessary minimum requirements for contractor selection.

All groups must work to tackle industry recruiting challenges

The Roundtable also strongly recommends that the entire industry focus on what most agree is construction's prime recruiting drawback — a very poor image.

This problem, the report stresses, "must be addressed first and foremost." BRT explains:

"Everyone in the industry had a hand in creating the image that exists and everyone must have a hand in changing that image.

"All groups must emphasize more of the positives, opportunities, accomplishments and importance of the construction industry. At the same time, the negative perceptions must be addressed and presented in a better light.

"Consideration also should be given to pooling industry resources for the greatest impact at both the national and regional levels."

The Business Roundtable's "Confronting Skilled Construction Work Force Shortages: Blueprint for the Future" is an excellent analysis of construction's Number One challenge.

The report's recommendations deserve the thoughtful consideration of all industry segments. ♦

Builders have more work than workers

Construction industry must develop long-term strategy for attracting employees, contractors say.

Molly McMillin
Wichita Eagle

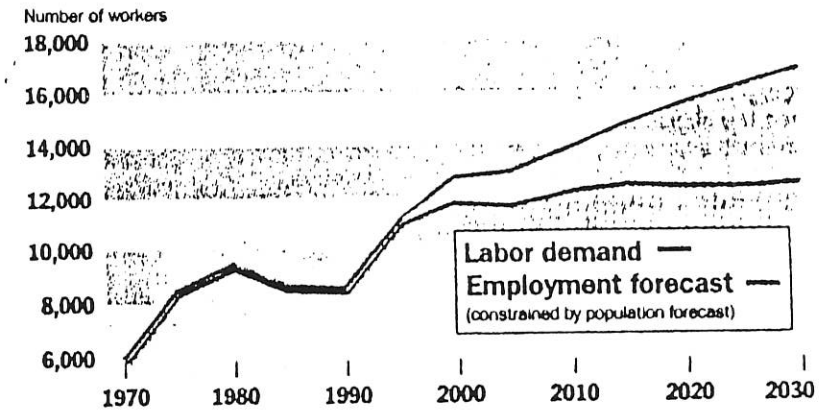
Tom Dondlinger, president of Dondlinger & Sons Construction, figures his company could take on 30 percent more work if the skilled construction workers were available.
Dondlinger is not alone. His story is being echoed by contractors, subcontractors and suppliers throughout Wichita and across the state who need framers, cement finishers, carpenters and most of other workers.
"It's getting almost to the desperate point," Dondlinger said.
Wichita, like other places in the region and throughout the country, is experiencing good times. The economy remains strong, interest rates remain low and unemployment

ment levels in Kansas have hit a 24-year low.
At the same time, new apartments, restaurants, businesses and houses are going up around the city.
"I think we've got tremendous potential," said Charles Schultz, director of project development at Eby Construction. While nobody likes to maneuver around orange barrels, those barrels mean growth, he said.
"It means we're expanding and we're going to be something tomorrow."
That growth is being hampered by a shortage of construction workers. A lack of workers is a mantra being echoed by other segments of the economy, such as manufacturing, service and retail.
Dondlinger and Schultz spoke to members of the Wichita Area Chamber of Commerce Business Growth Committee on Thursday about the challenges facing the industry. Dondlinger, for example, said he has been looking for a mechanic to maintain heavy equipment for three months.
"This is truly a workers' market right now in Kansas,

See **WORKERS**, Page 9A

Constructing the future

With low unemployment and a steady economy, construction firms in Sedgwick County could face a shortage in labor compared to the number of workers needed to complete the construction work that could be done.



Source: Kansas Department of Human Resources

The Wichita Eagle

WORKERS

from Page 1A
and we don't expect that to change anytime soon," said Wayne Franklin, secretary of the Kansas Department of Human Resources.
James Haly, 23, had no problem finding a job as a drywall finisher when he moved to Wichita four months ago.
"I knew I could get a job," Haly said, who has three years of experience. "If you look in the paper, there are all kinds of openings."
That doesn't begin to count the number of jobs posted on bulletin boards with suppliers, advertised through trade organizations and passed along by word of mouth.
In two years, the construction industry in Sedgwick County is expected to fall about 800 workers short of demand, according to a study done by Wichita State University's Center for Economic Development and Business Research.
Some skilled construction workers have left to take jobs with the local aircraft plants. Out-of-state headquarters continuously call workers at local companies to leave them away, Dondlinger said.

SEDGWICK COUNTY CONSTRUCTION WORK

Year	Average wages	Number of workers
1993	\$23,253	12,000
1994	\$24,347	12,100
1995	\$25,494	12,600
1996	\$26,425	13,700
1997	\$27,274	14,100

Source: Kansas Department of Human Resources

people, Schultz said.
"It has not been a glamorized position," Schultz said.
Some young people do not consider the potential, said Ted Farha, secretary/treasurer of Farha Construction.
Instead, they take a job for \$8, \$9, or \$10 an hour with a restaurant and don't think about their careers

According to the state Department of Human Resources, the average annual salary for Sedgwick County construction workers was \$27,274 in 1997.
Another concern is that the construction labor force is aging, Schultz said. And those workers are not encouraging their children to follow in their footsteps. Instead, they want their children to go to college and enter other professions.
The industry also suffered when a downturn in the 1980s resulted in workers leaving their trades to seek other employment.
High school students must be made more aware of and encouraged to enter the field, Schultz said. And the industry must work on its image and try to find ways to recruit workers to come to Kansas, Schultz said.
Local industry, business and city leaders are studying the scope of the problem and ways to help solve it.
"We could produce more," Schultz said, "if we had more skilled people."

Molly McMillin writes about banking, real estate and economic development. She can be reached at 369

COCKSHAW'S Construction Labor News+Opinion

THE LEADER IN LABOR ANALYSIS SINCE 1971

February, 1997
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Construction's No. 1 Challenge Industry must launch intense campaign to solve its acute skills shrinkage

(This is the first of a special series which will examine craft shortages and offer proposed solutions.)

Those who dismiss this industry's labor supply shortages as a "temporary" problem are not dealing with reality.

The fact that these shortages are real — and growing — has been well documented in COCKSHAW'S past issues (see March, June and September 1995; January, February, July, August 1996 issues and page six this month).

Now there's more proof that skills' shortfalls are a clear and present danger to construction's health. It comes from an analysis by the Fails Management Institute which warns that "the shortage is very real and could last for up to ten years."

According to FMI's "1996-1997 U.S. Markets Construction Overview" report, there are several factors which exacerbate the manpower shrinkage. The key ones:

- A so-called "baby bust" from 1965 to 1976 which resulted in a reduction of new workforce entrants;
- Construction's "image problem" which makes this industry an unattractive career choice for young people;
- Competency levels of those who are attracted to construction are often below those needed to meet the minimum requirements for skilled labor;
- The retirement of thousands of long-time craftsmen is creating a need for at least 200,000 new construction workers each year.

Construction's labor supply problems are complicated

Construction's No. 1 Challenge... (Continued from page 1)

further by its inability to keep craft workers over their entire working careers. Many workers leave the industry by the time they reach their mid-30s, a study by the Construction Labor Research Council (CLRC) revealed.

CLRC found that many of these experienced tradesmen move on to jobs in other fields that are potentially more rewarding.

The study cited the lures of "a fixed work site, decent working conditions, stable jobs, better wages and benefits" as reasons construction workers go elsewhere.

The bottom line is that this industry is wrestling with serious entry-level recruiting problems — compounded by an outflow of skilled craftsmen in their prime working years.

So today the signatory and nonsignatory sectors must urgently address a critical issue. And that is whether the industry will have a sufficiently skilled workforce to meet construction's future demands.

Apprentice programs are starved for qualified applicants

Talk to those who run industry apprenticeship programs and you'll find increasing pessimism. Most of these officials are appalled at the alarming decline in numbers and qualifications of entry-level workers.

Where once there were hundreds of applicants for a class, often only a few dozen apply. Worse, a surprising number of those who do apply are woefully deficient in basic reading and math skills.

Stated more explicitly, more and more apprentice programs are finding a growing applicant pool of bottom-of-the-barrel types.

And a key reason for this was noted in both the aforementioned FMI and CLRC studies — that construction compares unfavorably to many industries with which it competes for workers.

To be brutally blunt, this industry has a lousy, lousy image — among students, parents, educators, general media and public.

There are many reasons for this. One is the "beating" construction takes from the media. Think about it. Except for the trade publications, when is the last time you recall reading anything good about this industry?

Most of what dominates general news coverage are accounts of various disasters such as accidents or deaths from building collapses.

There are also well publicized incidents of bid-rigging and other forms of corruption that make headlines in metropolitan area television and print outlets.

But construction's unfavorable comparisons to other industries can't just be blamed on "the media." There are additional factors that can no longer be ignored if construction ever hopes to compete for qualified workers.

Compares some construction conditions to those of migrant farm workers

A prime reason workers don't view construction as a rewarding career is pinpointed by someone long involved in training and recruitment issues.

He is Leonard Toenjes, a former union carpenter who for many years was director of apprenticeship training at the Construction

(Continued on page 3)

Construction's No. 1 Challenge... (Continued from page 2)

Training School in St. Louis. Toenjes is currently executive vice president of AGC's St. Louis chapter.

"The challenge in recruiting workers," the contractor official points out, "is knowing the competition. And when you contrast the working conditions and benefits of other industries to construction's, this industry compares poorly.

"For example, do you know of any other major group of workers in this country other than construction's that do not receive paid sick days, paid holidays and paid vacations?

"The only other major group besides construction that does not get these basic benefits is migrant farm workers.

"This helps explain why we're now losing some young people even to the fast food sector.

"Many fast food firms provide certain wage and benefit guarantees — plus steady work — that are often more attractive to entry-level people than what construction offers." The AGC executive concludes:

"As long as this industry is moving toward conditions comparable to those in the migrant farm sector, it will not be able to recruit qualified workers — or keep the truly skilled from leaving for better opportunities."

