



October 20, 2010

Email delivery:

To: director@fasb.org

Subject: File Reference No. 1820-100

Technical Director – File Reference No. 1820-100
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Ladies and Gentlemen:

We thank you for the opportunity to comment on the Exposure Draft (“ED”) regarding “Revenue from Contracts with Customers.” We are an active member of an engineering and construction (“E&C”) controllers’ group (“the Group”), which is comprised of controllers and chief accounting officers from many of the largest E&C companies. As a member of the Group, we have participated in several industry roundtables and conference calls focused on the proposed changes to revenue recognition. Although the nature of the E&C industry lends itself to variability in terms of transactions and projects, the Group is unified in its opinions regarding certain aspects of the ED. As such, the Group has submitted a comment letter (“the Group Response”) which reflects the collective views and opinions of all who signed the letter, including Peter Kiewit Sons’, Inc.

We fully endorse and support the views, comments and recommendations expressed in the Group Response. We are providing in this letter additional insights and recommendations related to the ED that in some cases expand on the Group Response, and in others comment on items beyond those contained in the Group Response. Accordingly, the use of “our”, “us” and “we” refer to facts and circumstances specific to Peter Kiewit Sons’, Inc.

While we understand and respect the Boards’ objective of creating a common revenue recognition standard that is applicable for all transactions across industries, we believe that the model proposed by the ED does not provide a fully faithful depiction of the substance of all long-term contracts in general, and long-term contracts in the E&C industry in particular. We believe that:

- the model should allow for the combination of performance obligations similar to those found in E&C contracts when facts and circumstances indicate that the performance obligations are highly interrelated as determined by the presence of certain factors,

- retrospective application of the model is not practicable for long-term contracts, and therefore more flexibility should be allowed upon initial application, and
- additional clarifications should be provided in some areas, and additional flexibility should be added in others.

1. Separate performance obligations:

The ED requires that a contract's performance obligations be separated if they are distinct, and then provides, in paragraph 23, that an obligation is distinct if either a) the entity or any other entity sells identical or similar goods or services separately or, b) the obligation has a distinct function and a distinct profit margin.

It is the nature of the E&C industry that all work performed, including the management of the project, can be subcontracted, and that all materials can be purchased from another entity. Therefore, another entity exists that can perform every individual aspect of every project. As a result, under paragraph 23 a., every obligation within an E&C contract would be considered distinct which would seem to require the identification of dozens of separate performance obligations for each project. It seems clear, however, from 1) the inclusion of paragraph 23 b., 2) the concept in paragraph 24 that goods and services transferred at the same time need not be accounted for as separate obligations, and 3) Example 11 provided in the Implementation Guidance that the Boards did not intend that every obligation would be distinct for the E&C industry. Although it is a relief that the Boards do not intend there to be unlimited numbers of separate obligations, Example 11 actually illustrates how the ED's model does not provide a fully faithful depiction of all E&C contracts.

Example 11 is a Design/Build ('DB') contract. One conclusion in the example is that design services are distinct because they are sold separately by the entity and its competitors. It is also concluded that site preparation and site finishing are each separate performance obligations because they have distinct risks and presumably distinct function. The guarantee/warranty is also considered distinct.

This example introduces the concept of 'highly interrelated' when discussing contract management and the remaining procurement and construction activities. It concludes that some of the tasks are highly interrelated and require significant construction management. Even though each of those services could be performed by another entity, the example concludes that they are combined because the customer has contracted for integrated construction services and the risks of the contract management and the related tasks are not separable.

The conclusions in this example, however, do not fully recognize that the concept of highly interrelated is exactly on point for us as well as, we believe, many if not most companies in the E&C industry. All of the tasks within our E&C contracts are highly interrelated. That includes not only the tasks combined into one obligation in Example 11, but also the design, site preparation and site finishing. When a customer enters an E&C contract, the customer expects all of the tasks within that contract to be integrated, and contract management is responsible for

coordinating all of those tasks, including design, into a unique combination for each contract. Design/engineering, procurement and construction (including all of the tasks within construction - both the self-performed work and the subcontracted work) are all highly interrelated and interdependent in our contracts, and must be integrated by contract management into a cohesive process in order to successfully complete the project. Further, many aspects of the design/engineering, procurement and construction obligations are fulfilled concurrently through the use of shared resources in addition to construction management. Surety bonds, mobilization, project offices, computers, project management and supervision, some permanent materials, construction equipment and crews of craft workers, are all examples of resources that are employed in the performance of multiple obligations due to the interrelated and interdependent nature of an E&C contract. Our customers contract for integrated services because they are interested in making us responsible for one combined risk, the contract, as this is more efficient than contracting for the components and managing their combination for themselves. As a result, recognizing revenue at the contract level is a much more faithful depiction of the substance of the agreement with our customers.

