

STATE OF NORTH CAROLINA
Office of the State Auditor



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PRESS RELEASE

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Office of the State Auditor Hears Testimony on State Construction Audit

RALEIGH _ As part of an audit of the State Construction Office, the Office of the State Auditor held a series of four public hearings asking for comments from contractors and the public.

The following summaries are intended to give the reader a general understanding of the issues raised by speakers at those public meetings in Durham, Greenville, Charlotte and Morganton. The points listed are the thoughts and opinions of the speakers and may or may not be fact.

Comments relative to the Department of Insurance and the Department of Labor may or may not be directly related to the State Construction Office process under audit.



OFFICE OF THE STATE AUDITOR
State Construction Audit—Public Meetings
Summary of March 19, 2002 Meeting
Central Piedmont Community College-Huntersville, NC

The Office of the State Auditor held the third of four public meetings to obtain input about the construction process for state facilities from persons in the construction industry.

Panel members included: Deputy State Auditor Jimmy Benson, Mr. Brooks Skinner -- representing Secretary Gwynn Swinson—Department of Administration, Mr. Speros Fleggas—Director of State Construction, Mr. Jim Roberts—Department of Insurance, Mr. Dolan Simmons—Department of Environment and Natural Resources, and Mr. Jack Forshey—Department of Labor, OSHA, with OSA staff Spencer Phillips, and Walter McMiller also in attendance.

Deputy State Auditor Benson opened the meeting by explaining the purpose of the meetings and why OSA was conducting this performance audit of the State Construction Office and the state construction process. Approximately 12 individuals from the construction industry attended, with 7 of these addressing the panel. Comments are summarized below:

Speaker #1:

- Often find that project budgets given to us at the outset of a project are often 3-4 years old making it difficult to meet all client expectations
- Many AIA members find themselves negotiating services beyond the original scope of the contract
- Some AIA members have been forced to provide additional services without commensurate changes in fees
 - This way of doing business sets up distrust that carries over into project administration
- Auditor should look at whether agencies are developing realistic budgets (determine whether the SCO is sensitive to no-fee and reimbursables incurred by the designer on behalf of the owner)
- HB1272 put teeth into the lifecycle analysis statute for new construction
 - The SCO made it clear that all new construction would go through rigorous life cycle cost analysis prior to design
 - Fully support lifecycle cost analysis
 - Feel this implies and as proclaimed by the SCO, a greater commitment by the State to increase construction budgets to fund lifecycle analysis activities
 - There must be a shared commitment by all state agencies involved in the construction process to accept the increased construction cost due to lifecycle analysis
 - SCO believes that lifecycle analysis should be completed by the schematic design phase

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- Do not believe that it is unrealistic to do lifecycle analysis at the schematic design stage
- Believe that as the State conducts a pilot program to identify the most appropriate design phase for implementing the lifecycle cost analysis it should work w/the design industry
- Suspect that for State projects the appropriate design phase for lifecycle cost analysis will be somewhere between the schematic and design development phase
- AIA wants to make sure that the lifecycle analysis program succeeds and offers its guidance to make that happen
- Pre-qualification of contractors was left out of SB914, however, feel this activity will greatly increase the efficiency of the construction process
 - UNC recognized this in their CM at Risk projects prior to passage of SB914
 - UNC recognized the importance of having firms that understood the importance of teamwork and the work environment in which they would be working
 - Design services have been selected in this way for many years
 - This process allows for a greater level of owner confidence in the firms ability to perform expected work
- Would like to see the General Assembly pass legislation which implements a program for contractor pre-qualification
- Some contractors are guilty of submitting incomplete plans for review to buy time to complete design documents
 - This is rooted in pressure from the client to get the project started
 - SCO contributes to this by providing lengthy review comments which are subjective or inconsistent with reviews of prior reviews of similar projects
 - If submittals for review are incomplete the SCO should return it un-reviewed for completion
- SCO and the design community need to work together to identify the issues that cause designers to submit incomplete plans.
 - If schedules for design phases are unrealistic designers will need to advocate for more obtainable schedules
- To often contractors hold change orders until the end of the project and submit them in large batches
 - Architect and owner are often unaware of these changes and/or have forgotten an issue that arose 2-3 years earlier
 - This often leads to contract disputes and costly litigation
- State should require that contracts contain conditions that require a formal Notification of Changes (NOC) when issues arises that a contractor knows will lead to change orders