Industry fails to provide adequate pay to compensate for its negatives

At one time, of course, construction's generous pay compensated somewhat for the absence of paid sick days, paid holidays and

paid vacations. But this is no longer the case (see related article on page four).

The lack of competitive wages and fringes aside, there are other reasons construction has difficulty attracting young entry-level people.

Today's society promotes the idea that the only way into "middleclassdom" is through a four-year college degree (even though more and more graduates are finding that a sheepskin isn't as valuable as it once was).

Construction has many positives that industry must promote

Unfortunately, many students, parents and general education professionals do not understand the opportunities, satisfactions and

rewards from an apprenticeship that prepares people for immediate entry into the skilled work force.

That's largely construction's fault for hiding its many strengths under the proverbial bushel and not actively promoting

industry's countless job opportunities to schools and the public at large.

Construction people often criticize educational institutions and guidance systems for not recommending construction as a career.

But unlike many industries which are actively engaged in career promotion, few in labor and management have expended much effort getting their message across to educators. This must change!

Faced with all the negative factors we've highlighted, it's clear that construction has its work cut out for it. To succeed in this effort, the industry must begin by launching

(Continued on page 8)

"Many fast food firms provide certain wage and benefit guarantees — plus steady work — that is often more attractive to entry-level people than what construction offers."

Leonard Toenjes, Executive Vice President
Associated General Contractors of St. Louis

Construction's No. 1 Challenge... (Continued from page 3)

an intense image-building effort.

Success in attracting bright, motivated young men and women to construction depends on the ability to market this industry's many positives — and candidly address its negatives.

COCKSHAW's long involvement in construction convinces us that there are some very appealing positives to sell. A few key ones that should be spotlighted in a career marketing campaign follow:

- The industry uses — and teaches — high-tech skills;
- It is a career where young people “learn while they earn”;
- Craftsmen point with pride to the product of their labor, each being different from any other;
- Construction is a career path that has no limits — from field worker, to supervisor, to front office — even on to possible company ownership.

These are just some of the many strengths that offer potent ammunition for a much-needed, long overdue marketing effort to influence the career decisions of young

people and all segments of society.

Promoting construction is a multi-faceted process — similar to selling any product. But in this case, the “product” is a construction career.

Its rewards must be spelled out and promoted vigorously — to elementary, middle and high school officials and students, to the electronic and print media, and to the public.

Based on our interviews with experts in the career promotion field, future issues of COCKSHAW's will reveal the best strategies to market construction's strengths.

Hopefully, this special series of articles will help the industry launch a concerted and determined campaign to influence young people to choose construction as a career.

Absent this vitally-needed effort, the only people construction will attract are those who can't get a job elsewhere. ♦

Coming in COCKSHAW's:

Annual breakdown of contractor costs, including wage-fringe rates by region ... Strategies to recruit young entry-level workers ... plus other key labor-related and cost trends.

How you can get MORE information

I'm not a subscriber now. Please send me a FREE current issue and subscription details at no obligation.

I would like _____ reprints of this issue, February 1997 (available as supplies last). I understand I will be billed 65¢ for each copy plus mailing costs.

Please send me the publications checked off below, with an invoice for cost plus shipping.

- Benefit Cheating: How Corrupt Contractors Underbid Competitors and Cheat Employees (\$30+\$2s/h)*
- How Contractors Can Improve Jobsite Productivity and Profits (\$15+\$2s/h)*

me: _____ at: _____

Address: _____

City/State/ZIP: _____ Phone: _____

Mail to COCKSHAW's, P. O. Box 427, Newtown Square, PA 19073.
For fastest service, FAX or call Janet at (610) 789-6573

Wanted: Skilled help

① Continued from Page A1

He said a recent survey of high school seniors ranked 33 jobs on desirability. Construction trades ranked No. 32, just above migrant field workers.

"We've all encouraged our children (to enter) college and the white-collar field," Carpenter said. "No one finds dignity in the trades."

But that's not appropriate, Fair said. For instance, his company just finished work on Hale Library at Kansas State University.

"That's a hell of a responsible job, to give a guy a set of plans — and require that he finish it — on time and under budget," Fair said. "These guys have to be bright. They have to have people skills and know the process."

And it's not as if it's all low-pay work, according to Fair.

"A lot of hourly people make right at \$40,000 with a lot of fringes," he said. "Ten years from now, they're really going to make a lot of money."

Stanley Bartel, agricultural science instructor at Manhattan High School, has taught a variety of vocational agricultural and shop classes. He agrees that skilled labor has an image problem to overcome.

"Working with your hands is not a low-class thing to do," he contends. "Being a plumber, being a carpenter is not for dummies. You have to be smart to do that."

Duane Dunn, vice president of Manhattan Area Technical College, said he thinks 'labor' itself has become a dirty word.

"People don't want to work hard," Dunn said. "We idolize people making huge dollars with minimal labor. As a society, we look for the easy, quick buck. Welding, ... plumbing, electrical work is hot, dirty, strenuous type work."

But he said it's good, stable work that's in demand. Dunn said students in trades classes at the college "all get jobs."

The college offers a building trades program, an air-conditioning program and a welding program, among others. But admission to those programs is limited, he said. The State Board of Education, which controls vocational-technical schools, doesn't want to flood the market with workers, he said.

"What we've noticed is when the demands are the highest, the enrollment is the lowest," Dunn said. "It's always a little bit off-sync. We've talked about expanding the program, but if it was doubled, they wouldn't all get jobs."

At the high school level, several years ago the shop class enrollments sharply decreased, but the numbers are starting to bounce back, Bartel said. For the past two to three years, enrollment has been steady.

Dunn said in the five years he's been at the college, enrollment

has been fairly consistent. The average student's age is about 26, ranging from 16 to 86. Most are 21 or older, while 10 or so students attend the college while still in high school.

Two 18-year-olds — Brendon Parsons of Manhattan and Shannon Wilson of St. Francis — are examples of those who've taken the technical school route.

Wilson began a computer repair program straight out of high school. He said he understood the stigma that can go with attending a technical college.

"People do look down on people who go to a technical college," Wilson said. "But it didn't bother me. I'd rather get on with my life."

Parsons is attending the college as a high school senior. Studying drafting, Parsons said he's encouraged by the employment outlook.

"In vo-tech, most people coming out of drafting department get jobs," he said.

Some students who go into the trades do so by a circuitous route. In an effort to keep up with classmates and friends, they might try college, only to drop out after a semester or two. A technical college might be a more appropriate step out of high school.

"The first thing you have to do is convince the student what's important is what they want to do," Bartel said. "We're selling our students short by pushing everybody into college."

Dunn said he encourages students to "look at every option in education right now" and not limit themselves.

"There's nothing really wrong with going to college to explore," Dunn said. "The sad thing, for a lot, is it's a pretty expensive career exploration...It isn't for everyone right out of high school."

Fair said school of any kind may be a turn-off to some people. So his company has its own four-year apprentice program, which the employees can go through at their own pace — some as quickly as 2½ years. The company usually admits five to seven people each year.

"Nationwide, the push for training has started, but it's too little, too late," Fair said. "I'm 50, and I know that for the rest of my working life, labor is going to be in demand."

Carpenter said he gets some employees from the technical college and some from the construction science department at Kansas State University. For the most part, though, Carpenter said they just "scrape and scratch" to find workers. And they're willing to train the workers themselves. Carpenter said he's employed people who "didn't know a 2-by-4 from a window" and, with training, they've become valuable employees.

"The big picture here," Carpenter said, "is that construction is not going to go away. It's a huge, huge business. It's an accelerating industry."

Wanted: Skilled help

Even at \$40,000, building talent is in short supply

Lori Goodson
Staff Writer

Wanted: Individuals willing to learn various trade or construction skills. Good salary; excellent pay potential. No college degree required. Will train.

On the surface, that hypothetical want ad looks intriguing enough. But several local business owners and educators say there are few people responding.

They say several factors may be turning the general public away from skilled labor, including the lack of training, the push for young people to attend a traditional university, and the somewhat tarnished image of skilled labor as a career.

There are plenty of people who can testify that there's a problem. David Carpenter, owner of Carpenter Building Systems of Manhattan, says his company is struggling to find skilled laborers.

"It's a serious, serious problem," Carpenter said.

He said labor unions years ago had a successful journeyman program to train new skilled workers. But with the decline of unions, the numbers of people involved in the field have dropped — as have the training opportunities.

Dennis Fair, president of Central Mechanical Construction Co. Inc., said his Manhattan company employs plumbers, pipefitters, sheet-metal workers and masons. It is facing the same shortages — especially in hiring masons. And that can trigger delays in completing construction jobs.

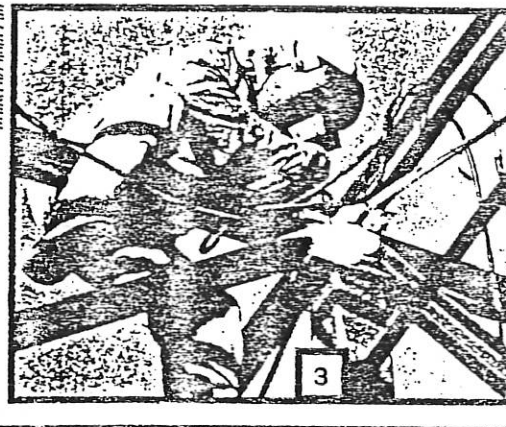
"We're well aware of the shortage," Fair said. He attributes much of it to a generation of skilled laborers retiring, with too few new ones entering the field.

A member of the mechanical council for the Associated Building Contractors, a national group, Fair said manpower is a never-ending issue.

"I think we've identified the problem — the construction trade has done a horrible job of marketing," he said.

See No. 1, back page

How stressful are these jobs? The answer might surprise you.



