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Joint Committee on Finance

Paper #166

Single Prime Contracting (Building Commission)

[LFB 2013-15 Budget Summary: Page 80, Item #7]

CURRENT LAW

Under current law, with limited exceptions, the Department of Administration (DOA) is required to take both single bids and separate bids on the division of work that it designates for construction projects in excess of \$185,000. For projects less than \$185,000, DOA is allowed to take single bids or separate bids on any division of the work that the Department designates.

GOVERNOR

Create a single prime contracting bidding and contracting process for state construction projects in excess of \$185,000 under which only a general prime contractor has a contractual relationship with the state on a project and DOA would select all mechanical, electrical, or plumbing subcontractors and those subcontractors would be subcontractors to the general prime contractor. Require DOA to let all construction projects in excess of \$185,000 through single prime contracting except for projects for which the Building Commission waives the bidding process under its authority to use alternatives to state construction.

Delete the current requirement that the Department take both single bids and separate bids on any division of the work that it designates for construction projects in excess of \$185,000. Also, for projects less than \$185,000, delete the current law provision that allows DOA to take single bids or separate bids on any division of the work that it designates. Further, delete the requirement that if DOA awards any contracts by division of work, the contract must be awarded according to the division of work selected for bidding.

Single Prime Contract Requirements. Specify that if a bid is being let through single prime contracting, bidders for the general prime contractor who are responsible qualified bidders must

submit their bids to the DOA no later than seven days after the successful subcontractor bids for the project become available to the public. DOA would be required to reject any general prime contractor bid from a bidder who submits a bid for a project that includes subcontractors other than the ones selected by Department for the project. Specify that the award of a contract could not be finalized until DOA approves the required performance bond and certificate of insurance.

Require DOA to notify the successful bidder of its selection within 30 days after the general prime contract bid submission deadline. Specify that the Department would be required to award all single prime contracts to the lowest bidder who is a qualified responsible bidder that results in the lowest total construction cost for the project, except for bids involving minority- or disabled veteran-owned businesses. Require DOA to make the final general prime contract bid results available on its Internet site at the time it provides the written, official notice to the successful general prime contractor bidder that the contract is fully executed and that the contractor is authorized to begin work on the project. Specify that the contractor who is awarded the contract would have to enter into contracts with the mechanical, electrical, or plumbing subcontractors selected by DOA for the project and comply with requirements of the standard general prime contract developed by the Department.

Require the Department to develop a standard contract for a general prime contractor that could not be amended by the contractor or subcontractor and specify that the contract would have to include all of the following:

- a. a requirement that all subcontractors selected by the Department for the project provide a 100% performance bond and a 100% payment bond to the benefit of the general prime contractor as the only obligee;
- b. a delineation of the responsibilities, insurance requirements, indemnification obligations, claims processes, and termination rights and protections of all subcontractors selected for the project.
- c. a requirement that the general prime contractor is subject to interest on any late payments to subcontractors, at a statutory rate of 12% per year.
- d. a schedule for payment from the general prime contractor to a subcontractor that is consistent with statutory retainage requirements for such contractual relationships on state construction projects.

Require DOA when developing this standard contract for general prime contractors to provide public notice of its development, review written comments, and hold at least one public hearing that allows for testimony. Also, require that the Building Commission approve the standard contract before the Department would be allowed to use the contract.

Selection of Subcontractors on Single Prime Contractor Construction Projects. Repeal the current law provision that requires prime contractors to: (a) at DOA's request, submit in writing the names of prospective subcontractors for the DOA's approval before awarding a contract to the prime contractor; (b) that all subcontractors be approved in writing by the DOA prior to their employment, and requests to change subcontractors must be made in writing; and (c) that

changes may be made to the list of subcontractors with the agreement of the Department and the prime contractor when it is in the best interest of the state to require the change.

Instead, require DOA, for any project let under single prime contracting, to identify the necessary mechanical, electrical, or plumbing subcontractors who are qualified responsible bidders and require any general prime contractor submitting a bid on the project to include the selected subcontractors. For purposes of selecting subcontractors for a specific project, require DOA to develop and administer an open and public bidding process and follow the statutory requirements and procedures relating to soliciting bids for construction projects. Require DOA, within 48 hours of a contractor's bid submission, to make available on its Internet site the names of the bidders and the amount of the bid. No more than seven days after the deadline for bid submission of a project, require the Department to provide public notice of the lowest bidders who are qualified responsible bidders. The Department would also be required to make available on its Internet site the bids, including the bid documents, of the identified lowest bidders and make those bids and bid documents open to public inspection. Specify that no other bids for subcontracting work could be on the Internet site or open to public inspection.