We believe that all obligations within our E&C contracts are highly interrelated, and therefore not distinct, because:

- **They are performed concurrently.**

For example, in DB projects, or in the industrial equivalent of Engineer/Procure/Construct (EPC), construction can begin when design is as little as 30% complete, and design continues throughout the project. This happens because the engineer and the contractor must work together as the project progresses to ensure both the constructability of the design and that the design reflects the project as it was actually built. Each project is unique simply because it is in a different location with different site conditions, weather, and legal requirements. As a result, the contractor continually works throughout the project with the engineer to make design changes that are unique to the project. In fact, the submission of “as-built” engineering drawings is one of the last activities to be completed in a construction project.

As noted above, paragraph 24 of the ED allows for the combination of obligations that are performed at the same time. In Example 11, however, the ED indicates that procurement is not a separate obligation because the customer obtains control as the materials are installed. This therefore implies that if the customer obtains control of the materials as they arrive at the project, they would be a separate obligation from installation because the obligations are not performed at exactly the same time. This seems to be an important enough point that it should be clearly stated if that is the intent of the Boards. That being said, requiring obligations to be performed at exactly the same time in order to be combined seems to us to be an extremely high hurdle in the E&C arena. We believe performing obligations at substantially the same time should be sufficient for their combination. If E&C contractors are precluded from combining

performance obligations that are not performed at exactly the same time, they could affect the timing of revenue recognition simply by accelerating or deferring the timing of the receipt of materials. Since the materials would likely have a smaller margin than other obligations in the contract, this could lead to misleading results as contractors move low margin obligations from one period to the next.

- **Changes are made by contract management to individual tasks or obligations throughout the completion of the project due to their interdependence in order to improve overall contract profitability rather than the profitability of the individual tasks or obligations within the contract.**

Our business is no different from many other industries in that typically contract price is determined based on an assessment of the contract as a whole rather than the sum of the selling prices of the parts. A cell phone provider prices the combination of the phone and the service as a whole based on total cost, demand, the level of competition, availability of resources to fulfill the contract, etc., and not based on just adding up separate selling prices. We price contracts similarly. The difference between E&C and many other industries, however, is that once the contract starts, the E&C contractor always changes the mix of the underlying interdependent tasks or obligations to improve overall contract profit. When the cell phone provider or the refrigerator manufacturer ships the product, the die is largely cast, and there is little that the seller can do to the product to affect the profitability of the remaining services to be offered, short of shipping a new product. In our business, however, we can subsequently determine that spending more on design will reduce construction costs (or vice versa) and therefore make the entire project more profitable. (The same could be said for site work vs. foundation work, or any other combination of tasks within a contract.) An E&C contractor can also decide to subcontract work that it originally planned to self-perform when the contract was signed since the contractor can subsequently determine that managing a subcontractor's performance of those tasks will make the contract more profitable. External factors such as weather, a request by the customer for an acceleration of the completion of the project, and restrictions on access to the work area (imposed by either the customer or a third party) also create situations in which the contractor will change the mix of the underlying tasks or performance obligations in order to maintain overall contract profitability. E&C contractors typically are able to do this because the individual tasks or obligations are so highly interrelated and interdependent. When the goal is to improve overall contract profitability, reporting separate gain or loss on interdependent obligations within the contract is misleading to financial statement users who will only see a portion of the results of decisions that have been made.

In fact, this relationship points out an important danger in strictly applying the proposed

model to E&C. Since a contractor can change the cost of the tasks or obligations after the price of those obligations has been set, a contractor has greater opportunity to structure results. For example, a contractor could decide to spend less money on an early obligation in the project in order to increase margin in a current period. That decision could be at the expense of work to be performed (and the contract as a whole), and therefore profit to be recognized, in future periods, but that impact would not be apparent to users of the financial statements. Conversely, a contractor could decide to spend more on an early obligation (even to the extent of creating an onerous obligation) in order to benefit future work (and the contract as a whole), but the impact of this decision on future periods also would not be apparent to users of the financial statements. These examples illustrate how interrelated the tasks within an E&C contract are, and how separating them into separate obligations does not faithfully represent the overall financial results of the contract.