- 1. Firefighter
- 2. Emergency medical technician
- 3. Construction worker
- 4. Teacher
- 5. Waitress
- 6. Stock trader

THESE JOBS MAY BE dangerous or tough, but they aren't necessarily stressful. Some people thrive on high-risk or high-pressure work. But *any* job that has unrealistic expectations, poor communication, difficult co-workers, lack of routine or unsettling change will likely be stressful.

Kansas and Prevailing Wage Legislation

By Peter Philips, Ph.D.

Professor of Economics, University of Utah

Overview. Kansas prevailing wage law—the first in the country—was passed in 1891 to help prod the Kansas labor market in general and the construction labor market in particular down a high-skilled, high-wage growth path. Confronted with falling wage rates and longer working days, the Republican government of Kansas embraced a series of reforms including child labor laws, compulsory schooling, convict labor laws, the eight-hour day and prevailing wages. All of these reforms were aimed at the same goal. The Kansas labor market was to be regulated so that young people were in school, apprenticeships would be encouraged, the working day would be limited, and competition would be built upon a system of skill-formation that generated and justified rising wages and incomes. Kansas legislators did not want businesses to prove profitable simply because people were working longer for less, and younger with less skills.

Almost 100 years after its original passage, Kansas' prevailing wage law was repealed on the promise that Kansas taxpayers would save from 6% to 17% on total construction costs depending on the project—and in some cases the savings would be even higher. To obtain these gains, workers wages on public works would have to be cut. If there were spill-over effects on wages outside public works, that would be the additional cost of saving money on public construction.

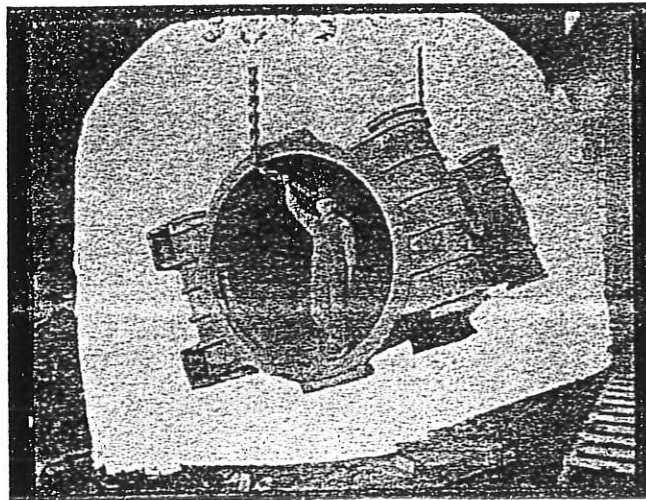
The immediate effect of the repeal of Kansas' prevailing wage law was that construction wages were cut—not only on public construction—but across the entire Kansas construction labor market. Adjusted for inflation, Kansas construction workers wage incomes fell by 11% from 1987, the year of the repeal to 1991. This amounted to a drop in average wages from \$25,573 to \$22,807. In the nine Great Plains states surrounding Kansas that retained their prevailing wage laws, wage income fell—but only by 2%. So the predicted pain of prevailing wage repeal had been achieved. Was there a corresponding gain for that pain? Were state construction costs cut by from 6% to 17% or even higher?

A case-study comparison of new school construction costs in Kansas compared to surrounding Great Plains states that have retained their prevailing wage laws finds no difference in square foot construction costs. The average square foot construction cost of building 365 elementary schools in nine Great Plains states with prevailing wage laws was \$76.86. The average square foot construction costs of building 81 new elementary schools in six Great Plains states—including Kansas—that do not have prevailing wage laws was \$76.23. Comparison of the square foot costs of middle schools and high schools yielded similar results. There is no statistically significant difference in school construction costs between comparable states with and without prevailing wage laws.

Why could wages be cut substantially and yet, no construction savings were forthcoming? The answer is—training and productivity fell with wage rates. Apprenticeship training in Kansas fell by 38% after the state repealed its prevailing wage law. Minority apprentices fell even more by 56% after the repeal of the Kansas law. The balance of construction shifted away from collective bargaining towards the open shop. Currently, open shop contractors account for only 12% of all enrolled apprentices in Kansas. Thus, as the unions declined, the open shop did not take up the slack in apprenticeship training. Rather, in the short-run, merit shop contractors hired union-trained journeymen at substantially lower wage rates and markedly reduced pension and health programs. Total employer contributions to pension and health insurance in Kansas fell by 17% after the state repealed its prevailing wage law. This was a drop from an annual average of \$20 million per year to \$16.6 million. This drop was due to a shift from collective bargaining to the merit shop. Almost all union contractors in Kansas provide pension coverage and health insurance. Currently, only 10% of merit shop workers in Kansas are covered by a company pension and only 4% receive company health insurance.

With lower wages and benefits, experienced and skilled workers eventually migrated out of the industry or retired. With a 38% fall-off in apprenticeship training, skilled and experienced older workers were replaced by younger, less-experienced, less trained workers. Thus, the promised construction savings were based on a false premise—that wage rates could be cut without effecting productivity, and collective bargaining could be terminated without effecting training. Both these premises proved false.

In place of lower construction costs, Kansas reaped a costly, higher injury rate in construction. Less trained, younger, inexperienced and poorly paid workers got hurt on the job much more often. In the five years after repeal, serious-injury rates in Kansas construction rose by 21% compared to prior to repeal. A comparison of Great Plains states with prevailing wage laws compared to those like Kansas shows that states without prevailing wage laws have a 26% higher injury rate in construction.



Appendix

A vast amount of information, some of which is included in this handbook, was thoroughly reviewed and gathered from the following sources.

1. Kansas Statutes
2. Kansas Department of Transportation
3. Kansas Department of Administration, Division of Purchases
4. Kansas Department of Administration, Division of Architectural Services
5. Kansas Department of Human Resources
6. Kansas Department of Health and Environment
7. Kansas Insurance Department
8. Kansas Attorney General Office
9. Kansas, Inc.
10. Kansas Apprenticeship Council
11. Kansas Performance Review Board
12. University of Kansas
13. Arizona State University/ "Performance Based Procurement Systems, Performance Based Information Systems and Information Measurement Theory" authored by Dr. Dean Kashiwagi
14. State of Missouri
15. State of Oklahoma
16. State of Utah
17. Suffolk County, New York
18. Bergen County, New Jersey
19. City of Kansas City, Missouri
20. City of Cambridge, Massachusetts
21. Associated Builders and Contractors
22. Associated General Contractors
23. Handbook on Prequalification of Bidders on Public Works Contracts in Iowa., November 9, 1998 edition, by C.I.B.&C.T.C.
24. Department of the Army, U.S. Army Corps of Engineers
25. American Institute of Architects
26. COCKSHAWS's Construction Labor News+Opinion
27. Numerous Newspapers including but not limited to, The Manhattan Mercury, The Wichita Eagle, The Topeka Daily Capital Journal and The Kansas City Star
28. Building Maintenance Engineers
29. Code Enforcement Officers
30. Building Inspectors
31. Contractors

32. Engineers
33. Estimators
34. Architects
35. Craftsmen
36. Certified Apprentices
37. Apprentice Instructors
38. Building Trades Councils
39. Purchasing Agents
40. Trade School Students
41. Trade School Administration
42. Joint Apprenticeship Training Committees
43. Apprenticeship Graduates
44. Retired Craftsmen
45. High School Students
46. High School Counselors
47. Labor Leaders
48. Elected Officials
49. Healthcare Providers
50. Words & Phrases, Volume 25a, Lis-Lysol / All Judicial Constructions and Definition of Words and Phrases by the State and Federal Courts from the Earliest Times, Alphabetically Arranged and Indexed, copyright, 1961 by West Publishing
51. Reports of Cases Argued and Determined in the Supreme Court of the State Kansas, Volume 228, May 1980 – January 1981 Official Reporter: Richard D. Ross
52. Reports of Cases Argued and Determined in the Supreme Court of the State of Kansas, Volume 238 July 27, 1985 – February 21, 1986 Official Reporter: Richard D. Ross
53. Tenth Decennial Digest, Part 1 American Digest System 1986-1991 A Complete Digest of All Decisions of the State and Federal Courts as Reported in the National Reporter Systems and the State Reports. Volume 31, Pilots to Public Contracts
54. Tenth Decennial Digest, Part 2 American Digest System 1991-1996 A Complete Digest of All Decisions of the State and Federal Courts as Reported in the National Reporter System and the State Reports. Volume 48 Principal and Agent to Receivers
55. Illinois Appellate Reports, Third Series Volume 249, Ill. App. 3d Official Reports of the Illinois Appellate Court, Brian C. Erwin, Reporter of Decisions December 1995
56. Kansas and Prevailing Wage Legislation
By Peter Philips, Ph.D.
Professor of Economics, University of Utah

Committee member

Re; House Bill No. 2850

I'm writing in support of this proposed legislation. As a member of the State Building Advisory Board I have seen problems with many of the State building projects; Not meeting completion deadlines, cost over runs, back charges, inferior workmanship, unsafe working conditions, not meeting the specifications in products used or methods of installation and contractors being removed because of the afore mention problems as well as subcontractors and suppliers not receiving their money.

All of the above problems mentioned end up in litigation for resolution. Today, the total of our prayers for relief against contractors in the State of Kansas is approximately 7.5 million dollars and much of the time the taxpayers end up with a sub-standard structure or at minimum a delayed completion date.

State Architect, Thiane Hoffman invited us to see a demonstrations of a software program that is being used in some other states, that creates a model to evaluate collected information to fit the needs of each project. This information would be submitted by each contractor that wishes to bid on a particular project. In talking to some contractors, I am told that they already have the required information available as they electronically track their jobs now. This is very similar to the selection process that is now used to select Architects for state projects. It is ironic that architects are selected in such a careful manner. That we interview from 3 to 5 firms to make sure we have the best architects suited for a particular project as far as workforce, past performance, past experience with similar projects and then award the construction contract to the low-bid.