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- State does not require contractors to have a plan to get projects back on track
 - This can leave a project floundering with no end in sight
 - Wake county requires their contractors to file recovery schedules if they are responsible for the project falling behind
- State should include a recovery schedule requirement in its contracts
 - A recovery schedule simply holds a contractor accountable for his/her actions and production
- Closing out projects seems to be an ongoing problem
 - Same thing was being discussed by the legislative review commission 4 years ago
 - No reason projects can't be closed out in 45 days
 - Only roadblock is the State's inability to enforce its own requirements
- State needs to enforce liquidated damages provisions in the contractor's contract if they do not close out in the required time frame
- State should do a better job in enforcing all liquidated damages clauses in the contract
- By in large the SCO is doing a fine job in implementing its mission
 - Staff is helpful
 - Interactions and service delivery is good
 - Feel that the length of review time and the consistency of review issues are easily solvable by providing sufficient staff and compensation
- Believe that the working relationship between the design community and the State can be improved
- Perception of the design community is that the design review process is the same every time
 - All projects that go through the SCO for review are not the same
 - One size does not fit all
 - A \$1 million building should take far less time in review than the review process for a \$50 million project
- Negotiated fees for professional design work for the State should be at least on the same level as negotiated fees for private work
 - Logic says fee for State work should be better because of the additional work required to meet special State requirements and review processes
 - An example is the SCO's current position of maximum fees for a principal designer of \$70/hr. compared to \$120/hr. on private work
- Members are far from negative in their view of DOI
 - The design professional appreciate the job DOI that reviewers do
 - Common complaint--that the SCO is woefully understaffed

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- Concerned about DOI's ability to handle the increased load as a result of the Higher Ed. Bond
- A big problem is getting appointments with DOI.
- It takes 3-4 weeks to get an appointment to see a plan reviewer on your project
- Concerned about the SCO's ability to pick up the review slack if DOI does not meet the SB914 required 60 day deadline for code review
 - SCO is not prepared with qualified reviewers to handle this job
- Electrical inspections in the field have become an increasing problem for project delay
 - Members report too many unnecessary inspections that slow down the process
- Encourage the DOI's efforts in establishing and interpreting policies and procedures on grey areas of the building codes
 - Recommend that DOI make these interpretations available to the design community
 - This can help cut down on the plan review problems early on
- Encourage the Auditor's Office to review the possibility of redundancy in the review processes between DOI and SCO

Speaker #2:

- AGC supported the Higher Education Bond and SB 914
- The industry compromised on certain things in 914, but provides the state with more options on the bidding process
- Will take some time to see how everything will work out
- Suggested additional funding is necessary for the State Construction Office to help with the oversight of the bond projects
- Said the SCO brings common sense to the projects and a fair/balanced viewpoint to all the parties involved
- Indicated the industry had talked to the Legislature about additional positions at SCO but no action was taken
- Confusion surrounding the criteria of the tolerance levels about lead paint on construction sites
 - per OSHA, there is a 0% tolerance level
 - State and local criteria is not the same?
 - This causes work stoppage and delays on the construction site.
 - Most general contractors do not have a license or insurance to handle lead paint removal.
 - Have to get an abatement contract.
 - Should be addressed in contract documents.

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Speaker #3:

- ❑ University and colleges have their own procurement offices to get information to HUB Office.
- ❑ Do not think that universities and community colleges are being effective in HUB outreach/assistance/and other activities.
- ❑ Need better outreach programs to assist small businesses.
- ❑ Need better assistance and outreach from the State to keep firms informed.

Speaker #4:

- ❑ Questioned whether the State is being challenged on the legality of SB 914.
 - What will happen to the legislation if it is contested in court?
- ❑ What part the HUB office will play in the Bond projects?
- ❑ Who is looking at the funding and equality?
- ❑ Will the HUB office have sufficient staff to implement its SB914 responsibilities?

Rick Baskett, HUB Office:

- ❑ Stated the DOA-HUB office would be collecting the information from approximately 900 entities on construction data regarding HUBs.
- ❑ His office will also be responsible for the certification process.
- ❑ The HUB office was granted 5 positions through SB 914 to accomplish these tasks.
- ❑ Not sure whether this staffing will be sufficient.

Speaker #5:

- ❑ Asked the State to compare the costs associated with multi-prime and single prime.
- ❑ The State should contract a pilot group of single prime projects to use in comparison with single prime and other delivery models to determine where the cost savings would be.

Speaker #6:

- ❑ Most of his work was with the Mecklenburg School System.
- ❑ There are obstacles with the single prime system.
 - On single prime projects, all RFI (Requests for Information) have to go thru the general contractor.
 - This impedes the RFI process.
 - Need to call architect and engineers directly to save time and paperwork.
 - You can speed up the job and the quality if the subs can deal with an architect.
- ❑ Favors the multi-prime system.

