



MINUTES

PURCHASE AND CONTRACT STUDY COMMITTEE

Wednesday, January 15, 2014
1:00 p.m.
Room 544, Legislative Office Building

The Purchase and Contract Study Committee met on January 15, 2014, at 1:00 p.m. in Room 544 of the Legislative Office Building. Representative Dean Arp presided. Members present were Co-Chairs Representative Dean Arp and Senator Neal Hunt; Representative Mike Hager, Tim Bailey, Paul Boney, Paul Coble, Greg Driver, Marshall Gurley, Keith Harrod, Susie Lewis, and Richard Rohrbaugh. Staff members present were Erika Churchill, Kelly Quick, and Wendy Graf Ray, from Research; and Susan Phillips, filling in as Committee Assistant. Chairman Arp called the meeting to order, welcomed everyone, and asked committee members to complete their reimbursement forms which would be collected by the Sergeants-At-Arms. Chairman Arp then introduced the Sergeant-At-Arms, (Attachment 1). Copies of the agenda, attendance, and visitor registration sheets are attached to these minutes, (Attachment 2, 3, and 4).

Chairman Arp started the meeting by introducing the committee's staff from the North Carolina General Assembly Research Department: Erika Churchill, Wendy Graf Ray, and Kelly Quick. He then asked the committee members to introduce themselves and to share a little about themselves, their background, and the position they hold on the committee.

Greg Driver – Director of State Construction for 7 years. Worked in the State Construction office for 21 years. Electrical Engineer by background. Position on the committee: State Construction Office representative.

Richard Rohrbaugh – With Kimley-Horn and Associates based in Cary, NC. Manages all client facing staffing and work. Graduate of Civil Engineer, and practicing professional engineer. Position on committee: Professional Engineer.

Susie Lewis – With Beam Construction Company in Cherryville, NC; General Contractor. Does a lot of work on State construction projects. Civil Engineer by background. Graduated from NC State. Position on committee: Licensed General Contractor.

Keith Harrod – General Contractor from Raleigh, NC. Has been in contracting business for about 50 years. Position on committee: Licensed General Contractor.

Tim Bailey – Assistant Town Manager for the Town of Cary, NC. Registered professional engineer in the State of North Carolina. Position on committee: Upon recommendation of the NC League of Municipalities.

Marshall Gurley – General Contractor in Raleigh, NC. CEO for Centurion Construction Company. Has been in the business a long time. Position on committee: Licensed General Contractor.

Paul Coble – Wake County Board of Commissioners. Position on committee: Upon recommendation of the NC Association of County Commissioners.

Paul Boney – Architect with LS3P Architects; from Wilmington. Position on committee: Registered Architect.

Representative Hager – Represents the 112th District; Rutherford and Burke Counties. Holds a degree in Mechanical Engineering from UNC-Charlotte. Originally from Gaston County. Held a contractor's license at one time. Position on committee: NC House of Representatives.

Representative Arp – Freshman and first-time Chairing; Co-Chairing this committee with Senator Hunt. Position on committee: Co-Chair and NC House of Representatives.

Senator Hunt – Senator, District 15, Wake County. His company built a lot of multi-family housing. Used to be a Contractor/Developer, but now a lowly Senator. Position on committee: Co-Chair and NC Senate.

Chairman Arp mentioned that **Senator Rick Gunn** was also a member of this committee.

Chairman Arp next recognized Co-Chairman Hunt for opening remarks. Chairman Hunt began by thanking everyone for attending. He stated that he believes the purpose of this study committee is to study the use of prequalification with respect to construction manager at-risk construction contracts as they are awarded by public bodies. Senator Hunt further stated that the committee's assignment is to determine if the prequalification process and construction manager at-risk process is objective and consistent among all public bodies and if the committee finds improvements need to be made to these delivery methods it should make these recommendations to the legislature for consideration. Chairman Hunt ended his statements by thanking members for participating.

Chairman Arp also thanked members for taking time out of their busy schedules and taking the time to look at this important issue. He stated that he would like to begin the meeting by giving an overview as to how he envisions the committee working, the process that the committee will follow, where we are, and where we are going.

Chairman Arp stated the charge of the committee is to look at an overview of the current public contracting statutes. He further stressed the importance of making sure the highest public trust in public contracting is maintained and that public contracting is fair, open, has a level playing field, and open access to all qualified North Carolina General Contractors who work in North Carolina. Chairman Arp further stressed the importance of the committee to review the Public Contracting Statutes, particularly as it relates to the

methods identified in 143-128.1, (Attachment 5). He stated that part of the committee charge is to review the current prequalification law, which is to analyze the existing prequalification requirements and consider whether or not current State construction voluntary standards should be required on all public projects. Chairman Arp further stated that he felt it is important for the committee to make a determination as to whether or not the currently utilized prequalification requirements are having an adverse effect, and if they are, to determine what corrective action is needed.

Chairman Arp recognized Erika Churchill, Staff Attorney, to read the committee charge.