Retainage by General Prime Contractor. As the work progresses under any subcontract for construction of a project, require that the general prime contractor, upon request of a subcontractor, pay to the subcontractor an amount equal to the proportionate value of the subcontractor's work done, less retainage. Specify that the retainage could be an amount equal to not more than 5% of the subcontractor's work completed until 50% of the subcontractor's work has been completed. At 50% completion, no additional amounts could be retained, and partial payments would have to be made in full to the subcontractor unless DOA would certify that the subcontractor's work is not proceeding satisfactorily. Specify that at 50% completion, or any time thereafter, when the progress of the subcontractor's work is not satisfactory, additional amounts could be retained but the total retainage could not be more than 10% of the value of the work completed. Upon substantial completion of the subcontractor's work, any retained amount would have to be paid to the subcontractor, less the value of any required corrective work or uncompleted work. Require that all such payments the general prime contractor makes be made within seven calendar days after the date on which the general prime contractor receives payment from the Department for the work performed.

State Not Liable for Damage for Contractor Delay. Modify a current law provision that specifies that the state is not liable to a prime contractor from delay caused by another prime contractor if DOA takes reasonable action to require the delaying prime contractor to comply with its contract, to delete the word "prime" and instead refer to contractors.

Building Commission Waiver Authority. Under current law, if the Building Commission determines that it is in the best interest of the state to use an alternative process to construct a state construction project, the Commission has authority to waive the statutory requirements relating state construction project contracts. Specify that the Commission's authority relating to alternatives to state construction would not include the authority to waive: (a) the requirements relating to DOA's development of a standard general prime contract; or (b) the requirements relating to subcontractor bids on single prime contracts.

Effective Dates and Initial Applicability. Specify that these provisions would take effect on January 1, 2014, and the provisions would first to apply to bids and proposals solicited on that effective date. However, the provisions requiring the Department to develop a standard general prime contract, publicly notice the process for development of the contract, receive comments, take testimony, and obtain Building Commission approval would not have a specified effective date or initial applicability date, and would take effect on the general effective date of the bill

DISCUSSION POINTS

DOA Errata

1. DOA staff indicate that the single prime contracting provisions included in Assembly Bill (AB) 40 bill are the culmination of discussions the Department has been having on state building project delivery with state agency staff, general contractors, and subcontractors in the mechanical, electrical and plumbing trades. They indicate that these discussions have been ongoing since 2011.

2. Subsequent to the introduction of the Governor's budget recommendations under AB 40, DOA has continued to work with the affected groups on the bill's contracting provisions. DOA and the groups have suggested modifications to the single prime contracting provisions in AB 40. The DOA Secretary, in an errata letter to the Committee Co-chairs on April 23, 2013, indicated that bill should be modified to incorporate the agreed upon changes. These modifications are summarized in the attachment to this paper. The bill would have to be amended to incorporate these requested modifications.

Project Delivery

3. Under statute, the state is required to bid both single and multiple divisions of work for any construction project in excess of \$185,000. This is generally called a multiple prime bidding process. The Building Commission has the authority to waive the multiple prime bidding requirements under their existing authority to deliver state construction projects using alternatives to the state construction process if such action is in the best interest of the state and if the waiver is accomplished through formal action of the Commission.

4. How the state contracts for the delivery of a state construction project has been much debated among DOA, state agencies, contractors, subcontractors, and consultants over the past decade. Much of the concern and discussion has revolved around the Commission's use of its authority to waive the competitive bidding process. It has been estimated that the Commission over time has authorized waivers of the competitive bidding process in favor of alternative project delivery methods on 10% to 15% of enumerated projects.