- **Control of the individual obligations provides the customer with limited immediate utility.**

In an E&C contract, the customer typically has control of the work as it progresses. Typically, however, having control of incomplete work or even completed obligations within the contract provides the customer with little immediate utility. As noted earlier, and in Example 11, our customer has contracted for integrated services that will result in an entire completed project, and not for the individual pieces which provide little immediate utility. Materials that have not been fully installed have little value if the project is not completed, and the cost to switch contractors on a project is very high. Even the design provided by the engineers has limited use outside of the existing project due to the differing site, weather, legal, etc. differences in a new location. Engineers typically accept no liability for the reuse of their designs on a new project, and therefore require that customers obtain their approval before reusing them. As a result, designs are not typically reused.

As a result of the above, we believe that obligations should not be considered distinct when they are highly interrelated. Factors indicating that obligations are highly interrelated include the following:

- The timing of the performance of the obligations overlap.
- The seller can alter the timing or extent of the work performed in those overlapping and interdependent obligations thereby affecting the profitability of each obligation in order to affect total contract profitability.

Financial Accounting Standards Board
October 20, 2010
Page 6

- The customer has control of the individual obligations within the contract, but that control provides the seller with limited immediate utility until the entire contract is complete.

We believe these factors allow for the combination of the obligations within an E&C contract, and many other long-term contracts, while also allowing for the separation of obligations in other situations. For example:

- The cell phone would be separate from the service as the customer would have a phone that provides a utility (it can be used with another service) and the phone can no longer be significantly changed to affect the profitability of the services provided.
- Under a typical design, build, operate and maintain contract, the design and build components would be highly interrelated and therefore one obligation, but they would not be highly interrelated with the operate and maintain portions which would likely each be separate obligations. Once the customer has the project (the completion of the DB component), the customer would have received significant utility, similar to the cell phone. Then the maintenance and operation begin, and the profit of these obligations can no longer be significantly affected by the DB portion since that work is complete. Further, any warranty would be a separate obligation under these factors as it is not concurrent with the DB portion.

We have discussed separate obligations with our bonding company, which is the largest bonding company in both the United States and Canada and is also one of the most significant users of our financial statements. They firmly believe that dividing our E&C contracts into multiple obligations for revenue recognition purposes is inappropriate as the obligations within the contract are so highly interrelated. They feel separate obligations will cause misleading results and opportunities to structure results, as described above, and therefore believe the most faithful representation of our results is to record revenue at the contract level. They feel that the faithful application of contract level revenue recognition has always provided them with the information they have needed to assess the financial results of an E&C contractor, and that none of the failures they have seen in the E&C industry have been as a result of a faithful use of contract level revenue recognition. In fact, they feel so strongly about this that they have indicated that they will require us to provide them with separate financial information that continues to recognize revenue at the contract level.

In addition to being highly interrelated, obligations within E&C contracts have other characteristics that make the separate obligations model inappropriate for the E&C industry. We know that the Boards have considered many of these characteristics before, but we feel very strongly that they should be reconsidered.

- **Comparability between E&C financial statements will be reduced.** This is the case for two reasons. First, E&C contracts contain a large number of individual tasks or obligations. Without much more specific guidance, the identification of distinct obligations will be extremely subjective. It seems very unlikely that any two contractors will look at a contract the same way and arrive at the same list of separate obligations.

The second reason is the complexity of identifying standalone selling prices. E&C contractors typically sell very few goods or services, if any, separately. Instead, E&C contractors typically pursue work that employs the breadth of their capabilities rather than work that employs only one standalone capability. As discussed above, each E&C contract joins obligations into a unique combination. In fact, even the obligations within the contract itself are often unique due to differing site, weather, legal, etc. differences in a new location. As a result, standard market prices do not exist, and standalone selling prices simply are not measurable in a meaningful way. Prices bid at the contract level are only made public by a portion of the E&C industry's customers, and even that information does not provide performance obligation level data. Also, since each bid is unique in terms of project specifications, number of bidders, location, legal environment etc., even an extremely broad interpretation of "similar goods and services" will reveal that obligations in different contracts are bid with a wide range of margins. This is the case not only for bids submitted by general contractors, but also for bids submitted by subcontractors. Subcontractors consider the same factors mentioned above as they develop bids, and therefore will also have a wide range of bid prices. We believe the range of standalone selling prices is so wide that its relevance for the purpose of estimating standalone selling price for each performance obligation is questionable.

As a result, E&C contractors will be left to estimate standalone selling prices using questionable data, and, again, it seems very unlikely that any two contractors will arrive at the same conclusions. Add differing views on the number of obligations to differing views on standalone selling prices, and the result is financial information from different entities that is extremely difficult for financial statement readers to compare. Our bonding company has told us that they are very concerned about comparability across the E&C industry because of these two factors, and, again, will insist on another set of reports.