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Speaker #7:

- Questions concerning the impact of 914 on school system construction.
 - Will Charlotte have to report on the HUB requirements for construction projects?
- How can one determine if State dollars are tied to a project.

Mr. Brooks Skinner, DOA:

- Responded that Charlotte would be required to apply SB914 rules to any project funded with State dollars.
- Advised that he would have to ask Charlotte officials or look at the bid advertisement.

Speaker #8:

- General contractor's mindset has not changed regarding the use of HUB in construction projects.
 - The law may have changed but the practices have not.
 - His association will work cooperatively with the general contractor industry to improve this.
- Need more training, skilled work force, and qualified subcontractors to participate in state projects.
- If general contractors refuse to adhere to HUB requirements, what recourse does the State have?
- Need to establish training centers for trades and involve the general contractors to be involved in mentoring programs.
- Currently the general contractor industry is the main obstacle to subcontractors getting work.
 - If you confront the system, you have to hire a lawyer.
 - Need assistance from the state to step in when general contractors are not following the proper process.
 - If a subcontractor speaks out, then the general contractors attack them verbally and they are later excluded from projects.
- Need data on projects, who is working, what type of work they are doing, if they are paid timely if at all.
 - Need ongoing routine reports on good faith effort so that can be proactive in dealing with contractors not making a good faith effort.
- The requirements for SB 914 were watered down regarding HUB participation.
 - General contractor only has to meet 5 of the 10 criteria.
 - That point system "opens up the back door and lets the general contractor run out."
- CAMC had a lawsuit against DOT regarding contracts for highway construction. What is being done differently?

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- Acknowledged that the State Construction Office does not have enough authority.
- Evaluation of contractors on all publicly funded projects has to be the key to improving good faith effort and minority contracting conditions.
 - HUB office can provide this information.
- Need to re-train everyone regarding projects in relation to SB 914.
 - Need ongoing training to address needs of minority and small business enterprises.
- Minority companies have problems getting bonding and insurance for construction projects and need assistance in these areas.
 - The Winston Salem Minority Business Association has a self- help program in place where members pool their resources to meet bonding and insurance needs.
 - However, such efforts are wasted if contractors place roadblock and barriers and roadblocks in the way of small contractors and the State is not able to detect such impediments.
 - For example, specifications in contract documents requiring masonry contractors to be bonded, is a roadblock.
 - There is currently no legal requirement.

Speros Fleggas, Director, State Construction Office:

- Call his office anytime a contractor is not doing what it is supposed to do.
- SCO working with Turner Construction to see about developing training for subcontractors.
 - Such training would include such things as bonding, bookkeeping, etc.

Mr. Benson closed the meeting by explaining how the performance audit process works and the time frame for completion of the audit. He informed the group that a summary of each of the public meetings would be posted on the OSA web site within two weeks after the completion of the meetings. He also reminded the group that the public can receive copies of our audit reports once they are finalized by contacting OSA or going to our web site.

OFFICE OF THE STATE AUDITOR
State Construction Audit—Public Meetings
Summary of March 6, 2002 Meeting
Durham Technical Community College

The Office of the State Auditor held the first of four public meetings to obtain input about the construction process for state facilities from persons in the construction industry.

Panel members included: State Auditor Ralph Campbell, Jr., Commissioner Jim Long—Department of Insurance, Mr. Brooks Skinner -- representing Secretary Gwynn Swinson—Department of Administration, Mr. Speros Fleegas—Director of State Construction, Mr. Laird Davison—Department of Environment and Natural Resources, and Mr. Jack Forshey—Department of Labor, OSHA. Deputy State Auditor Jimmy Benson served as moderator, with OSA staff Janet Hayes, Spencer Phillips, and Walter McMiller also in attendance.

State Auditor Campbell opened the meeting by explaining the purpose of the meetings and why OSA was conducting this performance audit of the State Construction Office and the state construction process. Approximately 15 individuals from the construction industry attended, with 6 of these addressing the panel. Comments are summarized below:

Speaker #1:

- ❑ Need innovative bonding and lending programs for minority contractors
- ❑ Only a few minority contractors have been chosen to work on any of the \$3.1 billion in university projects
- ❑ Programs need to identify more bonding agents for minorities to work with
- ❑ State should find ways to get the banking industry involved
- ❑ CAMC is currently working with DOT on innovative programs and has met with State Construction Office personnel to discuss issues
- ❑ One innovation that the state should consider is using some of the bond funds to train minorities on AFDC to reduce the welfare roles
- ❑ Another possibility is to use some of the funds to train non-violent inmates

Speaker #2:

- ❑ Concerns about the length of time it's taking to get minority contractors in the state system
- ❑ "Good faith effort" not working
- ❑ SB914 intended to even the playing field, but still has obstacles for minorities
- ❑ Meetings with state officials usually address these issues, but nothing is changed
- ❑ Need funding, bonding, and insurance assistance
- ❑ Need state assistance in finding contracting jobs to help the minority community

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Speaker #3:

- ❑ Have submitted proposals on 9 of the UNC projects but has only been selected on 2
- ❑ Feels that the criteria for selection has not been explained clearly
- ❑ More projects have been advertised but no changes have been requested in proposals
- ❑ Thus far, have spent over \$100,000 in completing these proposals, and other firms are doing the same
- ❑ No assurance that the proposals are being done correctly or that SCO will accept

Speaker #4:

- ❑ Do a lot of work with the state but has been eliminated from consideration on a number of UNC projects
- ❑ Have been monitoring changes re: SB914, but confused as to how system is now working
- ❑ Changes have been poorly communicated to the industry
- ❑ Not sure if pricing or merit is driving the award of contracts
- ❑ Should be able to compete on either level but still not considered
- ❑ State may be opening itself up for litigation
- ❑ It appears contractors are eliminated from consideration if there is a strained working relationship with the contract manager

Speaker #5:

- ❑ Carolinas AGC is the largest construction trade association in the Carolinas
- ❑ Involved in crafting SB914 which was the first rewrite of the construction laws in 30 years
- ❑ 80% of the state construction work was done by AGC members
- ❑ SB914 complies with the policy that open competitive bidding system must be in place
- ❑ Requires that the construction manager must be a licensed general contractor
- ❑ Gives the owner a number of options on the method to use for a given project
- ❑ AGC supports SB914 and feels SCO needs additional funding for staff in order to keep qualified people from leaving because of low salaries
- ❑ SCO has approximately \$1 billion in construction projects to oversee in the next 4 years
- ❑ Additionally, the university system will let about \$4.2 billion in projects and the public school systems will let about \$1.3 billion in projects

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Speaker #6:

- ❑ Have been involved with a number of state projects
- ❑ Is a strong advocate of the single prime process – it is proven and successful
- ❑ Single prime gives more control and quality to one entity
- ❑ Multiple prime results in poor communication and confusion over who is responsible for what

Because there were only a few speakers, Mr. Campbell opened the meeting up for questions—both from the audience and from the panel and staff.

Q: What will OSA do with the data that is gathered through these public meetings?

A: Our purpose is to identify areas of concern and to solicit potential recommendations for change from construction industry people. If any issues or concerns warrant, follow-up work will be done by the audit team to resolve those issues. Once all fieldwork is completed, a final report will be issued which will include an official response from the Secretary of Administration and the State Construction Office. Our recommendations for changes will be not just short-term but long-term. We anticipate public release of the final report around September.

Q: Will OSA audit budgets to see if any funds are available to help minorities?

A: Staff will be following up on several issues and suggestions. For instance, OSA did a prior audit on job training programs. We'll see if anything from that audit is applicable to possible recommendations in this audit.

Q: Can Commissioner Long do anything to help with liability insurance increases? For example, Wake County Schools are looking at something called owner-controlled insurance. Could the state do this?

A: Costs of insurance have been increasing across the board, not necessarily because of 9/11. Unfortunately, the Department of Insurance does not have jurisdiction over increases in liability insurance. Not familiar with owner-controlled insurance.

Q: Do any of the firms represented have any long-term procedural or systematic problems with the construction process?

A: No response from audience.

Q: How does a delay in getting an electrical inspection completed affect the project overall?

A: It delays the close out of the project. The problem seems to be too few staff to do all the inspections required.

Q: Several persons mentioned confusion over the process resulting from the SB914 changes, problems with communication. Who was doing the communicating?

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- A: SCO held construction meetings to explain the changes. The meetings were not clear on changes. Right now, not sure which method the state wants to use.
- Q: All the agencies represented on the panel have a role in a state construction project. Would the interest of the state and the contractors be better served if, for example, OSHA were involved earlier in the process?
- A: Rouse has worked to get OSHA involved early in the process by doing a consultative inspection. This has worked to eliminate a number of problems and get the project completed faster. CAMC members also try to invite all the parties involved in a project to meet in the beginning to help communications and be able to close out the project sooner.

Mr. Campbell closed the meeting by explaining how the performance audit process works and the time frame for completion of the audit. He informed the group that a summary of each of the public meetings would be posted on the OSA web site within two weeks after the completion of the meetings. He also reminded the group that the public can receive copies of our audit reports once they are finalized by contacting OSA or going to our web site.