5. A related concern on the use of waivers is that the Commission has not developed any criteria for, or the characteristics of, the types of project for which the Committee will grant a competitive bid waiver or authorize an alternative project delivery method. However, the Commission has generally approved single prime contracting under the following circumstances:

(a) complex building design; (b) special reporting requirements, such as Leadership in Energy and Environmental Design (LEED) certification requirements; (c) congested construction site, which limits material storage and project staging areas; (d) complex project phasing; and (e) compressed schedule. Regardless of the identified circumstances, the Commission has waived the competitive bid process on a case-by-case basis, with no set criteria for determining the waiver or the ultimate project delivery method.

6. Under the bill, the Commission could continue to waive the competitive bid statutes, if the it determines that an alternative method of project delivery is in the best interest of the state. However, if the project is to be carried as a single prime contract, the Commission could not waive most of the single prime contracting requirements under the bill, or under the DOA errata.

7. There are four main actors in the state building construction contracting process: (a) the state Department of Administration, which staffs the Building Commission and contracts for, and oversees the contract of, state public construction projects; (b) the state agency for which a project is being constructed, which can have programmatic and scheduling concerns related to the project; (c) general contractors, who are the primary entity responsible for project management; and (d) subcontractors, who generally contract with the state under the multiple prime bidding system, but can contract with the general contractor under a single prime system. Subcontractors are typically mechanical, electrical, and plumbing (often termed "MEP" contractors).

8. Often mentioned as one of the primary benefits of single prime contracting is that DOA, as the state agency responsible for contracting and managing state construction projects, would only have one contract to work out, and would have one single point of contact for project coordination and schedule control. This could ease the agency's administrative burden and costs. The prime contractor would be responsible for contracting and working with subcontractors to make sure the project is delivered on time. Also, proponents of single prime contracting contend that the contracting method reduces the likelihood of inefficiencies associated with the state having to deal with multiple sets of detailed plans for each subcontractor. A state agency for which the project being built, and in particular UW System projects, which generally have to deal with tight schedules and working around school semesters, may prefer having just a single prime contractor to facilitate project coordination and schedules.

9. Some also contend that single prime contracts can potentially reduce the state's costs because bidders on prime contracts have likely already received bids and chosen their subcontractors at the time of their prime contract bid. This would be unlike multiple prime bids where general contractors do not know which subcontractors they will be working with and at what cost, so they have to build the risk of unknown subcontractor and subcontractor bids in their prime contract bid. Also proponents of single prime contracting note that administrative expenses can be higher under the multiple prime bidding process because having multiple, detailed contracts can result in more work change orders, litigation and delays. Conversely, multiple prime contracting proponents contend that when change orders occur under single prime contracting, those changes are more expensive because any change in costs would include the general prime contractor's markup.

10. Others contend that multiple prime bids are ultimately less expensive because the

state is bidding out each division of labor, typically MEP subcontractors, at the lowest possible bid. Further, quality subcontractors may be more drawn to multiple prime contract bids because they can count on prompt payment from the state (as the project owner) and bidding in open to all qualified subcontractors rather than just a few bidders favored by the single prime contractor.

11. Two considerations that are frequently mentioned as concerns related to single prime contracting by subcontractors, and their member associations, relate to "bid shopping" and to the openness of the process or access to public work project for all subcontractors. "Bid shopping" involves a prime contractor, who does not have to publicly bid the subcontracting work, receiving a bid from one subcontractor and "shops" that bid around attempting to obtain a lower bid before the prime contractor has to submit their prime contract bid. Under multiple prime, each subcontractor has one opportunity to submit and receive the winning bid. Under a "bid shopping" scenario, the prime contractor can play one bidder off of another to drive down the final subcontractor bid. Some contend that this process can squeeze the potential margins of subcontractors with no guarantee that those reductions are passed on to the public building owner, which means they could increase the prime contractor's profit margin on the project.

12. Openness and access to public bids as a subcontractor concern generally involves prime contractors consistently choosing to work with the same subcontractor, which limits the number of subcontractors with actual access to subcontracting work on state projects. Under the current law multiple prime bid process, any qualified subcontractor has the opportunity to bid and win state construction contracts. Under a true single prime contracting bid process, the prime contractor bids the subcontracting work, and chooses the winning bid or negotiates with subcontractor for the work. The prime contractor is not required to publicly bid the subcontract work and could simply choose to work with only those subcontractors with whom they have a working relationship. Under this scenario, concern exists that the pool of subcontractors with access to state construction contracts could be more limited, and could ultimately inhibit the ability to have a competitive marketplace for subcontracting work on state contracts.