Erika Churchill stated that the Study Committee was created by Section 8 of Session Law 2013-401, which is probably better known as House Bill 857, the Public/Private Partnership bill, (Attachment 6). She further stated that the committee was created to study the issue of prequalification on public non-transportation construction work for both local and state government projects and that the committee may study any of the following:

1. An analysis of existing prequalification requirements and consider whether or not current state construction voluntary standards should be required on all public projects.
2. An analysis of whether and/or how prequalification standards may have effectively disqualified licensed North Carolina General Contractors who are able to satisfy all applicable bonding requirements under Chapter 44A of the General Statutes.
3. Develop one or more objective and non-discriminatory systems for prequalification to permit appropriately licensed North Carolina General Contractors to have the opportunity to bid in open competition for public construction projects in the state.
4. Lastly, any other matter relevant to the implementation of House Bill 857, which is the Public/Private Partnership bill.

Erika stated that the committee has to report its findings together with any recommendations on or before the convening of the 2014 Session of the General Assembly, which is May 14, 2014, at 12:00 noon.”

Erika next gave an overview of the current law: Bidders may be prequalified for any public construction project, (Attachment 7).

Chairman Arp opened the floor for questions. Hearing none Chairman Arp introduced Ms. Lou Jurkowski, a Fellow American Institute of Architects, a Leed AP BD+C, a Sector Leader, EYP/BJAC, and former Chairwoman of the State Building Commission, to give an overview of the current State Construction prequalification process.

Ms. Jurkowski’s presentation materials are attached to these minutes (Attachment 8, 9, 10, 11, and 12).

Chairman Arp opened the Floor for questions and/or comments.

Several members asked questions and made comments about the prequalification bidding application:

- What was the original intent of the requirements and does it still need to be required?
- What was the original intent of the wording, “projects of similar nature”, and is it too restrictive?
- Do homebuilders have to have bonding capacity to bid?
- More feedback needs to be given to contractors as to why they were disqualified for a project; their score, which questions lost points, etc.
- Are the applicants aware of what point values each question has or each statement has?
- What are the legal ramifications of prequalification?
- What are the unintended consequences of the prequalification process?
- What harm, if any, is the prequalification process doing to taxpayers?

Chairman Arp thanked Ms. Jurkowski for her presentation. He then asked Ms. Churchill to share with the committee the paths that are open to the committee in obtaining information to review prequalifications.

Ms. Churchill responded that, although there may be other ways, the following two items would be suggestions for the committee to obtain this information:

1. To ask local governments and local entities have they done a construction project in a certain time frame that they used the prequalification process and see what kind of responses you get.
2. To ask the League, the County Commissioners Association, maybe even the School of Government, if they know of entities that are using the prequalification process and ask them to come and tell the committee about their prequalification process, much as the State Construction did.

Chairman Arp opened the Floor for further questions or comments.

Several members made comments in response to the committee obtaining information.

- Prequalifications process is not the same for different locations.
- Have there been any lawsuits filed where contractors challenged their disqualification?
- How many lawsuits are filed; how many formal appeals are filed?
- Look at other states where lawsuits have been filed for direction and guidance.
- Ask League, counties, and Contractors Association of General Contractors for their input.
- Find out if construction management at-risk is being used and why.
- Ask the State Construction office for the number of people who sent in prequalification applications and the number that were disqualified.
- Ask bonding industry about their procedure in bonding a General Contractor.

Mr. Harrod was recognized for comments and stated that he was concerned that the prequalification application form and Ms. Jurkowski’s presentation seemed to imply that the General Contractor was the one responsible for any cost increases or time increases during the course of a project. He further stated that there are a number of unforeseen

reasons a project can be delayed, but the General Contractor is somehow less than effective were the project to be either extended in terms of time or in terms of cost.

Chairman Arp responded by stating that the committee could add an item to the list that would look at the prequalification requirements to make sure those requirements are not prejudicial in terms of beyond the control of the contractor.

Chairman Arp recognized Mr. Gurley for comments.

Mr. Gurley stated that looking at the number of lawsuits filed may not give an accurate picture as, due to the cost, a contractor may not file a lawsuit. He also asked why there was opposition to a homebuilder having the opportunity in North Carolina to be a contractor.

Chairman Arp recognized Mr. Gurley for comments.

Mr. Gurley stated a concern that the person who is making the subjective opinion of a response from a General Contractor has a point system to go through and he could give them a 4 or he could give them a 1 depending on how he felt on that particular day.

Chairman Arp recognized Senator Hunt for comments.

Senator Hunt asked if a description could be given to the committee of how much investigation bonding companies/insurance companies do before they are willing to write a \$20 million dollar bond.

The responses from committee members were consensual in that bonding companies/insurance companies are more careful in what they do today than they were five years ago. They request numerous financial documents from a General Contractor, know their ability to build/complete a project, as well as, the type and funds.

Chairman Arp recognized Senator Hunt for a follow-up question.

Senator Hunt responded by stating that the bottom line appeared to be that since the insurance company is doing a lot of investigation before underwriting a project then we are over analyzing the issue.

Chairman Arp announced that the next meeting would be held on February 12, 2014, at 1:00 pm. He further stated that for planning purposes future meetings would be held on March 12, 2014, April 16, 2014, and May 14th, and that since May 14th was opening day of Session, the meeting would be held before 12:00 noon.

There being no further business before the committee, the meeting adjourned at 2:00 pm.

Representative Dean Arp
Chair

Wendy Miller
Committee Assistant