

FORSYTH COUNTY
BOARD OF COMMISSIONERS

**BRIEFING
DRAFT**

MEETING DATE: JULY 11, 2016

AGENDA ITEM NUMBER: 12

SUBJECT: RESOLUTION AUTHORIZING WEXFORD WINSTON-SALEM BAILEY, LLC TO UTILIZE THE SERVICES OF A CONSTRUCTION MANAGER AT RISK TO COMPLETE THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE UNDER THE REIMBURSEMENT AGREEMENT WITH FORSYTH COUNTY

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: YES NO

SIGNATURE: _____ DATE: _____
 COUNTY MANAGER

**RESOLUTION AUTHORIZING WEXFORD WINSTON-SALEM BAILEY, LLC TO
UTILIZE THE SERVICES OF A CONSTRUCTION MANAGER AT RISK TO
COMPLETE THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE UNDER THE
REIMBURSEMENT AGREEMENT WITH FORSYTH COUNTY**

WHEREAS, on December 21, 2015, the Forsyth County Board of Commissioners authorized the County to enter into a Reimbursement Agreement with Wexford Winston-Salem Bailey, LLC (“Wexford”) for public infrastructure development as part of the Bailey Power Plant redevelopment; and

WHEREAS, Wexford now requests to use the construction management at risk services to complete the public infrastructure construction project; and

WHEREAS, N.C.G.S. 143-128.1 authorizes the use of construction management at risk services only after the public entity has concluded that it is in the best interest of the project, after comparing the advantages and disadvantages of using the construction management at risk method in lieu of other authorized delivery methods; and

WHEREAS, Wexford has prepared the attached Memorandum to explain and support its request to use construction management at risk services on the project; and

WHEREAS, the Economic Development Department Director recommends approval of Wexford’s request to use the services of a construction manager at risk on the said project;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners has compared the advantages and disadvantages of using the construction management at risk method on the public infrastructure construction project in lieu of other statutorily authorized methods and hereby concludes that construction management at risk services is in the best interest of the public infrastructure construction project under the Reimbursement Agreement between Forsyth County and Wexford Winston-Salem Bailey, LLC.

BE IT FURTHER RESOLVED that the Forsyth County Board of Commissioners hereby authorizes Wexford Winston-Salem Bailey, LLC to complete the construction of the public infrastructure under the Reimbursement Agreement with Forsyth County by using the services of a construction manager at risk.

BE IT FURTHER RESOLVED that Wexford Winston-Salem Bailey, LLC shall comply with all provisions of the North Carolina General Statutes in its use of construction management at risk services.

Adopted this 11th day of July 2016.

MEMORANDUM

RE: Bailey Power Plant Project and County Reimbursement for
Public Infrastructure Elements of the Project

DATE: December 1, 2015

Forsyth County proposes to reimburse Wexford Winston-Salem Bailey, LLC (“Wexford”), an affiliate of Wexford Science & Technology, LLC, for costs associated with certain aspects of Wexford’s redevelopment project to rehabilitate the Bailey Power Plant which will include the creation or improvement of public infrastructure (the “Project”).

The County’s proposal falls under N.C.G.S. §153A-451, which allows the County to “enter into reimbursement agreements with private developers or property owners for the design and construction of municipal infrastructure that is included on the county’s Capital Improvement Plan and serves the developer or property owner.” As set forth in N.C.G.S. §153A-451(d), the private developer or owner will solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes because the public infrastructure items the County is including in the Project exceed a cost of \$500,000.00.

Because this Project is unique in nature, the County should approve the use of a Construction Management At-Risk (“CM At-Risk”) method of contracting for the aspect of the Project that will qualify for such reimbursements. Otherwise, it is likely that the cost of the aspect of the overall Project that relates to public infrastructure improvements for which reimbursement is sought will be greater or result in inferior quality work which does not comport with the overall design and plan for the Project. N.C.G.S. §143-128.1 describes the permissible use of CM At-Risk contracts for municipalities, and since the owner essentially steps into the shoes of the County for the bidding purposes, the same provisions will apply to Wexford.

Wexford’s position and understanding of how it may use the CM At-Risk selection process is described below, specifically so the County may indicate whether it agrees that the CM At-Risk method is appropriate for this Project and may comment and provide additional information as to whether the specific process outlined by Wexford below conforms with the process the County would implement and the discretion the County would employ during the process.