Furthermore, in order to combat comparability concerns, financial statement issuers and audit firms will take two approaches. The first will be to bring a large volume of specific issues to bodies like the EITF for additional guidance. This approach is very time consuming and leads to significant rework of systems and financial results as previous conclusions are clarified or reversed.

The second will be that the audit firms will create their own sets of guidance and interpretations. This second approach will create a shadow GAAP system that has little due process in its creation. Also the existence of such a sub layer of rules runs contrary to the principle based approach.

- **Determining percent complete is a difficult process with significant estimation.** Estimates of quantities necessary to complete work and the per unit prices of those quantities change continually as the work progresses and the contractor learns more about the project. Splitting a contract into multiple obligations adds more estimation uncertainty into the process. Standalone selling prices would need to be estimated to determine each performance obligation's revenue. Costs that relate to multiple performance obligations within a contract (surety bonds, mobilization, project offices, computers, project management and supervision, some permanent materials, construction equipment, crews of craft workers, etc.) will be allocated to each of those obligations based on estimates. If an obligation is onerous, the timing of the cash flows for that obligation will need to be estimated. Each added estimate significantly reduces the accuracy and therefore the usefulness of the result in decision making.
- **Partnerships are common in the E&C industry.** E&C contractors form partnerships to construct specific projects. One of the partners in that venture is typically responsible for maintaining the books and records. Given the comparability issues described above, a partnership will have significant impacts on the consistency of application of this model within the financials of the partners. If partners have different approaches to determining distinct performance obligations and to determining standalone selling prices, will the partnership be required to keep two sets of books to accommodate each partner?
- **Management will continue to assess performance at the contract level.** Like our surety, our management firmly believes that dividing an E&C contract into multiple performance obligations for revenue recognition purposes is inappropriate. Due to the performance obligations being highly interrelated, as discussed above, we manage at the contract level, and view the results of the contract as relevant when assessing project success. E&C companies decide to bid on contracts, not subparts of contracts. Decision useful information is at the contract level – if it is a good contract or not, if the project is worth building or not. The contract is the unit of measure that drives our business, and our management therefore wants the business driver to drive the accounting. Tracking revenue, and therefore gain and loss, at the performance obligation level has little meaning to our management because they recognize that the mix of those performance obligations is continually changed to improve overall contract profitability. Recording

revenue at the performance obligation level disconnects the accounting from the level at which decisions are made. As a result, management will continue to require reporting under the current accounting.

Further, since management reporting will be based on a non-GAAP measure, this will affect segment reporting for registered entities. Segment reporting is required to be in the form that management reviews. Consequently, there would be non-GAAP measures in the segment data that would require reconciliation to the GAAP results. This reconciliation would not be readily understandable by most readers given the number of differences between the two methods.

- **The cost of applying this model to E&C is significant and not cost-justifiable.** Many of the factors above contribute to this. Identifying distinct performance obligations in contracts with such a large number of obligations will be very difficult and will require significant involvement of project management. Similarly, significant project management time will be required to estimate stand alone selling prices given the factors mentioned above. Project management does not have an accounting background, and the application of this model to E&C is complicated for even experienced accountants. Giving project management the training they need to effectively apply the model will take considerable efforts. Involving project management in these tasks is not only costly in terms of the time they will spend applying the model, but also in terms of the increased risk on the projects they manage as they will be focused on the provisions of the model rather than on building safe, high quality and profitable projects. E&C projects are very risky by their nature, and drawing project management attention away from those risks to focus on the accounting model is not a sound business practice.

In addition to these people costs, significant costs will be incurred to reconfigure computer systems to accommodate the provisions of the model. Accounting systems are not currently configured to:

- create separate obligations within a contract,
- allocate price to multiple obligations based on standalone selling prices,
- calculate revenue for multiple obligations within a contract,
- allocate variable pricing and changes to contract price to multiple obligations,
- allocate shared costs to multiple obligations,
- recognize revenue for obligations at different timing based on differences in change of control,
- calculate the time value of money for receivables, contract liabilities or onerous obligations, or
- calculate price or onerous obligations by applying probability factors.

Most long-term contract revenue recognition systems are highly integrated as they are

used both for cost management as well as revenue recognition. Reconfiguring systems to accommodate all of these changes for long-term contracts will be extremely expensive. Based on work we recently have performed in our revenue recognition systems, we expect this to be a multi-million dollar effort.