Low-bid is good if the tax payer is indeed getting the quality required to get the specified product and probably most are. But one only has to look at the anxiety and cost to complete the KU stadium, the Pittsburgh State Technology building, and the Ferrell Library at KSU, Piping replacement on the El Dorado Prison Project, to name a few, and some are not completed yet. We have a problem with the way the State of Kansas does business in construction contracting. We think this bill will help.

HOUSE APPROPRIATIONS
3-8-00
Attachment 5

When it comes to construction contracting, virtually all project owners have the same concerns: cost, quality, schedule. For most project owners and facility managers, a successful project is one that results in good quality facilities delivered on time, at the lowest possible cost. The challenge is to select a contractor that will deliver on all of these areas simultaneously, rather than sacrificing quality for schedule, sacrificing schedule for cost, or some other trade-off. We think this bill will enhance the process.

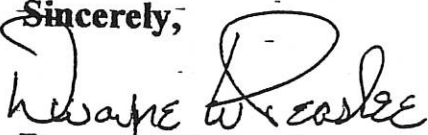
One of the most critical flaws in the low bid system is its failure to hold contractors accountable for past performance on previous projects. There is no accountability from one project to another. This bill addresses that.

Once a contractor wins a bid under low-bid, it has no incentive to do a good job. If the work performed complies with minimum specifications, the contractor must be paid. The same problems continue from project to project. This bill gives the flexibility, and tools to change those patterns and makes it possible for the State to receive a better quality for their construction dollar, similar to the private sector.

Training is another critical segment of this bill. The contractor who complains the loudest about the skilled labor shortage is often the one who has no training program. This bill encourages training through the State Apprentice program. This not only strengthens the State labor pool, it also enhances the chances of attracting quality businesses to the State at no additional cost to the taxpayer.

Thank you for your consideration and hopefully your support on HB-2850

Sincerely,



Dwayne W. Peaslee
14805 27th Street
Perry, Ks. 66073
785/597-5218
dpeaslee10@aol.com

ASSOCIATION

MECHANICAL AND SHEET METAL CONTRACTORS OF KANSAS, INC.

March 8, 2000

To: The House Appropriations Committee:

Thank you for the opportunity to speak in favor of House Bill 2850. As you are all keenly aware, we are living in times of unprecedented change. The construction industry is no different. Traditional methods of design, bidding, construction, etc. may or may not be valid in the year 2000. One of these out of date traditions is the low bid method of choosing contractors. In the past, many factors tended to lend a check to this method so it worked reasonably well. Those days are gone. Even the Federal government is moving away from low bid to a performance based bidding methods.

Low bid would work if the quality of work as specified was being performed. Unfortunately, it is not. Projects across the state are suffering from poor quality, omissions, delays, and unwarranted change orders. Why then do we continually reward work to companies that we are almost assured will cut corners, have long delays, and have questionable changes? Would you hire someone to work on your house that you knew had at best a questionable past? I certainly would not.

DAVID M. FINLEY
EXECUTIVE DIRECTOR



320 LAURA STREET • WICHITA, KS 67211
PHONE 316-269-1181 • FAX 316-269-1192 • dfinley@feist.com

SHEET METAL &
AIR CONDITIONING
NATIONAL ASSOCIATION

House Appropriations
3-8-00
Attachment 6

ASSOCIATION

MECHANICAL AND SHEET METAL CONTRACTORS OF KANSAS, INC.

The old saying, "you get what you pay for" is still generally true. I always find it amazing that people never seem to have the money to do it right the first time, but always end up paying to have it fixed two or three times. The state is no different.

Another problem in today's world is the labor shortage. Anyone in the construction industry knows that the current labor shortage will only get worse. This bill would help address that problem by enhancing training through the State Apprentice program.

As a taxpayer, I want the job done right the first time and on time. The majority of contractors will provide such service, but need to have a fair playing field. House Bill 2850 will be a great step forward to address these needs in the industry. Those who abuse the system would no longer be rewarded, but instead would have to meet the same standards as those who are playing by the rules.

Thank you again for the opportunity to speak on behalf of HB 2850.

David Finley

Executive Director

DAVID M. FINLEY
EXECUTIVE DIRECTOR

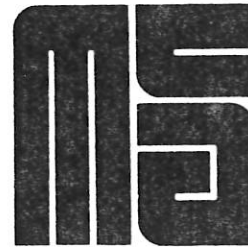
320 LAURA STREET • WICHITA, KS 67211

PHONE 316-269-1181 • FAX 316-269-1192 • dfinley@feist.com



SHEET METAL &
AIR CONDITIONING
NATIONAL ASSOCIATION

**MECHANICAL CONTRACTORS ASSOCIATION OF
GREATER KANSAS CITY**



9229 Ward Parkway, Suite 270
Kansas City, Missouri 64114
Phone (816) 523-3341
FAX (816) 333-4603

March 6, 2000

David Adkins, Chairman
Appropriations Committee
Topeka, KS

Dear Representative Adkins:

House Bill No. 2850 will significantly enhance the government's ability to ensure quality and efficiency for public construction project.

I urge all public officials to do the responsible thing and support House Bill No. 2850.
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Herbert C. Millard".

Herbert C. Millard
Executive Director
MCA of Greater Kansas City

cc: Philip R. Petty



House APPROPRIATIONS
3-8-00
Attachment 7

The University of Kansas

Office of the Chancellor

Monday March 6, 2000

The Honorable David Adkins, Chairman
House Appropriations Committee
Statehouse, Topeka, Kansas

RE: HB 2850

Dear Chairman Adkins:

The construction of state facilities is becoming more and more complex and difficult. The difference between capable and not-so-capable contractors is becoming more and more apparent in our building and remodeling projects. If there is anything that you can do to improve this situation it will really help the state of Kansas and its programs that depend upon adequate facilities.

It is such a pleasure to work with good, reliable contractors that construct our state buildings. Once in a while we get a low bidder that is very difficult to work with and to get the job done on time and done correctly according to the plans and specifications. These jobs drag on for months after they should have been done.

I know we have to keep all state work open for all to bid and that is fine. But the state should have some power as to make sure that the person taking on the contract has a capable firm with the financial backing and the knowhow and scheduling experience to complete the job on time and in a proper manner. I think that this can be done without hurting anyone. Those who cannot meet the requirements and criteria would know this ahead of time and would not bother to take the time to bid if they were not qualified.

The Department of Purchasing needs the authority to make the tough decisions ahead of time instead of struggling for months and months with a unqualified contractor who has taken on a project that he cannot handle properly.

House Bill 2850 should improve the construction of our facilities and thus benefit Kansas in the future.

Sincerely,



Warren Corman, University Architect and
Special Assistant to the Chancellor



DEPARTMENT OF ADMINISTRATION
Division of Purchases

BILL GRAVES
Governor

DAN STANLEY
Secretary of Administration

JOHN T. HOULIHAN
Director of Purchases
900 S.W. Jackson, Room 102-N
Landon State Office Building
Topeka, KS 66612-1286
(785) 296-2376
FAX (785) 296-7240

APPROPRIATIONS COMMITTEE
TESTIMONY ON HOUSE BILL 2850
MARCH 8, 2000

Presented by John T. Houlihan
Director of Purchases

Mr. Chairman and members of the committee. I am John Houlihan, Director of Purchases. Thank you for the opportunity to speak on behalf of the Department of Administration in opposition to House Bill 2850

I support the idea of awarding construction and major repair contracts on a best value basis, as opposed to a low bid basis. However, I am opposed to the part of the bill that requires contractors and subcontractors to submit voluminous amounts of information as part of their bids. This bill requires bidders to submit about 20 different items of information and failure to provide any of the requested information "shall" cause the bid to be rejected, even though the bid may represent the best value to the state. I believe that the information and certification requirements in this bill will significantly reduce the number of contractors and subcontractors that will be willing to bid on state construction projects, thus increasing the cost to the state.

We will have to review and evaluate all of the information provided and we have few, if any, benchmarks to determine what's good and what's bad. This information requirement and evaluation process could add a significant amount of time to the procurement process. The bill does not allow us any flexibility in determining what information is really necessary to determine what is the best value bid. In addition, all of the information provided by the contractor, to include certified financial statements, will be open to the public, which will include the contractor's competitors.

The bill requires a written notification if the low bid is not selected, to include an opportunity for a hearing before awarding the contract. It also requires me to open the file to the public for ten days prior to awarding a contract. These provisions will further slow the procurement process.

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Page Two

In summary, I support the concept of best value for construction contracts, but I believe the Director of Purchases, the State Architect and the State Agency should have the flexibility to decide what information is required from the bidders in order to determine what represents a best value bid.

This concludes my prepared testimony, are there any questions?

Testimony by
Thaine Hoffman – Director, Division of Architectural Services
HB 2850 Purchases and Contracts
March 8, 2000
House Appropriation Committee

Rep. Adkins, members of the committee.

I am strongly opposed this bill as written. It would be an administrative nightmare, and it would slow down the bidding and contracting process at a time when we are already criticized for the process being too slow. I do not believe it would accomplish the intended purpose.

However, the bill does have valuable and workable concepts. Although present statute allows Purchases to accept the lowest **responsible** bidder, since it is difficult to determine “responsible”, present selections are based only on low bid. Cost will always be a major consideration, but many problems would be avoided if contractor’s qualifications were also considered. We have been actively investigating this concept.

I would like to offer an amendment that would make this bill more workable while still maintaining some of its features. My concerns and proposals are as follows.

1. The bill as written is extremely detailed and does not give the Director of Purchases any ability to make even minor changes without waiting a year and going through the process of having the statute amended. I suggest that the bill be amended to allow the contractor’s qualifications to be considered, and leave it to the Director of Purchases to develop and refine the process.
2. The bill as written would require a ton of paperwork and administration. Again, it should be left up to the Director of Purchases to work out the most efficient and effective procedures.
3. Page 4, line 19 requires the contractor to identify the source of workers. Page 5, line 29 indicates no contract employees will be allowed. I question whether we want this included. If a critical project was behind schedule, we want to encourage the consideration of all options. This bill would not allow the Director of Purchases to make an exception.
4. Page 4, line 28 requires that all subcontractors be subject to approval by the Director of Purchases. We already require that major subs to be listed on the bid form and any changes be approved.