OFFICE OF THE STATE AUDITOR
State Construction Audit—Public Meetings
Summary of March 20, 2002 Meeting
McDowell Technical Community College-Marion, NC

The Office of the State Auditor held the fourth of four public meetings to obtain input about the construction process for state facilities from persons in the construction industry.

Panel members included: Deputy State Auditor Jimmy Benson, Mr. Brooks Skinner -- representing Secretary Gwynn Swinson—Department of Administration, Mr. Kenneth Hunt—State Construction, Mr. Jack Cooke—Department of Insurance, Mr. Dolan Simmons—Department of Environment and Natural Resource, and Mr. Jack Forshey—Department of Labor, OSHA, with OSA staff Spencer Phillips, and Walter McMiller also in attendance.

Deputy State Auditor Benson opened the meeting by explaining the purpose of the meetings and why OSA was conducting this performance audit of the State Construction Office and the state construction process. One individual from the construction industry attended and addressed the panel. Comments are summarized below:

Speaker #1:

- Purpose of design reviews should be to determine compliance with building code and published State Construction Office Design Guidelines.
 - Responding to design reviews can turn into debate between designers and reviewer over design philosophy and preferences, rather than responding to objective review comments based on established design guidelines.
 - System types and basic design directions need to be set at the completion of design development.
- Site visit requirements during construction need to be flexible, based on size and complexity of project, and negotiated design fee.
 - Weekly site visits during construction by the prime designer and all consultants is good if the fee levels can cover the legitimate costs for all these site visits.
- Current fee levels do not correspond to designer' costs incurred in providing the basic services outlined in standard design contract.
- Current contract does not address payments from prime designer to consultants.
 - Standard AIA Owner-Architect agreements require architect to make timely payments to consultants.
 - State Construction documents and policies should mirror requirements set forth in AIA documents.
- Design guidelines and other SCO procedures such as processing change orders or project closeout need to be officially issued and published, with a regular schedule of revisions.
 - Guidelines and procedures in place at time design contract is executed should be basis for designer's performance, or there

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should be opportunity for additional compensation to designers when changes in guidelines or procedures result in additional cost for designing, overseeing construction, and closing out projects.

Mr. Benson closed the meeting by explaining how the performance audit process works and the time frame for completion of the audit. He informed the group that a summary of each of the public meetings would be posted on the OSA web site within two weeks after the completion of the meetings. He also reminded the group that the public can receive copies of our audit reports once they are finalized by contacting OSA or going to our web site.

OFFICE OF THE STATE AUDITOR
State Construction Audit—Public Meetings
Summary of March 7, 2002 Meeting
Pitt County Community College

The Office of the State Auditor held the second of four public meetings to obtain input about the construction process for state facilities from persons in the construction industry.

Panel members included: State Auditor Ralph Campbell, Jr., Mr. Brooks Skinner--representing Secretary Gwynn Swinson—Department of Administration, Mr. Speros Fleegas—Director of State Construction, Mr. Jim Roberts—Department of Insurance, and Mr. Jack Forshey—Department of Labor, OSHA. Deputy State Auditor Jimmy Benson acted as moderator, with OSA staff Janet Hayes, Spencer Phillips, and Walter McMiller also in attendance.

State Auditor Campbell opened the meeting by explaining the purpose of the meetings and why OSA was conducting this performance audit of the State Construction Office and the state construction process. Only two individuals from the construction industry attended, with just 1 of these addressing the panel. Comments are summarized below:

Speaker #1:

- Represent a medium-sized mechanical contractor with between 80-90 employees
- Have been successful in obtaining state contracts under the multi-prime system
- Were active in lobbying for SB914 but have some concerns
 - Elimination of requirements for separate dual prime bidding process, elimination of multi-prime requirement
 - Feel that single prime could add costs to the HVAC portion of the contract resulting in higher costs to the state
 - No set criteria for the construction manager at risk process
 - Leaves decision criteria totally up to the owner
 - Need specific rules similar to multi prime

State Construction Office personnel pointed Speaker to the SCO web site where selection criteria for construction manager at risk are posted. The State Building Commission passed temporary rules for this. They closely follow the procedures for selection of architects. University boards of trustees and all other state agencies should use these for selection.

Mr. Campbell closed the meeting by explaining how the performance audit process works and the time frame for completion of the audit. He informed the group that a summary of each of the public meetings would be posted on the OSA web site within two weeks after the completion of the meetings. He also reminded the group that the public can receive copies of our audit reports once they are finalized by contacting OSA or going to our web site.