A final factor in the cost analysis of the proposed model is tax law. Tax laws in the United States likely will continue to require the use of an SOP 81-1 approach. As a result, E&C contractors will be required to maintain two sets of very different books. To be sure, tax and GAAP diverge in numerous ways today, and preparers have always been able to handle the consequences. Most of the differences, however, require a fairly simple process of substitution (eliminating non-deductible expenses, replacing accrual based expenses with cash outlays, etc.) The differences between the model and current tax law, however, are far beyond simple reconciliation, and will require two parallel systems. Configuring and maintaining two parallel systems will be extremely costly.

Finally, we would like to add that separating contracts into performance obligations concerns us not just as a preparer of financial statements, but also as a user. We review the financial statements of our partners and our significant subcontractors, and we are very concerned that separate obligations will cause misleading results and opportunities to structure results in those statements as described above. We therefore believe that recording revenue at the contract level provides a more faithful representation the results of long-term contracts performed by our partners and our subcontractors.

2. Retrospective application:

Paragraph 85 of the ED indicates that this Statement would be applied retrospectively upon adoption. Retrospective application would require an entity to restate the results of their financial statements for the past one to five years, along with a restated opening balance sheet, depending on whether the entity is a registered entity. Since many construction contracts have a long duration (often five years or longer; in fact, some companies in our industry have active contract periods exceeding 15 years), the entity may be required to look back 10 or more years. If a five year contract ended five years prior to effective date, an entity would need to examine information created and maintained at the contract initiation in order to determine price, segmentation or combination of contracts, distinct performance obligations, standalone selling prices, whether continuous transfer of control occurred, the appropriate method to determine progress, and how to account for contract modifications. In addition, an entity would have to review historical records as of each reporting period. These facts present a number of challenges.

First, the information simply may not be available. Some of it will have been destroyed in accordance with document retention policies, and some of it, particularly standalone selling price, was never collected. Acquisitions also affect the amount of available information. Business combination accounting can impact the value of contracts at the date of the acquisition, which will make the retrospective application significantly more complex. In addition, it is common for the acquired company to adopt the acquirer's accounting system soon after

acquisition. The ability to retrieve and re-create information from which to make retrospective revenue recognition decisions is questionable at best in such circumstances. Lastly, in asset acquisitions, the acquiree often maintains ownership of the pre-acquisition books and records. In this case, it simply may not be possible to access the needed information.

Second, an E&C contractor can have hundreds if not thousands of active contracts at any point in time. Multiply this by the number of years that must be restated, and the number of contracts to be reviewed can be enormous.

Third, the nature of each E&C project is so unique that the analysis of segmentation, distinct performance obligations, standalone selling prices, etc. cannot be made by accounting alone. As we noted earlier in our comments on cost/benefit, these determinations will require significant effort from project management and legal. Combining these resources to review hundreds or thousands of contracts that span over several years is a staggering prospect. This work will take an enormous amount of time and will be very expensive. It will also distract project management from the completion of their current work.

Finally, once all of the contracts have been analyzed and results have been restated, each contractor's auditors will essentially need to re-audit the revenues, expenses, and contract accounting balances as of each period end. Although this always happens under retrospective application, few accounting changes are as pervasive and fundamental to the financial statements as a change in the revenue model. Re-auditing prior years will be very time consuming and expensive.

We have discussed retrospective application with our bonding company. They believe that the benefit does not justify the cost. We have also been involved in a discussion in which banks that lend to the E&C industry indicated they share that opinion. Analysts who track publicly traded E&C contractors were also involved in that discussion, and seemed split on the benefit. We ask the Boards to consider that only a small fraction of the E&C industry is publicly traded. The vast majority are private companies with banks and bonding companies as their primary financial statement users.

While we understand the Board's desire to maintain comparability of trends across all current and historical periods, we believe that retrospective application of the model in the ED is simply not practicable and is cost prohibitive in the E&C industry. If the Boards were to determine that obligations within E&C contracts were not always distinct and therefore could be considered one obligation, as discussed earlier, then retrospective application becomes much more possible. A modified prospective method similar to that proposed in the ED on Leases (in which only open contracts at the date of conversion are retrospectively restated) would be an improvement, but that would still leave a very difficult task for public filers with large numbers of contracts. We therefore believe a prospective application for new contracts entered after the effective date is most appropriate for the E&C industry. We recognize that financial statement users may be affected by these temporary fluctuations in trends, but it is our observation, based on the discussions we have participated in, that they will be able to adapt to this short term issue. There are likely some industries that are better able to restate given the nature of the changes affecting

them, and we believe the model therefore should have the flexibility to allow for either retrospective or prospective application based on each entity's facts and circumstances, similar to the approach taken under EITF 08-01.