Governor's Proposal

13. As mentioned earlier, the Governor's recommendations are the result of ongoing discussions with the actors involved in state construction projects. The Governor's recommendation would not be considered a true single prime contracting model in that it is somewhat of a compromise between the competing interests of general contractors and subcontractors on state construction contracts.

14. According to BusinessDictionary.com, in construction, a single prime contract typically involves a prime contractor, who has a contract with the owner of a project or job. This contractor has the full responsibility for the project and its completion. A prime contractor undertakes to perform a complete contract, and may contract with and manage, one or more subcontractors to carry out specific parts of the contract.

15. The Governor's recommendations could be considered a hybrid proposal that would incorporate some tenets of single prime contracting and some tenets of state's current law process of competitively bidding the various divisions of labor on a state construction project. The bill would

allow DOA to enter into only a single prime contract for a state construction project. However, the bill would not allow that prime contractor to either bid out, or choose its own subcontractors. Under the bill, as modified by the errata, DOA would identify the subcontractors that the prime contractor would have to use, and then give any prime contractor bidding on a state construction job, time to incorporate the winning subcontractor bids into their final bid for the prime contract. In addition, the bill, as modified by the errata, would spell out the responsibilities, liabilities, and indemnification of the both the prime contractors and subcontractors on any single prime contract for a state construction project.

16. While this hybrid approach may be a compromise position between competing interests on state construction contracts, it may limit the benefits often contended by those in favor of single prime contracting. DOA would still be required to carry out the workload of soliciting subcontractor bids, and go through the process of identifying the winning bids. This could limit any administrative burden and project work schedule savings that are often touted as a benefit of single prime contracting. Further, the prime contractor would be required to work with the subcontractors identified by DOA, rather than the bid out those subcontracts on their own and work with the subcontractors with whom the contractor may want to work.

17. However, the hybrid approach does somewhat protect the concerns of subcontractors mentioned earlier because DOA would continue to have a role in publicly bidding and identifying subcontractors on state construction projects. Further, this hybrid approach would continue to involve the state, rather than the general prime contractor, in ensuring that subcontracts on state projects are provided to the lowest responsible bidder.

18. There are three alternatives the Committee can consider in addressing the Governor's recommendations: (a) if the Committee believes the Governor's hybrid approach provides some degree of the potential benefits of single prime contracting while maintaining some of the bidding and subcontractor safeguards associated with current law process, the Committee could approve the Governor's recommendation, as modified by the DOA errata (Alternative 1); (b) if the Committee would like to have a more true single prime contracting process that would provide the most potential to reduce the state's administrative burden and responsibility associated with state construction projects, the Committee could modify the Governor's recommendations by deleting the provisions related to DOA having to select the subcontractors and allow the prime contractor to take on this responsibility (Alternative 2); or (c) if the Committee believes that the current system of competitive bidding for each division of labor on a state construction contract, but has a process whereby that system could be waived, provides the most competitive pricing and the most subcontractor protections, the Committee could delete the Governor's recommendation (Alternative 4).

19. If the Committee considers the current law process sufficient in meeting the state project construction needs, one possible modification the Committee could consider would be to require the Building Commission to develop specific criteria for the types of projects or project concerns that make it necessary for the Commission to waive the current competitive bidding process and use an alternative method of construction (Alternative 3). The Committee could require that the Commission develop and adopt such criteria by July 1, 2014, and specify that the

Commission could only waive the competitive bidding process or select an alternative for state construction if the criteria adopted by the Commission are met.

ALTERNATIVES

1. Approve the Governor's recommendations related to single prime contracting of state contracts, as modified by the provisions included in DOA's errata (summarized in the attachment to this paper).

2. Modify the Governor's recommendations under AB 40 and the DOA errata, by deleting the provisions requiring DOA to select the subcontractors for a state construction project in excess of \$185,000, and the provisions requiring the single prime contractor to use the subcontractors selected by DOA.

3. Delete the Governor's recommendations. Instead require the Building Commission by July 1, 2014, to develop and adopt specific criteria for the types of projects and project concerns that would make it necessary for the Commission to waive the current competitive bidding process and the use an alternative method of construction for any state project in excess of \$185,000. Specify that the Commission could only waive the competitive bidding process or select an alternative for state construction if the criteria adopted by the Commission are met.

