

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS, 55TH ASSEMBLY SESSION, JANUARY 30, 1969

Present: Smith, Wood, Dini, Bryan Hafen, Hilbrecht, Branch, Lingenfelter
Absent: Mello and Getto

Chairman Smith opened the meeting and read to the members a set of Rules of Procedure which were adapted from those that have been adopted by the Assembly Judiciary Committee.

Lingenfelter moved the rules of procedure as read be adopted.
Bryan Hafen seconded.
Motion unanimously carried.

Chairman Smith told the committee he had asked Mr. William E. Hancock, Secretary-Manager of the State Planning Board to appear and talk on AB 61 and AB 62.

Mr. Hancock said that AB 61 is a recommendation from the State Planning Board which would allow the board to negotiate with the low bidder in the awarding of contracts under certain specified conditions. He stated that this is a procedure that is used by many federal agencies and it is used in every private bidding situation where you look to the bids. Mr. Hancock provided the committee with a copy of federal agency regulations that provide that in the event the bids received are higher than the applicant can accept and changes in the work are necessary to effect a reduction in cost the following procedure can be used as an alternative to revising and readvertising for bidding: The applicant may negotiate with the lowest acceptable bidder for each prime contract for minor changes in either plans or specifications prior to the award of the contract. The total value of negotiated changes shall not, except for special circumstances, exceed 5 percent of the contractor's base bid. Where there is a possibility of the bids exceeding the available funds, a reasonable number of alternates should be provided in the bidding material.

Mr. Hancock said that the reason for AB 61 was that the Attorney General had advised that while the board has used this procedure since the late '50's there is a danger from case law precedent in other states that procedure could be questioned to the detriment of the planning board. Also the Attorney General had suggested that instead of the 5% differential stated in the federal procedure that AB 61 allow 10%. Mr. Hancock also provided the committee with a case situation which outlined the application of AB 61 if adopted. The advantage of being able to negotiate with the low bidder would be to avoid the cost of rebidding. On a million dollar project it costs about \$4,000 to prepare a bid and the rebidding process creates additional overhead cost that is passed on to the State and other clients. Another advantage would be the time factor that is involved in the rebidding procedure. Also in the process of negotiating the board would have the advantage of the contractor's expertise. The contractor often has good ideas for modifications. The Attorney General has stated that the board could be led into a legally hazardous situation unless the specific authority as outlined in AB 61 is adopted.

Mr. Hancock then turned to his presentation of AB 62 which would provide a procedure to borrow money from the general fund that are in part federally financed on projects where partial costs are to be borne by the federal government. He said that until about four years ago the board did not have this problem but that recently and certainly in the immediate future many projects are contemplated especially in university construction that will be in part

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federally supported. This bill would allow the board to go to the general fund to borrow up to 50% of the amount of federal money owed to the board. Mr. Hancock stated that in these cases timing is the problem. The federal money is banked funds but not always available at the time demanded.

The committee then took the opportunity to question Mr. Hancock with regard to the sub-contractor position, the protection of resident contractors, and other matters related to the two proposed bills. It was suggested that State Highway Engineer John Bawden be invited by the committee to outline the highway department bidding practices especially inasmuch as many of the highway programs also are in part federally supported.

Chairman Smith thanked Mr. Hancock for his presentation and excused him from the meeting. He then called the committee's attention of a series of bills that are primarily remedial in nature.

AB 40 would place in proper context the retirement age of those who are required to assist the state fire marshal other than municipal fire chiefs or their designated representatives. It will enable those assistants to retire when they have attained the age of 55 years.

Hilbrecht moved Do Pass AB 40.
Lingenfelter seconded.
Motion unanimously passed.

AB 41 corrects a clerical error in NRS 412.152 relating to the National Guard.

Lingenfelter moved Do Pass AB 41.
Branch seconded.
Motion unanimously passed.

AB 42 requires the legislative counsel to advise that state controller of legislative appropriations. The committee discussed the mechanics of notification as between the State Treasurer and the State Controller. The committee agreed that a Do Pass of AB 42 be moved.