3. Identifying the contract and contract price using the entity's customary business practice:

The ED applies to contracts with customers. Paragraph 10 provides criteria that must be met for a contract to exist, and Paragraph 9 indicates that contracts can be written, oral or implied by the entity's customary business practice. There is considerable variation within the E&C industry as to when a contract has been reached both in terms of the original contract and change orders to that contract. Some begin to record revenue based on verbal agreement while others wait until the documents are fully executed by all parties. We read the wording in Paragraph 9 as saying that each of these variations are acceptable, as long as it can be demonstrated that Paragraph 10 has been satisfied, since they are customary business practice of each entity. Given the Boards' concerns for comparability between entities, however, we are concerned that may not be the intent. We believe a clarification in this area would be helpful.

Similarly, paragraph 35 indicates that an entity shall consider the terms of the contract and its customary business practice to determine the transaction price. Again, there is considerable variation within the E&C industry when determining price of a contract that meets the criteria of paragraph 10, but that does not define price. Some record revenue equal to cost until price is more definitively defined, while others have the practice of requiring price to be identified in the fully executed contract (either explicitly or by reference to other fully executed contracts) before the contract can be reflected in revenue. As with paragraph 9, we believe that customary business practice would allow for this variation to be acceptable, but we also believe that this area merits clarification.

One additional clarification that we believe should be made in this area is the treatment of contracts in which price negotiations are not finalized (for example, an unpriced change order). The criteria for qualifying as a contract in paragraph 10 seem to imply that the price to be paid by the customer is identified, or at least determinable, in the agreement. Paragraph 10 b. requires that the parties have approved the contract and are committed to satisfying their respective obligations. We take this to mean that the customer has committed to pay an agreed upon price (or at least a price that is determinable by the terms of the contract). Paragraph 10 c. indicates that you must be able to indentify each party's enforceable rights. Again, to us that means the price to be paid to the seller is in the contract. Lastly, in 10 d., terms and manner of payment must be identified, so we assume that also means contract price. Since, however, none of these paragraphs or the basis for conclusions explicitly mentions an agreed upon price, we believe this point should be clarified. We further believe that if a contract or a change order does not indicate price, then it is not a contract, and no revenue should be recorded. Without price, there is no commitment by the customer to satisfy his obligations since his obligation has not been agreed. Similarly, the seller's enforceable rights to payment have not been agreed.

4. Contract level assessment of the transfer of control to the customer:

The ED indicates that the entity shall assess the transfer of control for each separate performance obligation. This would seem to require a contract by contract assessment (and actually an obligation by obligation assessment within each contract). This in turn would probably result in a checklist for each contract that would likely require review by project management, legal and accounting. This level of assessment will be very time consuming, and will require extremely fast turnaround as work on contracts typically begins shortly after award. We believe that the model should allow for higher level assessments of the transfer of control. Project management, legal and accounting could review groupings of contracts with similar characteristics (similar customers, similar contract types, etc.) and make determinations at that level as to transfer of control. These assessments could be periodically updated (at least annually, but more often if facts and circumstance require – for example if a new customer or contract type is identified or if there have been significant changes to the contracts in one of the groupings). We believe this type of assessment would be far more efficient, and would be sufficient to meet the principles of the model. As a result, we believe such a concept should be added to the model.

5. Continuous transfer of control to the customer and applying a consistent recognition method:

Paragraph 32 indicates that when control is transferred continuously, as it is in E&C, one revenue recognition method must be applied consistently to similar obligations in similar circumstances. Although we agree with the broad principal, there are two areas in E&C that complicate the application of principle. The first is partnerships and the second is acquisitions.

As mentioned above, E&C contractors form partnerships to construct specific projects. One of the partners in that venture is typically responsible for maintaining the books and records. E&C contractors generally use the cost to cost method to determine percent complete, but that is not universal. As a result, the partner preparing the financials for the partnership may use a method for determining percent complete that is different from the method used by the other partners. Although the partners will likely have significant influence, they don't typically have enough to force a change in this accounting. Furthermore, depending on the methods involved, data may not be available to convert from the partnership's method to the method of one of the partners as the partnership may not collect the needed data. As a result, conforming methods can be impracticable.

Acquisitions in E&C present a similar problem when the acquirer and acquiree don't use the same method. Changing an acquiree's method takes considerable time and cost, and may not be achievable by the next reporting date.

We believe that the model should allow for flexibility, and we ask the Boards to clarify this area. The model should allow for reasonable variations. For example, as long as similar input methods are used for similar obligations, that should be acceptable in meeting the principles of the model. These variations would be disclosed under the provisions of paragraph 82 of the ED.