4. Delete provision.

Prepared by: Al Runde
Attachment

ATTACHMENT

Summary of DOA Single Prime Contracting Errata Provisions

Make the following modifications to the Governor's recommendations relating to single prime contracting:

- a. specify the DOA would be prohibited from requesting or accepting any bid alternates when letting a construction project through single prime contracting.
- b. specify that the state would not be liable for any damages to a subcontractor selected by the Department that enters into a contract with a general prime contractor.
- c. specify that if a bid is let using the single prime contracting process under the bill, bidders for the general prime contractor who are responsible bidders would be required to submit their bids within five, rather than seven, days after the successful subcontractor bids are made available to the public.
- d. require that within 48 hours after the general prime contractor bid deadline for a project, DOA would have to make all bid tabulations that identify the names of the general contractors who bid and their bid amounts publicly available on the Department's internet site. Require that in the event the bid tabulations are unavailable on the Department's internet site, they would be available at the Department's offices.
- e. specify that within 30 days after the deadline for single prime contractors, DOA would be required to identify, as well as notify, the general prime contract bidder that was awarded the single prime contract.
- f. modify the term "work done" to be "work properly completed" for the purposes of payment and retainage relating to general prime contracts.
- g. require DOA identify, rather than select, the mechanical, electrical, and plumbing contractors who have submitted the lowest bids for a project, and that any general prime contractor who is submitting a bid would have to include the subcontractors identified by DOA.
- h. Require the general prime contractor to ensure any contract entered into with a subcontractor meet the prompt payment, insurance and bonds, indemnification, retainage, and other requirements specified for such contracts.
- i. specify that if a contract is being carried out under the Building Commission's authority to use alternatives to the state's design and construction process, DOA would be required to identify the mechanical, electrical, and plumbing contractors who have submitted the lowest bids and are qualified responsible bidders for the project. Require that any contractor selected by the state and awarded the contract under the alternative construction process would have to contract with the subcontractors identified by DOA as the lowest responsible bidders for the mechanical, electrical, or plumbing work on the project. Specify that the requirements for

posting the list of lowest responsible subcontractors for a project, their bids and bid documents on the DOA's internet site under the bill, as modified by this errata, would apply to contracts for projects carried out under the Commission's alternative to state construction process.

j. modify the requirements under the bill relating to posting of subcontractor bids on DOA's internet site as follows: (1) the 48 hour requirement for making the names of bidders and the bids available on the Department's internet site would apply to the bid submission deadline rather than to the time of the bid submission; (2) specify that DOA would have to post on its internet site notice of the lowest bidders who are qualified responsible bidders within five, rather than seven, days after the bid submission deadline; and (3) specify that the lowest bidders and bid documents would be open to public inspection in accordance with the open access to state records statutes.

k. specify that if the Building Commission approves an alternative delivery method under its alternatives to state construction authority, a contractor would be subject to the contracting requirements when working with subcontractors except for those having to with the project schedule.

l. delete the provision under the bill that DOA, when developing a standard contract for general prime contractors, would be required to provide public notice of its development, review written comments, and hold at least one public hearing that allows for testimony. Delete the proposed requirement that the Building Commission approve the standard contract before the Department would be allowed to use the contract.

m. delete the bill provisions that would require DOA to develop a standard contract for a general prime contractor that could not be amended by the contractor or subcontractor and the specific provisions the standard contract would have to include.

n. Require the following for contracts for mechanical, electrical, and plumbing subcontractors and specify that any subcontract entered into between a general prime contractor and subcontractor or a contract entered into with a subcontractor is void unless it contains all four of the following clauses:

Prompt Payment. Require the general prime contractor to pay the subcontractors in accordance with provisions in the relating to retainage for work that has been satisfactorily completed and properly invoiced by the subcontractor. Specify that the payment is timely if it is mailed, delivered or transferred to the subcontractor by the required retainage deadline. If the subcontractor is not paid by the deadline set forth in this subcontract, require the general prime contractor to pay interest on any balance due from the eighth day after the contractor receives payment from DOA for any work for which payment is due and owing to subcontractor, at the rate 12% per year compounded monthly. Specify that any subcontractor receiving payment on a contract would be required to pay lower-tier subcontractors, and be liable for interest on late payments, in the same manner that the general prime contractor would be required to pay a subcontractor.