AB 43 supplies omitted and corrective language to general improvement district law.

Lingenfelter moved Do Pass AB 43.
Wood seconded.
Motion unanimously passed.

AB 44 eliminates redundant language relating to fees of county clerks. Mr. Hilbrecht stated that he did not understand on the face of the bill the objective being sought by the language changes. The committee agreed that AB 44 be held for further consideration at a later date.

AB 45 deletes requirement of receipt for supplying certain missing volumes to district judges.

Hilbrecht moved Do Pass AB 45.
Lingenfelter seconded.
Motion unanimously passed.

At the suggestion of Mr. Hilbrecht that the committee return to consideration

of AB 62, the committee discussed the measure further.

Hilbrecht moved Do Pass AB 62.

Motion was seconded.

Motion unanimously passed.

It was agreed that AB 44 be held for further consideration along with AB 61. Chairman Smith requested Hilbrecht to research AB 61 for the benefit of the committee and announced that Mr. Hancock as well as State Highway Engineer John Bawden would be called before the committee to resolve additional questions that had arisen from the discussions. He also stated that further consideration of AB 1, the ombudsman bill, would be tentatively scheduled for next Tuesday. Assemblyman Hilbrecht, as sponsor of the bill, provided the committee with copies of an objective analysis of the bill for their study.

Meeting adjourned.

EXAMPLE OF APPLICATION OF AB 61

1. Legislature appropriates \$1,000,000 for the design, construction and furnishing of a State Building.
2. Board adopts proposed budget:

a. Construction	\$ 850,000.
b. Architect/Engineer	50,000.
c. Contingency	25,000.
d. Inspection & Testing	25,000.
e. Furnishings	50,000.
	\$1,000,000.
3. If the low bid received is in excess of \$935,000.00 ($850,000 + 10\%$), all bids are rejected and architect instructed to revise the plans at no cost to the State and new bids are solicited.
4. If the low bid is \$935,000 or less, the Board under AB 61 would have the option to either reject all bids and re-advertise or attempt to negotiate with the low bidder to affect changes in plans or specifications to reduce the bid amount to approximately \$850,000 and award the contract.

The major advantages to this are:

1. Provides a procedure which permits the State to explore all possibilities of avoiding the cost of rebidding. On a job of this size, each bidder will have expended approximately \$4,000. to prepare his bid. Subcontractors will have spent a proportionate amount. With 5 to 10 general contractors and 20-30 subcontractors, this cost is significant, and becomes an overhead cost passed on to the State and other clients.
2. Saves time and thereby expedites completion of project. Rebidding of a project of this size requires at least 45 to 60 days, thereby delaying completion of the project.
3. Permits the State to give consideration of cost-saving changes based on the knowledge of the contractor prior to the award of a contract.
4. Permits the State to benefit from any sub bids that were not known to the low bidder prior to bidding.

A similar procedure is permitted by certain Federal agencies such as the U. S. Department of Health, Education and Welfare.

PHS
Health

Manual

Part 24-13
Construction Contracts, Bids, Awards,
and Contract Modifications24-13.3 In Excess of Estimated Cost of Work Covered by
and Specifications (cont'd)When Changes
Are Made to
Reduce the Cost

C. In the event the bids received are higher than the applicant can accept and changes in the work are necessary to effect a reduction in cost, one of the following procedures shall be used:

1. The applicant may negotiate with the lowest acceptable bidder for each prime contract for minor changes in either plans or specifications prior to the award of the contract. The total value of negotiated changes shall not, except for special circumstances, exceed 5 percent of the contractor's base bid. Where there is a possibility of the bids exceeding the available funds, a reasonable number of alternates should be provided in the bidding material.
2. Plans or specifications may be revised and the project readvertised for bidding, or the owner may request new bids from all of the original bidders based on changes in plans and specifications.

Revised
Bids24-13.4
Award of
Construction
ContractLowest
Responsible
Bidder

A. The Regulations require that all construction contracts be awarded to the responsible bidder submitting the lowest acceptable bid.