We believe that if this type of flexibility is not provided, then all E&C contractors will be forced as a practical matter to migrate to one method, which will most likely be the cost to cost method as that is most common, in order to ensure that partnership and acquiree results can be consolidated.

6. Probability weighting:

The ED requires measurement of transaction price and onerous performance obligations based on probability-weighted estimates. Current practice is to determine these amounts based on the best estimate using the information available to the entity as of the end of each reporting period. Projected job costs, for example, are determined through a bottoms-up process that entails a detailed estimate of each cost within each task (often hundreds to thousands of tasks) to be performed during the contract. For example, the estimated cost of a piece of equipment is determined based on the latest schedule for use of the piece and its weekly rate. Materials are estimated based on quantities indicated by design drawings. Labor costs are estimated based on quantities to be installed, productivity rates and weekly pay rates. In effect, “best estimate” is the sum of thousands of best estimates. There is, of course, a level of subjectivity inherent in this approach, and, as such, it is not always accurate. This approach, however, does allow management the flexibility to use methods it feels, based on its experience in the industry, will provide the most accurate estimate.

Prescribing the use of a probability-weighted method will not reduce the subjectivity of the estimate. Instead, it actually will increase the subjectivity, and therefore the inaccuracy, of the estimate by introducing an additional variable, the probability percentage, that will also be an estimate that is subjectively determined. We do not understand how probability percentages would be determined, or how they would be supported in audit. In fact, insisting that probability-weighting creates an answer that is more accurate than the answer derived by experienced project management professionals is counter-intuitive. At the same time, adding this required layer will increase the time and cost necessary to create this less accurate estimate. Consequently, we believe the model should not require probability weighting. Instead, the model should allow flexibility in determining the best estimate, and probability-weighting should be an acceptable method.

7. Time value of money:

The ED requires that time value of money be considered when determining transaction price. The ED, however, does not, provide guidance on short-term items. Paragraph 33 of the ED “Accounting for Financial Instruments and Revisions to the Accounting for Derivative Instruments and Hedging Activities” provides that short-term receivables and payables may be recorded at amortized cost if they are due in one year or less and meet the criteria of paragraph 21 of that ED. We believe that this treatment should be extended to the contract assets and contract liabilities that are created when revenue earned is compared to cumulative billings. Contract assets that are expected to turn to cash in one year or less should not require discounting. Similarly, contract liabilities that will become revenue in one year or less should not be accreted.

E&C contracts, and long-term contracts in general, present a complication that significantly affects estimating the time value of money. It is very difficult to estimate the timing of collection of long-term receivables, like retainage, or the timing with which a contract liability will become revenue because they are so heavily impacted by external forces. The collection of retainage can be very unpredictable as claims by the customer, subcontractors, and third parties can cause the customer to withhold payment for indeterminate periods of time. Further, retainage is actually a mechanism designed to protect the customer's interests, and not a method to finance the project. As a result, we believe that retainage should not be subject to time value of money considerations.

The timing of a contract liability becoming revenue is also subject to significant unpredictability due to factors such as work delays caused by weather, customer control of access to work sites, and differing site conditions. These factors will make the determination of the time value of money subject to frequent re-measurement in subsequent periods, and we believe such volatility in the financial statements will be confusing for financial statement users and unduly costly to implement. Also, from a balance sheet perspective, in the event that a contract liability were to be refunded in cash to our customers due to a contract change or cancellation, interest on those funds would not necessarily be due to the customer. As a result, we don't feel it is appropriate to increase the liability for the time value of money as we do not have an increased liability to the customer. As a result, we ask that the Boards reconsider the requirement to adjust the contract liability for the time value of money.

Finally, determining the effect of the time value of money in the case of an onerous performance obligation will be extremely complicated. Estimating the undiscounted costs, as discussed above, is difficult, but adding to that estimate the timing of the costs compounds the problem. Along with that, we assume the model would require that the time value of the revenue stream would also need to be considered when determining the present value of the onerous obligation. We believe that all of these estimates will be very difficult to combine, and will not provide the reader with information that is significantly improved or transparent. In fact, the time value of money only adds confusion by adding another factor that the reader must understand. In the discussions with financial statement users that we previously mentioned, users (bonding companies and analysts of traded companies) corroborated our opinion by expressing their concern about whether time value of money adds confusion rather than transparency.

8. Contract costs:

Paragraph 58 lists costs that directly relate to a contract. This list was meant to address the types of costs that can be deferred and then expensed according to the pattern of transfer of control to the customer. There are two aspects of contract costs that we would like the Boards to clarify. First, we would like the Boards to clarify whether the list in paragraph 58 also is intended to list costs that should be used when determining progress for contracts that meet the criteria for continuous transfer. We feel that list would be appropriate for that purpose.