Insurance and Bonds. Prohibit a subcontractor from commencing work under a contract

until it has obtained all necessary insurance required of the subcontractor in the general prime contractor's contract with DOA. Require the subcontractor to provide a separate 100% performance bond and a separate 100% payment bond to the benefit of the general prime contractor as the sole named obligee. Require original bonds to be given to the general prime contractor and a copy to DOA no later than 10 days after execution of the subcontract.

Indemnification. Require that to the fullest extent permitted by law, a subcontractor shall defend, indemnify, and hold harmless a general prime contractor, and its officers, directors, agents, and any others whom the contractor would be required to indemnify under its contract with DOA, including the employees of any of those required to be indemnified. Specify that the indemnification would involve defending and holding harmless from and against claims, damages, fines, penalties, losses and expenses, including but not limited to attorneys' fees, arising in any way out of, or resulting from, the performance of the work under this agreement. However, the indemnification requirement would only be to the extent such claim, damage, fine, penalty, loss or expense: (a) is attributed to bodily injury, sickness, disease or death, or to injury to or destruction of property, including but not limited to loss of use resulting therefrom and is caused by the negligence of or acts or omissions of subcontractor, or any of its sub-subcontractors, any of their employees and any directly or indirectly employed by them or anyone for whose acts they may be liable; or (b) as related to such claims, damages, fines, penalties, losses and expense of or against the general prime contractor, results from or arises out of general prime contractor's negligence or other fault in providing general supervision or oversight of subcontractor's work; or (c) as related to such claims, damages, fines, penalties, losses and expense against DOA, arises out of DOA's status as owner of the project or project site.

In addition, require the subcontractor to defend, indemnify, and hold harmless the general prime contractor and its officers, directors, agents, and any others whom general prime contractor would have to indemnify under its contract with DOA and the employees of any of them, from any liability, including liability resulting from a violation of any applicable Safe Place Act, that the general prime contractor or the state incurs to: (a) any employee of the subcontractor; or (b) any third party where the liability arises from a derivative claim from said employee, when such liability arises out of the general prime contractor's failure to supervise the subcontractor's work or work area. Specify that the subcontractor's liability would only be to the extent that such liability arises out of the acts or omissions of the subcontractor, its employees, or anyone for whom subcontractor may be liable.

The subcontractor's liability could also arise out of following: (a) the a subcontractor's breach of its contractual responsibilities; (b) the general prime contractor's negligence or other fault in providing general supervision or oversight of subcontractor's work; and (c) DOA's status as owner of the project or project site. In claims against general prime contractor or the state by an employee of the subcontractor or its subcontractors or anyone for whose acts the subcontractor may be liable, the indemnification obligation would not be limited by a limitation on amount or type of damage, compensation, or other benefits payable by or for the subcontractor or its subcontractors under Workers' Compensation Act.

Except for those identified, the obligations of subcontractor under these indemnification requirements would not extend to the liability of general prime contractor and its agents or employees thereof arising out of: (a) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; (b) the giving of or failure to give directions or instructions by the general prime contractor, DOA, or their agents or employees thereof provided such giving or failure to give is the cause of the injury or damage; or (c) the acts or omissions of other subcontractors.

Retainage. Specify that retainage would occur and be in amounts and on a schedule equal to that in general prime contractor's contract with DOA.

Other Requirements. Require that any subcontract entered into between a general prime contractor and subcontractor would have to include a scope of work clause that is identical to that on which the subcontractor bid. Prohibit a general prime contractor and subcontractor from entering into any other agreements in connection with bids submitted that would somehow alter or affect the scope or price of the contract or subcontract except for: (a) any change orders by DOA that result in changes to the plans or specifications; or (b) any back charges allowed by the subcontract.

Require the general prime contractor to base its project schedule on the schedule in the specifications or bid instructions unless otherwise agreed to by a mechanical, electrical, or plumbing subcontractor.

Responsible Bidders. In addition, modify the provisions under the bill related to the requirements a bidder must meet in order to be certified as a responsible bidder:

a. specify that the bidder would have to obtain a separate 100% performance bond and a separate 100% payment bond; and

b. specify that bill provision relating to any disciplinary action relative to a professional license held by the bidder's employees or members of the bidder's organization would refer to a professional license currently in use.