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EQUAL OPPORTUNITY EMPLOYER

EXHIBIT 7

DATE 02/20/2013

HR 494

AL SCHELLINGER
KYLE SCHELLINGER
GEORGE SCHMIDT

February 20, 2013

Chairman/Members of the Committee,

I apologize for not being able to attend the hearing today, but fortunately Cary with the Montana Contractor's Association is willing to relay my comments for your consideration.

I appreciate the time and effort you put all have put into this issue and sincerely hope this bill will pass in some form to fix the major problem we have regarding the timeliness of MDT final pay estimates on Montana highway projects.

What once again brought this issue to a head for our company is a recent "Final Estimate" we received on a Highway 93 Corridor Project, north of Missoula that we completed in 2010. This latest "Final" Estimate included a net deduct of nearly \$20,000. Almost all of the negative adjustments were related to quantity changes on our subcontract's work. One of the major quantity changes was for concrete work performed by a concrete subcontractor (ACI Northwest) who has been out of business for a couple of years. Obviously we now have no way to get compensated for their negative estimate, and no recourse but to absorb the loss. The other negative changes concerned areas of work performed by small subcontractors. These small subcontractors; seeders, and fencers etc., cannot be expected to come up with the money to pay us back for a payment reduction on their work which they completed and got paid for over 2 years ago. I personally provided documentation regarding this issue on this project to Kevin Christenson, the MDT Head Engineer, at a meeting earlier last fall and although he agreed this is not acceptable and needs to be fixed, as of today's date we have not heard anything back.

We also recently received an "adjusted" final estimate from a job completed in 2011, on Homestake Pass. This adjustment was actually a \$9,000.00 POSITIVE estimate. Obviously we did not dispute the adjustment, since it was in our favor, but the fact that there was an adjustment almost 2 years after completing the project shows that this is not an isolated problem. This particular project was a simple, mill, fill and chip-seal with guardrail improvements. This should have been a very straight forward job to measure and quantify, but obviously it was not.

A very important problem with this open ended process is that it is impossible for the MDT to "recreate" what transpired on a project 2 or 3 years ago, and what deals were made between the inspectors, contractor and subcontractors during construction in lieu of writing change orders etc. This leads to a problem when 2+ years later a project is inspected for the final, final, final estimate and re-measured and things don't add up. Without notes or any other written documentation, the MDT will adjust quantities back to what they measure without regard to what deals or fair quantity adjustments were made at the time of construction.

Another important point is the fact that contractors are held to a very strict time standard on everything when it comes to a MDT project. These items include contract time, notice to proceed dates, subcontractor payments, submittals and document reviews, certified payrolls, mix designs, fuel price adjustments and almost every other items. All of MDT's various timeframes are very strictly enforced with almost zero tolerance.

This issue has been a concern of Highway Contractors for years, and has been a topic of discussion for over 10 years-that I know about-at our Highway Liaison meetings with MDT personnel. So far nothing has changed.

It is time to put something into law that will protect Montana's highway contractors, and hold the Montana Department of Transportation accountable to get their projects closed out within a reasonable timeframe.

Our company would sincerely appreciate your support of this bill.

Thank You.

Sincerely,

A handwritten signature in black ink, appearing to read 'RW', with a long horizontal stroke extending to the right.

Robert Warren
Schellinger Construction Company, Inc.
Columbia Falls, MT