41st Annual State Construction Conference

March 3, 2022
Designer Responsibilities Examined
(or Oh my! – Public sector projects have different legal requirements than Private Sector)
Designer Responsibilities Examined

• General Statutes for the design professionals
• Mini-Brooks Act (GS 143-64.31) QBS selection
• Rules provided by NCBELS and NCBA/ID regarding plans
• NC Building Code – Administrative Code and Policies
• Standard Design Contract used by SCO
• Seals, plans specs and NC GS 133
• Bid openings and the Recommendation to Award
• Monthly meetings and designer inspections
• The FINAL and the Certifications
General Statutes - design professionals

- NC GS Chapter 83A – Architecture
  - GS 83A-12 “The purpose of this chapter is to safeguard the life, health and property....”
  - Establishes the NC Board of Architecture (now the NC Board of Architecture and Registered Interior Designers)
  - Board can create rules, bylaws and standards of professional conduct
General Statutes - design professionals

- NC GS Chapter 89C – Engineering
  - GS 89C-2 “In order to safeguard the life, health and property....”
  - Coordination and agreements between the board: scope of practice
  - Contact Boards for determination
Mini-Brooks Act - QBS

- History of Qualifications Based Selection
- NC Statute – GS 143-64.31
  - Law and Exemptions
  - 2014 Legislative Changes most recent
- NC Administrative Code - Board Rules require Architects, Engineers and Surveyors to comply
- NCBELS Mini-Brooks Guidelines
- NCBELS Board Newsletter article, Fall 2011
Federal Brooks Act
40 U.S. Code 1101 et seq. (formerly 541)

Introduced by Congressman Jack Brooks of Texas in 1972 to codify selection of architects and engineers (and surveyors) based on qualifications rather than solely on lowest price.
President Nixon signed into law on October 27, 1972.
North Carolina “Mini-Brooks”

Became law in 1987 for the procurement of architectural, engineering and land surveying services based on qualifications. Construction management at risk services added in 2001. Design-build services, and public-private partnership construction services were added in 2013.

Applies to the State and its public subdivisions and Local Governmental Units.
Relating Regulations to Procuring Professional Services

• **What** are the laws, rules, opinions and interpretations that apply?
• **When** is it architectural, engineering, land surveying or construction management at risk services?
• **Where** can you seek advice?
• **How** can you assure that you comply?
• **How** do you handle Design/Build?
(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm.
Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.
What is considered a fee bid?

The submission of any information that would allow the public entity to determine a total project fee would be considered a “fee bid.”
NCGS 143-64.33. Advice in selecting consultants or negotiating consultant contracts.

On architectural, engineering, or surveying contracts, the Department of Transportation or the Department of Administration may provide, upon request by a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with architects, engineers, or surveyors or any or all.
Rules provided by NCBELS and the NCBA/ID

- Websites:  www.ncbels.org  
  www.ncbarch.org

- All licensed design professionals are responsible for understanding and adhering to rules
Selection & Standard Design Contract - SCO

- The SCO “Blue book”
- SCO Web site – “Forms and Documents”
- Standard Contract
Selection & Standard Design Contract - SCO

- The SCO “Blue book”
- SCO Web site – “Forms and Documents”
- Standard Contract
- Design professional will be AHJ during construction
NC Building Code – Administrative Code and Policies

• NC Building Code will guide the plans
• Administrative Code is part of Building Code
• Building code cycle
• Duty to protect the public
Sealing your work

• Every submission must be properly noted on the drawings.
  • Architecture – 21 NCAC 02.0206
  • Engineering – 21 NCAC 56.1103
• There is a list of designations.
• Specific requirements for taking responsibility
.1103(d) Electronically transmitted documents

The scanned digital files of properly certified documents are not subject to the requirements of this paragraph. The electronic transmission of CAD, vector or other files subject to easy editing are subject to the requirements of this paragraph. Easy editing is based on the file consisting of separate elements that can be individually modified or deleted.
Electronically transmitted documents using digital signature

Engineering – 21 NCAC 56.1103(e)
Architecture – 21 NCAC 02.0206(e)(2) (identical as to the 4 items)

The term “digital signature” shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

1. Unique to the licensee using it;
2. Capable of verification;
3. Under the sole control of the licensee; and
4. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.
Public Sector work is different - GS 133-3

Free and open competition on public contracts

Three equal products...or performance specification
Bid openings and the Recommendation to Award

- Bidding
- HUB office
- PreBid meeting
- Bid Guidelines

2022 State Construction Conference
Bid openings and the Recommendation to Award

• Bidding
  • HUB office
  • PreBid meeting
  • Bid Guidelines

• Contract Award & Processing
  • Review bids and docs and recommend appropriately
  • Request Award
  • Create Contract for Signature
  • Follow the Check list

2022 State Construction Conference
Monthly meetings and designer inspections

- Weekly site visits
- Schedule of Values
- Change Orders
- Pay Application Certification
- Monthly meetings
The FINAL and the Certification

- Final vs BO
- Forms on SCO web site
- Check list of Documents
- Compliant and Complete
The FINAL and the Certifications

As the Design Professional, know what will be required for observation (inspections) during construction and what will be required for a final certification.

Include in contract what is required by State Construction, State reviewing/permitting agencies or local governments.

The end of the project is not the time to find out that you must provide a Certification of completion of project in accordance with the plans and specifications.
Questions
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