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5. Page 4, line 40 (k) requires the Director of Purchase alert the low bidder before the contract is awarded to another bidder. This paragraph also requires the files to be open to the public for 10 days before award of the bid. The reason for this is to allow others to find fault with the successful proposal. Government is already slow because of all the requirements. We are **constantly** being asked why it takes so long to complete projects. **Adding this delay is not in the best interest of the state.**
6. Page 5, starting with line 11 indicates all bidders and each subcontractor shall ensure appropriate training... Para (2) requires the bidder and all subcontractors to participate in an apprentice training program. I am not opposed to training but would propose to limit it to the general, plumbing, mechanical, & electrical contractors.
7. Page 5, line 26 requires the bidder to properly classify employees and treat them as provided by law. If it is already provided by law, why should this be added.
8. We presently have 238 building projects under construction. Changing the selection process would be a major change. If this is to be done, the procedures need to be developed, the process should be tried with a few pilot projects, the process evaluated, improved and expanded on an orderly basis rather than being initiated all at once. I suggest that the new "shall"s be changed to "may"s, to allow an orderly development of the program.
9. The proposed change would require more administration than simply accepting low bid. The new method of selection may be advisable for some projects, but it may never be advisable for all the projects. Again I suggest that "may" rather than "shall" be used.

Attached to my written testimony is a proposed amendment that has been developed by the Department of Administration Legal Section. That amendment includes the above thoughts. I believe this would retain the original concepts of the bill, but it makes it short and very workable.

Warren Corman, the Special Assistant to the Chancellor at KU, could not be here today but provided written testimony in favor of finding better ways to select contractors. He was not aware of this amendment when he provided his testimony but he has since added his support to the amendment.

I would ask for your consideration of this amendment. Thank you.

HOUSE BILL No. 2850

By Committee on Local Government

2-3

9 AN ACT concerning purchases by and contracts entered into by the di-
10 rector of purchases; amending K.S.A. 75-3740 and repealing the ex-
11 isting section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 75-3740 is hereby amended to read as follows: 75-
15 3740. (a) Except as provided by *this section and K.S.A. 75-3740b, and*
16 *amendments thereto*, all contracts and purchases made by or under the
17 supervision of the director of purchases or any state agency for which
18 competitive bids are required shall be awarded to the lowest responsible
19 bidder, taking into consideration conformity with the specifications, terms
20 of delivery, and other conditions imposed in the call for bids.

21 (b) The director of purchases shall have power to decide as to the
22 lowest responsible bidder for all purchases, but if:

23 (1) The dollar amount of the bid received from the lowest responsible
24 bidder from within the state is identical to the dollar amount of the bid
25 received from the lowest responsible bidder from without the state, the
26 contract shall be awarded to the bidder from within the state;

27 (2) in the case of bids for paper products specified in K.S.A. 75-
28 3740b, *and amendments thereto*, the dollar amounts of the bids received
29 from two or more lowest responsible bidders are identical, the contract
30 shall be awarded to the bidder whose bid is for those paper products
31 containing the highest percentage of recyclable materials; and

32 (3) in the case of bids for paper products specified in K.S.A. 75-
33 3740b, *and amendments thereto*, the dollar amounts of the bids received
34 from two or more lowest responsible bidders are identical, the contract
35 shall be awarded to the bidder whose bid is for those paper products
36 containing the highest percentage of recycled materials.

37 (c) Any or all bids may be rejected, and a bid shall be rejected if it
38 contains any material alteration or erasure.

39 (d) The director of purchases may reject the bid of any bidder who
40 is in arrears on taxes due the state, who is not properly registered to collect
41 and remit taxes due the state or who has failed to perform satisfactorily
42 on a previous contract with the state. The secretary of revenue is hereby
43 authorized to exchange such information with the director of purchases

1-0-4

1 as is necessary to effectuate the preceding sentence provisions of this
2 subsection notwithstanding any other provision of law prohibiting disclo-
3 sure of the contents of taxpayer records or information.

4 (e) Prior to determining the lowest responsible bidder on contracts
5 for construction of buildings or for major repairs or improvements to
6 buildings for state agencies, the director of purchases shall consider:

the following factors

7 (1) The criteria and information developed by the secretary of ad-
8 ministration, with the advice of the state building advisory commission to
9 rate contractors on the basis of their performance under similar contracts
10 with the state, local governmental entities and private entities, in addition
11 to other criteria and information available, and (2);

and

12 (2) ~~the information that is required to be provided by the bidder un-
13 der subsections (h) through (n), and~~

14 ~~(3)~~ the recommendations of the project architect, or, if there is no
15 project architect, the recommendations of the secretary of administration
16 or the agency architect for the project as provided in K.S.A. 75-1254, and
17 amendments thereto.

18 (f) In any case where competitive bids are required and where all
19 bids are rejected, new bids shall be called for as in the first instance,
20 unless otherwise expressly provided by law.

(1) In addition to the factors identified in subsection (e),
the director of purchases may develop and use procedures and
criteria for performance-based selection of contractors for
construction of buildings or for major repairs or improvements to
buildings for state agencies. These criteria may include the terms
of delivery, financial responsibility, accountability, past
performance, operational responsiveness, reliability, skill, capacity,
ability, judgement, and integrity of each bidder.
(2) Each contract

21 (g) ~~Contracts~~ for construction of buildings or for major repairs or
22 improvements to buildings for state agencies shall be awarded to the low-
23 est responsible bidder that provides best value, taking into consideration
24 ~~conformity with the specifications, terms of delivery, other conditions im-
25 posed in the call for bids and the financial responsibility, accountability,
26 past performance, operational responsiveness, reliability, skill, capacity,
27 ability, judgement and integrity of the bidder.~~

the

28 (h) All bidders ~~and subcontractors of bidders for~~ contracts for con-
29 struction of buildings or for major repairs or improvements to buildings
30 for state agencies shall submit ~~the following information~~ with the bid for
31 a project ~~or if stated on an annual basis, in addition to any other infor-
32 mation the bidder may be required to provide prior to the award of a
33 contract, failure to provide any requested information shall cause the bid
34 to be considered incomplete and disqualified.~~

the criteria established in subsection (e) and paragraph (g)(1)

on

35 ~~(1) A description of the bidder's experience with projects of compar-
36 ative size, complexity and cost within recent years, including documen-
37 tation that demonstrates the bidder's ability to perform a substantial por-
38 tion of the project with the bidder's own forces;~~

all information requested by the director of purchases as needed to
apply performance-based criteria in accordance with subsection
(g). If a bidder submits multiple bids, the bidder may file the
information with the director of purchases once during each fiscal
year and may reference previously filed information in all
subsequent bids submitted during that fiscal year

39 ~~(2) annual documentation of all projects in the previous three years
40 under written contract exceeding \$50,000 with a government entity, on
41 which the bidder performed work, disclosing:~~

- 42 ~~(A) Timeliness of the bidder's performance;~~
- 43 ~~(B) quality of the bidder's work;~~

1 ~~(C) any fines and penalties imposed and paid by the bidder with~~
2 ~~respect to such projects, including an explanation of each such fine or~~
3 ~~penalty;~~

4 ~~(D) a history of the bidder of claims for extra work requiring payment~~
5 ~~above the original contract amount, including an explanation of each such~~
6 ~~instance of a claim for extra work by the bidder with respect to such~~
7 ~~projects; and~~

8 ~~(E) contract defaults by the bidder with respect to such projects, in-~~
9 ~~cluding an explanation of each such default;~~

10 ~~(3) annual documentation identifying and describing any projects~~
11 ~~within the previous three years for which the bidder was determined by~~
12 ~~a government entity not to be a responsible bidder. The reason given by~~
13 ~~such government entity for such determination and an explanation of such~~
14 ~~determination;~~

15 ~~(4) annual documentation setting forth an adequate demonstration of~~
16 ~~financial responsibility, which shall include a certified financial statement~~
17 ~~prepared by a certified public accountant, to assure the bidder possesses~~
18 ~~adequate financial resources, availability of credit and the means and~~
19 ~~ability to procure insurance and bonds for the project;~~

20 ~~(5) annual documentation disclosing any suspensions or revocations~~
21 ~~of any professional license of any director, officer, owner or managerial~~
22 ~~employee of the bidder, to the extent that any work to be performed by~~
23 ~~the bidder for the project is within the field of such licensed profession;~~

24 ~~(6) annual documentation disclosing all violations of the federal oc-~~
25 ~~cupational safety and health act (OSHA) within the previous three years,~~
26 ~~all notices of OSHA citations filed against the bidder in the same three-~~
27 ~~year period and a description and explanation of remediation or other~~
28 ~~steps taken regarding each such violation or notice of violation;~~

29 ~~(7) annual documentation disclosing all violations within the previous~~
30 ~~five years pertaining to unlawful intimidation or discrimination against~~
31 ~~any employee by reason of race, creed, color, disability, sex or natural~~
32 ~~origin or to violations of an employee's civil rights or equal employment~~
33 ~~opportunities;~~

34 ~~(8) annual documentation disclosing any litigation related to any pro-~~
35 ~~ject in which the bidder has been engaged within the previous five years.~~
36 ~~Such documentation shall include copies of pleadings, in which the bidder~~
37 ~~has been named as a defendant or third party defendant in any action~~
38 ~~involving a claim for personal injury or wrongful death arising from per-~~
39 ~~formance of work for any such project;~~

40 ~~(9) annual documentation disclosing all violations within the previous~~
41 ~~five years of any labor law or any other provision of federal or state law~~
42 ~~regulating or relating to labor or employment, including, but not limited~~
43 ~~to, child labor violations, failure to pay wages, unemployment insurance~~

