

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes

December 14, 2023

Call to Order and Roll Call

The 7th meeting of the Legislative Oversight & Investigations Committee was held on December 14, 2023, at 1:00 PM in Room 131 of the Capitol Annex. Senator Brandon J. Storm, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon J. Storm, Co-Chair; Representative Adam Bowling, Co-Chair; Senator Jason Howell, Vice Chair; Senators Donald Douglas, Gerald A. Neal, Michael J. Nemes, and Reginald Thomas; Representatives John Blanton, Lindsey Burke, Ken Fleming, Matt Lockett, Steve Riley, Scott Sharp, and Pamela Stevenson.

Guests: James Ballinger, State Highway Engineer, Kentucky Transportation Cabinet; John Moore, Deputy State Highway Engineer, Kentucky Transportation Cabinet; and Will Fogle, General Counsel, Kentucky Transportation Cabinet

LRC Staff: William Spears, Committee Staff Administrator; Committee Analysts Jacob Blevins, Ryan Brown, Christopher Hall, Taylor Johnston, Jeremy Skinner, Austin Sprinkles, Shane Stevens, and Joel Thomas; and Ashley Taylor, Committee Assistant.

Approve Minutes from November 16, 2023

Upon motion by Representative Lockett and second by Senator Douglas the minutes for the November 16, 2023, meeting were approved without objection.

Staff Report: Single-Bid Asphalt Contracts

Committee analysts Ryan Brown and Jeremy Skinner presented the staff report "Single-Bid Asphalt Contracts" which included the report's findings and recommendations related to the procurement processes for asphalt contracts in Kentucky, with an emphasis on the impact that having a single bidder for contracts has on cost. Staff's full presentation is available on the Legislative Oversight and Investigations Committee webpage.

Upon conclusion of the presentation, Representative Fleming asked staff if an evaluation of the quality of asphalt construction work, in addition to an evaluation of contractor resources, past project experience, and past project performance, was considered when awarding contracts. Mr. Brown responded that the bids were awarded to the qualified company that submits the lowest cost bid for the project. The cabinet has a pre-qualification process that ensures companies have the necessary financial and material resources available to complete the project. Mr. Skinner added that the cabinet creates work standards that must be met by any company that accepts a project.

Representative Fleming asked what the state considers when evaluating the quality of a company's work. Fleming asked specifically about the evaluation of the quality and reliability of the asphalt itself. Mr. Brown responded that staff were not familiar with the quality

specifications of the asphalt itself, but noted that the Transportation Cabinet does conduct periodic reviews of contractors to review their work. Mr. Brown noted that the cabinet would likely be able to provide more insight into the question. Committee Staff Administrator William Spears added that evaluating the quality of asphalt produced by contractors was largely outside of the scope of the LOIC study, as the study focused primarily on the awarding of contracts rather than the material results of contracted projects. The cabinet conducts tests of asphalt quality after the asphalt has been set. Mr. Spears also recommended directing the inquiry to the Transportation Cabinet for more information.

Representative Fleming asked for more clarification on the pre-qualification process for asphalt contractors, specifically inquiring into the components of the pre-qualification process and how they are weighted. Mr. Brown responded that the Transportation Cabinet has created a formula for evaluating pre-qualification criteria but staff did not evaluate this process in the report.

Representative Bowling inquired about how Kentucky compares to surrounding states in regards to single-bid contracts. Mr. Skinner responded that staff primarily investigated only Kentucky contracts due to the information not being publicly available, which required staff to conduct specific data requests. To evaluate Kentucky's single-bid asphalt contract awards against other states, staff would need to request data requests and guidance from each state's transportation agency.

Representative Bowling asked if staff had data on the percentage or exact number of contractor bids that go over the Transportation Cabinet's engineer's estimates. Mr. Brown responded that staff did have this information and would provide it to the representative after the meeting. Representative Bowling added that putting that information into the report would be valuable.

Representative Burke then asked how Kentucky compares to other states with respect to the amount of money spent on single-bid and multiple-bid asphalt projects. She noted that if the cost of projects is similar to projects in other states then there is likely no problem with the process, even in cases of single-bid contracts. Mr. Skinner stated that staff did not look at the cost of single or multiple-bid projects in other states and did not have information on how they compare to Kentucky projects.