Second, we would like the Boards to clarify whether this list was also intended to distinguish between costs that should be included in cost of sales and costs that should be included in general and administrative expenses (“G&A”) on the Income Statement/Statement of Comprehensive Income. We believe that list would not be appropriate for that purpose primarily because of paragraph 58 d. E&C contracts will at times allow the contractor to bill for costs that are typically considered G&A. Contracts will also allow for a percentage of total direct costs to be billed to the customer to allow for recovery of G&A. Including those costs in either cost of sales or general and administrative expenses depending on whether they can be billed to the customer rather than the nature of the expenses themselves would distort trends in cost of sales, gross profit and G&A.

9. Segmentation:

Paragraphs 15 and 16 describe segmentation. The wording of paragraph 15 a. and 23 a. are identical making it difficult for us to understand the difference between segmenting and identifying distinct performance obligations. We believe that intent of the segmenting language, as it relates to E&C, essentially is to maintain a segmentation regimen that is consistent with previous practice, and which led to very few of our contracts being segmented. We are unsure, however, and ask the Boards to clarify this distinction.

10. Reconciliation of Contract Balances:

Paragraph 75 of the ED requires the disclosure of a reconciliation of contract assets and liabilities from the opening to the closing aggregate balance. It is unclear to us how to apply this proposed disclosure requirement. In particular, since contract assets or liabilities are determined at the end of each period based on the cumulative billings to the customer as compared to the revenue earned, and are updated at the end of each reporting period (rather than periodically transferring individual balances to accounts receivable), it is unclear if the roll forward should include the net change in the balances between periods, which we believe would not be meaningful to a financial statement user, or if the roll forward should include the gross change in the balances between periods, which would be potentially redundant given that similar information is often provided in the statement of cash flows. As such, we ask that the Boards clarify the preparation of this reconciliation, and reconsider whether the information included in the reconciliation will provide value beyond the information provided by the statement of cash flows.

Summary:

In summary, we ask that the Boards:

1. Allow for the combination of performance obligations in long-term contracts when they are highly interrelated. We believe that factors indicating that performance obligations are highly interrelated should include the following:
 - a. The timing of the performance of the obligations overlap.

- b. The seller can alter the timing or extent of the work performed in those overlapping and interdependent obligations thereby affecting the profitability of each obligation in order to affect total contract profitability.
 - c. The customer has control of the individual obligations within the contract, but that control provides the seller with limited immediate utility until the entire contract is complete.
2. Allow for performance obligations to be combined when they are performed at substantially the same time rather than at exactly the same time.
3. Allow for a flexible approach to initial application of the model similar to that in EITF 08-01.
4. Clarify the meaning of the entity's customary business practice to acknowledge that this concept allows for variation among entities in the same industry.
5. Clarify whether a contract exists when price is not identified, or at least determinable, by the terms of the agreement. We believe a contract cannot exist without an identified price.
6. Allow for the assessment of transfer of control to be performed upon groups of similar contracts rather than requiring assessment at the individual contract level.
7. Allow for reasonable variations in the revenue recognition methods applied to similar obligations in similar circumstances thereby facilitating the process of combining partnership and acquiree results.
8. Allow flexibility in determining the best estimate of outcomes rather than prescribing the use of a probability weighted method.
9. Clarify that, similar to the concepts in the ED on Financial Instruments, contract assets and liabilities may be carried at amortized cost if they are due in less than one year. Similarly, clarify that instruments like retainage, which are intended to protect a customer's interests and not to provide a means of financing, should not be discounted. Finally, reconsider the requirement to reflect the time value of money when calculating an onerous obligation.
10. Clarify that the list of costs in paragraph 58 may be used when determining progress for contracts that meeting criteria for continuous transfer, but should not be used to determine classification of costs as either cost of sales or G&A when preparing the Income Statement/Statement of Comprehensive Income.
11. Clarify the distinction between segmentation and identification of distinct performance obligations.
12. Clarify how the reconciliation of contract balances should be prepared, and reconsider whether the information provided by the reconciliation provides value beyond similar information all ready included in the statement of cash flows.

Financial Accounting Standards Board
October 20, 2010
Page 18

Thank you for consideration of our views. If you should wish to discuss them further, please don't hesitate to contact us.

Very truly yours,

Peter Kiewit Sons', Inc.

/s/ Michael J. Piechoski
Michael J. Piechoski
Chief Financial Officer

/s/ Michael Whetstine
Michael Whetstine
Controller