1 ~~tax delinquencies or unfair labor practices;~~

2 ~~(10) annual documentation disclosing all violations of the workers~~
3 ~~compensation act of Kansas or the workers compensation law of any other~~
4 ~~state or federal jurisdiction, including, but not limited to, the failure to~~
5 ~~provide proof of workers compensation insurance or other proof of ability~~
6 ~~to meet the obligation to provide workers compensation that is imposed~~
7 ~~by any such law, and any lapses thereof;~~

8 ~~(11) annual documentation disclosing all criminal convictions or~~
9 ~~criminal indictments within the previous five years that are related to~~
10 ~~company operations, involving the bidder or the bidder's officers, direc-~~
11 ~~tors, owners or managerial employees;~~

12 ~~(12) annual documentation disclosing all violations or pending~~
13 ~~charges within the past five years concerning violations of federal, state~~
14 ~~or municipal environmental or health laws, codes or rules and regulations;~~

15 ~~(13) annual documentation disclosing all violations or pending~~
16 ~~charges within the past five years related to violations of federal immi-~~
17 ~~gration and naturalization laws;~~

18 ~~(14) identify the sources from which the bidder intends to provide~~
19 ~~the necessary workers to complete the project in a satisfactory manner;~~

20 ~~(15) documentation identifying all work for the project that the bidder~~
21 ~~intends to subcontract to other firms and identify each firm to which the~~
22 ~~work will be subcontracted. All work not identified as being subcon-~~
23 ~~tracted, shall be performed by the bidder, and~~

24 ~~(16) documentation providing the same information for each subcon-~~
25 ~~tractor submitted with the bid, as is prescribed for the bidder under sub-~~
26 ~~sections (h) (1) through (h) (14), which shall be obtained by the bidder~~
27 ~~from each such subcontractor.~~

28 ~~(i) All subcontractors that are submitted by a bidder are subject to~~
29 ~~the approval of the director of purchases. The approval of the subcon-~~
30 ~~tractors, as provided in the general conditions, shall be subject to the same~~
31 ~~conditions and criteria for evaluation of responsibility as the bidder.~~

32 ~~(j) Prior to a final determination that the apparent lowest bidder will~~
33 ~~not be awarded a contract for construction of buildings or for major re-~~
34 ~~pairs or improvements to buildings for state agencies, the director of pur-~~
35 ~~chases shall provide written notice to such bidder that such bidder may~~
36 ~~not be awarded such contract. The written notice shall set forth the rea-~~
37 ~~sons for not awarding the contract to such bidder and shall set forth a~~
38 ~~time, date and place for such bidder to appear and be heard, prior to a~~
39 ~~final determination being made to not award the contract to such bidder.~~

40 ~~(k) All bids with the names of the bidders and the amounts thereof,~~
41 ~~together with all documents pertaining to the proposed award of a con-~~
42 ~~tract for construction of buildings or for major repairs or improvements~~
43 ~~to buildings for state agencies, shall be made a part of a file or record by~~

1 ~~the director of purchases and such file or record shall be open to public~~
 2 ~~inspection at all reasonable times for a ten day period prior to award of~~
 3 ~~the contract, in addition to any requirements under the open records act~~
 4 ~~applicable thereto.~~

(i)

that exceed \$100,000

5 ~~(f) The director of purchases shall require all bidders and each sub-~~
 6 ~~contractor under the bidder. As a condition for bidding on contracts for~~
 7 ~~construction of buildings or for major repairs or improvements to build-~~
 8 ~~ings for state agencies for which competitive bids are required, to agree~~
 9 ~~in writing that such bidder or subcontractor shall comply with the follow-~~
 10 ~~ing obligations:~~

the director of purchases may require all bidders and each plumbing, mechanical, and electrical subcontractor under the bidder

11 ~~(1) The bidder and each subcontractor under the bidder shall ensure~~
 12 ~~that all employees on the job site have appropriate training, including~~
 13 ~~safety training and that all such employees have all applicable state,~~
 14 ~~county, city and other local governmental licenses for licensed trades or~~
 15 ~~professions,~~

16 ~~(2) the bidder and each subcontractor under the bidder shall maintain~~
 17 ~~or participate in an apprentice training program for each apprenticeable~~
 18 ~~trade or occupation represented in the workforce of the bidder or sub-~~
 19 ~~contractor. As used in this subsection, "apprentice training program"~~
 20 ~~means an apprenticeship program that is registered through the Kansas~~
 21 ~~apprenticeship council and recognized by the bureau of apprenticeship~~
 22 ~~training of the United States department of labor and under which pro-~~
 23 ~~gram when an apprentice is employed on a project the apprentice must~~
 24 ~~be registered with the Kansas apprenticeship council to be considered an~~
 25 ~~apprentice.~~

. Each

shall

26 ~~(3) the bidder and each subcontractor under the bidder shall properly~~
 27 ~~classify employees and treat them as provided by law for purposes of~~
 28 ~~workers compensation coverage, unemployment taxes, social security~~
 29 ~~taxes and income tax withholding, no contract employees will be allowed;~~
 30 ~~and~~

31 ~~(4) the bidder shall: (A) Provide, upon application for payment under~~
 32 ~~any such contract, a certified employment sheet for all employees, includ-~~
 33 ~~ing employees of all subcontractors, for each day on which work is per-~~
 34 ~~formed on the site, upon a form acceptable to the secretary of adminis-~~
 35 ~~tration containing job classification, hours of employment, wage rate and~~
 36 ~~supplements, employer identification information and all other such in-~~
 37 ~~formation the secretary of administration deems appropriate; and (B)~~
 38 ~~maintain a current record of the information prescribed for the certified~~
 39 ~~employment sheet at a location designated by the project architect, or, if~~
 40 ~~there is no project architect, by the secretary of administration or the~~
 41 ~~agency architect for the project.~~

(j) If a

42 ~~(m) Any bidder or subcontractor of the bidder who fails to comply~~
 43 ~~with any one of the obligations specified in subsection (1) for any period~~

1 of time during the term of a contract, at the discretion of the secretary of
 2 administration ~~shall be subject to one or more of the following penalties~~
 3 ~~and sanctions~~, in addition to any other penalties prescribed by law. (i),
 4 (1) ~~Cessation of work on the project until compliance is obtained with~~ may
 5 ~~no extension of project time requirements;~~
 6 (2) ~~withholding of payment due under any contract or subcontract~~
 7 ~~until compliance is obtained.~~ , withhold
 8 (3) ~~permanent removal from any further work on the project, and~~
 9 (4) ~~penalty payable to the state in the amount of 5% of the dollar~~
 10 ~~value of the contract.~~
 11 (n) ~~In addition to the penalties and sanctions specified in subsection~~
 12 (m) A general or other contractor shall be liable equally for the violation
 13 of a subcontractor of such contractor. ~~Any contractor or subcontractor~~
 14 ~~who has been determined to have violated any of the obligations specified~~
 15 ~~in subsection (1) shall be barred from performing any work on any future~~
 16 ~~projects for construction of buildings or for major repairs or improve-~~
 17 ~~ments to buildings for state agencies for a period thereafter of six months~~
 18 ~~for a first violation and for a period thereafter of three years for a second~~
 19 ~~violation. Any such contractor or subcontractor who has been determined~~
 20 ~~to have committed a third such violation shall be barred permanently~~
 21 ~~from performing any work on any such future projects.~~ (k)
 22 (o) ~~The provisions of paragraph (2) of subsection (1) shall not apply~~
 23 ~~to rebids of projects for which the state received fewer than two bids in~~
 24 ~~response to the original request for bids.~~ (i)
 25 (d) (p) ~~Before the awarding of any contract for construction of a~~
 26 ~~building or the making of repairs or improvements upon any building for~~
 27 ~~a state agency, the director of purchases shall receive written approval~~
 28 ~~from the state agency for which the building construction project has been~~
 29 ~~approved, that the bids generally conform with the plans and specifica-~~
 30 ~~tions prepared by the project architect, by the secretary of administration~~
 31 ~~or by the agency architect for the project, as the case may be, so as to~~
 32 ~~avoid error and mistake on the part of the contractors. In all cases where~~
 33 ~~material described in a contract can be obtained from any state institution,~~
 34 ~~the director of purchases shall exclude the same from the contract.~~ (l)
 35 (e) (q) ~~All bids with the names of the bidders and the amounts~~
 36 ~~thereof, together with all documents pertaining to the award of a contract,~~
 37 ~~shall be made a part of a file or record and retained by the director of~~
 38 ~~purchases for five years, unless reproduced as provided in K.S.A. 75-3737,~~
 39 ~~and amendments thereto, and shall be open to public inspection at all~~
 40 ~~reasonable times.~~ (m)
 41 (f) (r) ~~As used in this section and in K.S.A. 75-3741, and amendments~~
 42 ~~thereto, "project architect" shall have the meaning ascribed thereto in~~
 43 ~~K.S.A. 75-1251, and amendments thereto.~~ (n)

Sec. 2. K.S.A. 75-3740 is hereby repealed.

2 Sec. 3. This act shall take effect and be in force from and after its
3 publication in the statute book.

TESTIMONY OF ASSOCIATED GENERAL CONTRACTORS OF KANSAS BEFORE
HOUSE APPROPRIATIONS COMMITTEE

ON HB 2850

March 8, 2000

by Thomas E. Slattery

Mr. Chairman, the Associated General Contractors of Kansas is opposed to HB 2850. The long followed practice of the state of Kansas of awarding construction projects to the lowest responsible bidder, has served the state well for many years.

HB 2850 creates a number of additional burdensome if not impossible criteria for a contractor to be awarded a contract for a state project.

If the Associated General Contractors of Kansas were to support changes in the current bid procedure it would be in the area of "prequalification" rather than "post qualification" as this bill asserts. If prequalification guidelines were to be considered by the state, they should be drafted with industry wide input coordinated by the Department of Architectural Services and the Joint Building Committee.

Some of our major concerns about HB 2850 are as follows. Subsection (h) requires all general contractors and subcontractors of general contractors to submit twenty-one pieces of information or documentation. Without all of this information the bid would be disqualified. For a general contractor to provide this information for his or her own company would be very difficult and

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expensive. To provide it for all of the subcontractor bidders would be impossible. I don't know how the Department of Architectural Services would police these provisions.