Representative Blanton thanked staff for their work and asked whether multiple bidders were allowed to bid on all contracts, even in cases where the result was a single-bid contract. Staff reported that all contracts encourage the participation of multiple bidders. Representative Blanton responded that Kentucky cannot wait to begin important projects until multiple companies bid on contracts, noting that these companies chose not to participate. Blanton also pointed to examples from his district where single-bids were rejected because they exceeded the engineer's estimates and the contract was re-bid, noting that the state does not have to accept bids just because a company submits a bid. Mr. Skinner agreed that staff found several examples where single-bids were rejected and re-bid, he also noted that staff recommendations were not condemning the Transportation Cabinet but were designed to encourage bid competitiveness generally.

Senator Douglas asked if staff had found that any asphalt companies that reported frustrations with the bidding process when bids went to a single bidder. Mr. Spears replied that interviews with four asphalt companies found that the companies were not frustrated by the process, were understanding of the market forces leading to single-bid contracts, and supported

Transportation Cabinet policies. The one concern reported was with the release of contractor bid amounts when all bids are rejected. A contractor felt the release of bid amounts allowed other companies to underbid them when the project was rebid.

Senator Thomas noted there was no concern with the quality of the work and his personal experience is that the roads in district 7 are in good condition. He said single-bid projects should not be unnecessarily delayed to seek additional bidders if having a single bidder is not negatively affecting the quality or the cost of the asphalt projects. He did not see a problem with asphalt contracts given the information provided in the report. Mr. Skinner responded that the staff report did not conclude there was a problem with asphalt contracts.

Response from the Kentucky Transportation Cabinet

James Ballinger, John Moore, and Will Fogle from the Kentucky Transportation Cabinet introduced themselves. Mr. Ballinger stated the cabinet is interested in and pursuing many of the recommendations in the report. The cabinet's single reservation is related to prescribing the awards and the rejection process in recommendation 3.4. Due to current law requiring the engineer's estimate to be published at bid opening, the cabinet feels that retaining flexibility and discretion is necessary when a bid requires multiple attempts to be awarded. Mr. Ballinger listed the factors that are considered before awarding a contract to a bidder and stated that work is being conducted to incorporate recommendation 3.3 into cabinet policy to ensure the accuracy of engineer's estimates.

Representative Bowling stated construction costs have risen in recent years and asked cabinet representatives where they stand on using more recycled material in asphalt projects. Mr. Ballinger explained the cabinet's engineering team is looking into the use of recycled asphalt pavement and there are a number of technical aspects that must be considered such as durability and cost efficiency. Representative Bowling asked if there will be a report issued following the cabinet's research, to which Mr. Ballinger responded that the cabinet would issue a report if desired. Mr. Moore added the potential savings of using recycled asphalt pavement do not appear to be large, however the use of recycled materials is beneficial from a sustainability perspective.

Representative Sharp asked for cabinet representatives to clarify and provide a citation for a law they mentioned in their opening remarks. Mr. Moore stated that the law was KRS 176.080 which requires an engineer's estimate to be published upon bid opening. Representative Sharp asked generally how long the length of time is between letting the bid out and a contract being awarded. Mr. Moore said the cabinet generally operates on a three-week window to receive bids and it is the goal to reward or reject within a week and a half.

Representative Sharp spoke regarding his district in Lawrence County having an ongoing issue with an out-of-service bridge. Work has not begun for several years despite securing funding for the bridge and he has heard conflicting reasons for this delay. He asked cabinet officials to find out the reason for this delay, to which Mr. Ballinger responded that he would share that information.

Senator Howell explained his interpretation of the report's findings is that market forces in the asphalt industry are inevitable. He asked if cabinet representatives would agree with that statement, and if there is anything that needs to be put into place to address quality control gaps that are created by single-bid contracts. Mr. Ballinger responded that quality control inspections

and material testing are performed on all projects regardless of the number of bidders.

Senator Storm asked staff to update the report pursuant to the requests made by Representative Bowling and Representative Burke, and stated that adoption of the report will be deferred to a later date in January.

Adjournment

Upon motion by Senator Storm and second by Representative Lockett, the meeting was adjourned.