Subsection (k) would require all documentation pertaining to the bid be open to public inspection. A contractor is not a public agency and the state should have no right to expose a contractor's financial and business histories to public scrutiny. As one contractor said to me "if this were to become law we probably would just decide never to do another state of Kansas project". This type of information should be kept in the strictest of confidence.

Subsection (l) (2) requires each general contractor and subcontractor to maintain an apprenticeship program for each trade and the apprenticeship program be registered with the State Apprenticeship Council and recognized by the US Department of Labor. While AGC supports training and apprenticeship 100% I suggest that this provision would prohibit the vast majority of contractors from being able to submit a bid on state projects.

Mr. Chairman and members of the Committee I believe there is some merit in the concept of HB 2850 but it is not acceptable or fair in its current form. We respectfully request that you not report HB 2850 favorably.

Thank you.




DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 7, 2000
TO: House Appropriations Committee
FROM: Charles E. Simmons 
Secretary of Corrections
RE: HB 2724

HB 2724 amends K.S.A. 75-52,129 to require that the Secretary of Corrections not enter into contract with a city or county to house inmates sentenced to the custody of the Department of Corrections which does not provide for the city or county to maintain appropriate and recognized standards of safety, health and security. This provision is also contained in SB 491 as passed by the Senate. SB 491 has been referred to the House Judiciary Committee.

The requirement that cities and counties housing inmates sentenced to the custody of the department maintain recognized standards codifies the department's current practice. The contract the department enters into with cities and counties for inmate placement allows the department to have the right of inspection of the jail, and provisions that the jail maintain standards of care and discipline not incompatible with those of the State. The jail would also be subject to inspections of the State Fire Marshal.

CES/TGM/II

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STATE OF KANSAS

Rep. Shari Weber
934 Union Road
Herington, KS 67449
(785) 258-3526



Capitol Building
Room 303-N
Topeka, KS 66612
(785) 296-7674
weber@house.state.ks.us

HOUSE OF REPRESENTATIVES
68TH DISTRICT
Assistant Majority Leader

TESTIMONY ON HB 2724
HOUSE APPROPRIATIONS COMMITTEE
March 8, 2000

Thank you, Mister Chairman and members of the committee, for the opportunity to appear before you today in support of House Bill 2724. My interest in this bill comes from my involvement with the Joint Committee on Corrections and Juvenile Justice Oversight.

The current statute allows the secretary of corrections to negotiate and enter into contracts with Kansas cities and counties for the placement of inmates, who are classified as medium custody or higher classification, in facilities owned and operated by the cities and counties of Kansas. It also allows the secretary of corrections to negotiate with facilities outside of Kansas if space is not available within the cities or counties. However, the statute does not stipulate that these facilities must provide and maintain appropriate and recognized standards of safety, health and security. In order to make the best use of these correctional facilities, which have available space, it is pertinent that the secretary of corrections be allowed to negotiate these contracts. Many of our facilities in the cities and counties are sometimes not used to their full capacity. Allowing the state to contract for these available facilities, fills a need at the state level. However, we must emphasize that adequate safety, health and security standards be followed for the good of all concerned - the employees at these facilities, our Kansas citizens, as well as the inmates housed in the facility.

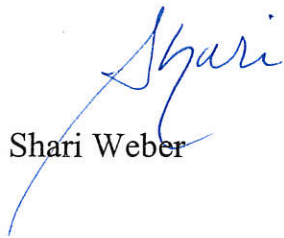
HB 2724 stipulates that the secretary of corrections shall not enter into any contract with the Kansas cities and counties for placement of inmates that does not provide and maintain

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appropriate and recognized standards of safety, health and security.

I thank you for your time and favorable consideration of House Bill 2724.

Sincerely,

A handwritten signature in blue ink that reads "Shari". The signature is written in a cursive style with a long, sweeping underline that extends to the left and then curves back up towards the right.

Shari Weber

JUDICIAL COUNCIL TESTIMONY
ON 2000 HB 3009
March 8, 2000

Introduction

My name is Randy M. Hearrell. I am the Executive Director of the Kansas Judicial Council and I am here to support passage of 2000 HB 3009, with the addition of one amendment. The bill was introduced at the request of your Tax, Judicial and Transportation Committee. (A copy of that Committee's recommendation is attached as Appendix 1.)

History

The Judicial Council is a statutory agency created in 1927 to continuously survey and study the Judicial Branch of government and to make recommendations that improve the administration of justice. One of the ways the Judicial Council attempts to improve the administration of justice is through publications. The first Judicial Council publication was in 1927, and publications have continued to be issued since that time.

For many years the publications of the Judicial Council were distributed without charge on the theory that they improved the administration of justice. Also, in the 1970's and 1980's grants were often available to pay for the publications. By the late 1980's few grants were available and the publications had evolved into works that were relied upon by judges, lawyers and clerks. At that time, the Legislature appropriated money on a yearly basis for these publications, but the appropriations often depended on the condition of the state treasury.

In 1992, I worked with the Legislature to establish the Judicial Council Publications Fee Fund. (See Appendix 2.) The Legislature decided that if these publications were actually so heavily used by the legal profession, they should be able to be self-supporting, and the publications should no longer be given to lawyers and judges free of charge. The Legislature provided start-up money of \$5,000 in FY 1993 and made it clear that if these publications were to continue they needed to be self-sufficient. One of the reasons I am here today is that selling these publications has been so successful.

Beginning immediately after the creation of the Publications Fee Fund the Judicial Council republished and sold the books and published and sold regular supplements. From FY 1993 through FY 1998 the Judicial Council Publications Fee Fund generated approximately \$394,000 with expenses of about \$197,000, leaving a balance of slightly less than \$200,000 in the fund at the end of FY 1998. (See Appendix 3.)

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Beginning in FY 1999, the Legislature began to use balances in the Publications Fee Fund to offset SGF expenditures. To facilitate the shifting, the proviso limiting expenditures to publication expenses was removed. The lack of the limitation on expenditures in the proviso has left the Publications Fee Fund open to use for other than publications in FY 2000 and FY 2001. In FY 1999 to FY 2001 approximately \$139,000 has been either lapsed or spent on non-publication expenses.

I am here to respectfully request passage of 2000 HB 3009, with one small amendment - that is to make it effective with the FY 2002 budget.

House Budget Committee Recommendation

The House Budget Committee concurs with the recommendation of the Governor, with the following exception:

1. Legislation should be introduced to create the Publications Fee Fund to be used by the Judicial Council for operating expenditures related to the preparation, publication, and distribution of the Council's legal publications. The legislation would be effective FY 2002.

The legislation would create in the statutes a fee fund that already exists by proviso and traditionally has been used by the Judicial Council to pay costs associated with preparation and distribution of various legal publications the Council prepares. Revenue from the sale of these publications is credited to the Publications Fee Fund and the proviso limits expenditures to publications activities.

Beginning in FY 1999, the Legislature began to use balances in the Publications Fee Fund to offset State General Fund expenditures. To facilitate the shifting, the proviso limiting expenditures to publications expenses was removed in FY 1999 and FY 2000. Based on the Governor's recommendations for FY 2001, expenditures from the Fund will be \$116,670, of which only \$62,965 would be directly related to publications activities.

The Executive Director of the Council expressed concern that expenditures unrelated to publications would be paid for from the Publications Fee Fund under the Governor's recommendation and asked the Budget Committee to rectify the situation. The Budget Committee agrees with the Governor that State General Fund expenditures should be offset by other resources in FY 2001, but believes that, henceforth, the traditional use of the Publications Fee Fund should be adhered to. By recommending the introduction of legislation, the Budget Committee is codifying the practice in statute and not in a proviso that is effective for only one year.

FY 1993 - FY 1999

Publications fee fund No limit
Provided, That expenditures may be made from the publications fee fund for operating expenditures related to preparation, publication and distribution of legal publications: *Provided further*, That the judicial council is hereby authorized to fix, charge and collect fees for sale and distribution of legal publications in order to recover direct and indirect costs incurred for preparation, publication and distribution of legal publications: *And provided further*, That such fees may be fixed in order to recover all or part of such costs: *And provided further*, That all moneys received from such fees shall be deposited in the state treasury and credited to the publications fee fund: *And provided further*, That all moneys received as gifts, grants or donations for the preparation, publication or distribution of legal publications shall be deposited in the state treasury to the credit of the publications fee fund.

FY 2000

Publications fee fund No limit
Provided, That the judicial council is hereby authorized to fix, charge and collect fees for sale and distribution of legal publications in order to recover direct and indirect costs incurred for preparation, publication and distribution of legal publications: *Provided further*, That such fees may be fixed in order to recover all or part of such costs: *And provided further*, That all moneys received from such fees shall be deposited in the state treasury and credited to the publications fee fund: *And provided further*, That all moneys received as gifts, grants or donations for the preparation, publication or distribution of legal publications shall be deposited in the state treasury to the credit of the publications fee fund.

(c) On June 30, 2000, the director of accounts and reports shall transfer the amount of any unencumbered balance in the publications fee fund as of June 30, 2000, in excess of \$175,000 from the publications fee fund to the state general fund.

PUBLICATIONS FEE FUND

	<u>Revenue</u>	<u>Publication Expenses</u>	<u>Non-Publicate Expenses</u>	<u>Balance</u>
FY 1993	38,402	18,846	0	19,556
FY 1994	90,255	7,170	0	102,641
FY 1995	45,696	32,207	0	116,130
FY 1996	89,832	66,020	0	139,942
FY 1997	57,543	28,871	0	168,614
FY 1998	72,340	44,568	0	196,386
FY 1999	87,384	51,444	50,000	182,326
FY 2000(est)	92,973	61,993	37,401	175,905
FY 2001(est)	85,650	65,313	51,397	144,845

**OPERATING EXPENDITURES
FY 1992 - FY 2001**

<u>Fiscal Year</u>	<u>SGF</u>	<u>PFF</u>	<u>All Funds</u>
1992	213,562	0	213,562
1993	240,374	18,846	259,220
1994	222,128	7,170	229,298
1995	222,732	32,207	254,939
1996	230,839	66,020	296,859
1997	231,700	28,821	260,521
1998	239,293	44,568	283,861
1999	199,652	101,444	301,096
2000(est)	208,051	99,394	307,445
2001(est)	199,050	116,670	315,720

DRAFT OF AMENDMENTS

March 8, 2000

For Consideration by House Committee on Appropriations

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Session of 2000

HOUSE BILL No. 2732

By Representative Weber

1-27

9 AN ACT relating to the Kansas sports hall of fame; providing for the
10 transfer of specified funds for the support thereof.

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. (a) On ~~and after July 1, 2000, on each January 1, April 1,~~
13 ~~July 1 and October 1, the secretary of revenue shall certify to the director~~
14 ~~of accounts and reports the amount equal to the total revenues received~~
15 ~~by the secretary~~ from the taxes imposed under the Kansas retailers' sales
16 tax act and deposited in the state treasury and credited to the state general
17 fund during the preceding ~~three~~ calendar months from the sale of tickets
18 to athletic playoff games sponsored or sanctioned by the Kansas state high
19 school activities association.

20
21 (b) ~~Upon receipt of each certification under subsection (a), the di-~~
22 ~~rector of accounts and reports shall transfer from the state general fund~~
23 ~~to the bank account designated pursuant to K.S.A. 74-2912 and amend-~~
24 ~~ments thereto for the support and benefit of the Kansas sports hall of~~
25 ~~fame an amount equal to the amount so certified on each January 1, April~~
26 ~~1, July 1 and October 1 as specified in subsection (a). All transfers made~~
27 ~~pursuant to this section are subject to reduction under K.S.A. 75-6704,~~
28 ~~and amendments thereto.~~

29 (c) ~~All transfers made in accordance with the provisions of this section~~
30 ~~shall be considered to be demand transfers from the state general fund.~~

31 Sec. 2. This act shall take effect and be in force from and after its
32 publication in the statute book.

July 1, 2000, and on each July 1 thereafter,

shall transfer \$80,000 from the state general fund to the Kansas sports hall of fame fund. The amount so transferred is hereby determined to be substantially equivalent to the revenues received by the state

12

There is hereby established the Kansas sports hall of fame fund in the state treasury which shall be administered by the state treasurer in accordance with this section. All moneys transferred to the Kansas sports hall of fame fund pursuant to this section shall be paid by the state treasurer to the Kansas all sports hall of fame board of trustees and shall be deposited in

All transfers made pursuant to this section are subject to reduction under K.S.A. 75-6704 and amendments thereto.

House Substitute for SENATE BILL NO. 248

As Recommended by the Subcommittee to the Appropriations Committee

AN ACT concerning state educational institutions under the control and supervision of the state board of regents; relating to certain capital improvement projects; amending K.S.A. 76-833 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Any research foundation is authorized to initiate and complete capital improvement projects on state-owned property of the state educational institution that the research foundation is organized and operated to benefit if the capital improvement projects have received prior approval by the state board of regents and the plans and specifications for such capital improvement projects have received prior approval by the secretary of administration. Each such capital improvement project shall be totally financed from nonstate moneys of the research foundation. The buildings and facilities constructed and the repairs, remodeling and renovations of state buildings and facilities conducted under such capital improvement projects shall become the property of Kansas upon completion and acceptance by the secretary of administration. No such capital improvement project shall be approved by the state board of regents without having first advised and consulted with the joint committee on state building construction.

(b) As used in this section:

(1) "Capital improvement project" means a project to construct one or more buildings or facilities for a state educational institution or to repair, remodel or renovate one or more state buildings or facilities of a state educational institution and, in any such case, which has a total cost of \$1,000,000 or less;

(2) "research foundation" means any not-for-profit research foundation organized and operated for the primary purpose of encouraging, fostering and conducting scholarly investigation and other types of research for the benefit of a state educational institution;

(3) "nonstate moneys" means moneys received from any source

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except the state of Kansas or any agency thereof; and

(4) "state educational institution" has the meaning ascribed thereto by K.S.A. 76-711 and amendments thereto.

Sec. 2. K.S.A. 76-833 is hereby amended to read as follows:
76-833. (a) As used in this ~~act~~ section:

(1) "Capital improvement project" means a project which has a total cost of ~~\$500,000~~ \$1,000,000 or less;

(2) "private moneys" means moneys from nongovernmental sources;

(3) "state educational institution" has the meaning ascribed thereto by K.S.A. 76-711 and amendments thereto.

(b) ~~The university--of--Kansas--medical--center~~ Each state educational institution is authorized to construct buildings and facilities on state-owned property of the ~~university--of--Kansas medical--center~~ state educational institution from private moneys granted or given to such institution if the capital improvement projects for such buildings and facilities have received prior approval by the state board of regents and the plans and specifications for such projects have received prior approval by the secretary of administration. Such capital improvement projects shall be inspected by the division of architectural services. Such capital improvement projects financed totally from private moneys shall be exempt from the provisions of K.S.A. 75-3739, 75-3740, 75-3740a, 75-3741, 75-3741a, 75-3741b, 75-3742, 75-3743 and 75-3744, and amendments thereto. Such capital improvement projects shall be totally financed from private moneys and the buildings and facilities constructed shall become the property of the state of Kansas upon completion and acceptance by the secretary of administration. No such capital improvement project for a building or facility shall be approved by the state board of regents without having first advised and consulted with the joint committee on state building construction.

(c) ~~The--university--of--Kansas--medical--center~~ Each state educational institution is authorized to repair, remodel or

renovate state buildings and facilities of the ~~university-of Kansas-medical-center~~ state educational institution from private moneys granted or given to such institution if the capital improvement projects for such repairs, remodeling or renovations have received prior approval by the state board of regents and the plans and specifications of such projects have received prior approval by the secretary of administration. Such capital improvement projects shall be inspected by the division of architectural services. Such capital improvement projects financed totally from private moneys shall be exempt from the provisions of K.S.A. 75-3739, 75-3740, 75-3740a, 75-3741, 75-3741a, 75-3741b, 75-3742, 75-3743 and 75-3744, and amendments thereto. Such capital improvement projects shall be totally financed from private moneys and the improvements shall become the property of the state of Kansas upon completion and acceptance by the secretary of administration. No such capital improvement project to repair, remodel or renovate any such state building or facility shall be approved by the state board of regents without having first advised and consulted with the joint committee on state building construction.

~~(d)--The--provisions--of--this--section--shall--expire--on--June--30,~~
~~2001.~~

Sec. 3. K.S.A. 76-833 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

JANET SCHALANSKY, SECRETARY

March 2, 2000

The Honorable David Adkins, Chair House Appropriations Committee
and Members of the House Appropriations Committee
Statehouse
Room 514-S

Dear Committee members:

During review of the SRS budget in the full House Appropriations Committee, the Committee requested that this Department report back to the Committee on whether we could continue funding for homeless programs for persons with mental illness during FY 00 and FY 01. I am pleased to report that we have identified a limited amount of resources to continue some services for homeless programs in FY 00. Regretfully, we are unable to commit further resources in FY 01.

In 1993, two communities in Kansas received funding under the ACCESS federal grant for homeless outreach and services. These 5 year grants were intended to serve homeless individuals with mental illness. These grants have expired, and the 1999 Legislature appropriated \$750,000 in SGF for FY 2000 to maintain homeless services and to expand to other sites. These funds required a local match totaling \$250,000 statewide. The planned allocation of these funds was as follows:

Sedgwick County	\$289,500
Shawnee County	\$244,500
Wyandotte County	\$171,000
Rural site	\$ 45,000
TOTAL	\$750,000 (State General Fund)

The Governor's budget recommendations for FY 2000 did not include these funds. SRS had already signed contracts with Shawnee and Wyandot Community Mental Health Centers, and in fact had disbursed one quarter funding on these grants. The Division of Health Care Policy met with the providers impacted and reviewed outcomes of the grants, and minimum funding levels to continue some homeless services. Other grants and contracts were reviewed in an effort to partially fund some services in FY 2000, and the following will be funded:

Sedgwick County	0
Shawnee County	\$146,127
Wyandotte County	\$ 92,035
Rural site	0
TOTAL	\$238,162

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Other existing efforts will also assist in serving individuals that are homeless:


- Wyandot Mental Health Center applied for and received some additional federal funding that will assist in maintaining homeless services for FY 2000.
- Sedgwick County held reserves for the homeless program that will assist in funding the program for FY 2000.
- Shawnee County reviewed ways to use other homeless federal funds and local resources and will maintain some level of services for FY 2000.
- Programs are encouraged to apply for all federal funds, and Health Care Policy staff will be available to provide technical assistance in this effort.
- Federal funds for homeless outreach continue in the PATH grant, and fund services at 5 sites in Kansas. These funds are not impacted by these budget reductions.

Health Care Policy staff continue to review funding options for FY 2001, but at this time does not expect to be able to fund any homeless services through these grants after the FY 2000 funds are disbursed. To continue to fund these services would require us to reduce funds to target populations statewide. The FY 2001 budget does not contain funding specifically for these services; also, mental health grants in total are reduced by \$600,000 in FY 01 from the current year level.

I would point out, however, that CMHC's have the flexibility to use Mental Health Reform funds, state aid, and county funds to prioritize needs locally, including serving individuals that are homeless. Total funding from state and federal funds to community mental health centers in FY 2001 is budgeted at \$98 million.

In closing, my staff have worked diligently to find resources to continue some level of support in the current year. We will not be able to continue this support in FY 2001 given current budget funding levels.

Sincerely,


Janet Schalansky
Secretary

cc: Governor Bill Graves
Joe DelaTorre, Office of the Governor
Karen Suddath, SRS