I. Importance of using the CM At-Risk Method for the Project

No portion of the amounts for which Wexford is seeking reimbursement under a Reimbursement Agreement will relate to design or architectural services, and as such, no public bidding requirements will apply to any such work.

However, for the aspects of this Project for which Wexford is seeking reimbursement under N.C.G.S. §153A-451, the CM At-Risk contract is the best option. Because the reimbursement is aimed at only a portion of an overall redevelopment project, the “added value”

resulting from the developer's use of the CM At-Risk contract set forth in NCGS §143-128.1 is particularly important. The owner has identified several reasons or advantages to demonstrate why this particular construction method is better for the Project than other construction methods:

1. The portions of the Project for which reimbursement is sought are limited in scope, and other bidding procedures are not suitable for the limited needs of those aspects of the Project (i.e., the portion of the Project subject to reimbursement does not include enough separate "categories" of work to justify the use of separate or multi-prime contracting);
2. The ability to control the quality of work to ensure it is consistent with the overall Project;
3. The benefit of having a contractor participate during the design process (although no portion of the design work is being claimed for reimbursement) to give an opinion on cost estimates or to suggest changes to the design which may simplify or expedite the process or keep the Project on schedule;
4. The benefit of having a contractor with prior experience at brownfields sites such as this one;
5. The ability to ensure the contractor's work comports with other related work on the Project which must comply with certain historic preservation requirements established by the National Park Service;
6. The benefit of utilizing a contractor with previous knowledge of, and experience with, the Wake Forest Innovation Quarter;
7. The benefit and security of using a contractor with sufficient financial resources to properly oversee and manage a project of this scope and size;
8. The benefit of establishing economies of scale and identifying areas of cost savings or overlap with the overall Project;
9. The ability to ensure that the best possible quality is achieved in the finished Project; and
10. The ability to achieve flexibility in the construction process while minimizing cost overruns.

Wexford is very concerned with quality control for the Project. Using a piecemeal bidding process may result in delays, inconsistencies, or work which is subpar. A CM At-Risk construction method is the best way for Wexford to achieve its overall goals in the most timely and cost-effective manner.

II. Application of CM At-Risk Method to Wexford

In the event the County agrees that the CM At-Risk contract method is the proper method to employ in this situation, it is the owner's understanding that, during the selection process, it should choose a construction manager in accordance with Article 3D of Chapter 143. See N.C.G.S. §143-128.1(b). Wexford's understanding of this process is that it must identify at least three (3) qualified firms and send those firms a Request for Qualification ("RFQ") based on the specific aspects of the Project for which reimbursement is sought. Wexford must then assess the firms which respond to the RFQ before selecting the appropriate firm to perform the work on the Project for which reimbursement will be sought. Assuming Wexford receives more than one

response to its RFQ from qualified firms, Wexford should then consider the same criteria the County would use in selecting the appropriate construction manager. *See* N.C. Gen. Stat. Ann. § 143-64.31 (noting that the goal is “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.”)

Some of the factors that may be assessed during this selection process are (1) the workload of the bidder and whether it can commit sufficient time and resources to complete the project on time and properly, (2) the bidder’s record of successfully completing similar projects without major issues, (3) previous experience with the owner and a good working relationship with the owner, having completed projects in a timely manner with an acceptable quality of work, (4) key personnel who have appropriate experience, (5) completion of CM At-Risk projects with little difference between the guaranteed price and the final cost, (6) projects completed on or ahead of schedule, (7) recent experience with project costs and schedules, (8) construction administration capabilities, (9) familiarity with and proximity to the area where the project is, and other factors. *See, e.g.*, “Construction Manager-At-Risk Selection Procedures” adopted by the State Building Commission on 2/26/02. Wexford understands that it also may consider other appropriate factors in selecting which firm to contract with, including, but not limited to, those described in Section I. above which support the use of the CM At-Risk construction method in general

Pursuant to N.C.G.S. § 143-128.1(b), Wexford will use a good faith effort to comply with N.C.G.S. § 143-128.2 (minority business participation goals) and N.C.G.S. § 143-128.4 (historically underutilized businesses) to the extent possible, in selecting the appropriate firm. It is Wexford's understanding however, that such goals are considerations only, along with various other criteria discussed above. Further, Wexford understands that it is not required to award a contract to the firm submitting the lowest bid; instead, it may evaluate the bids in light of the foregoing criteria and select the firm it feels is the lowest, most qualified, responsible bidder, just as the County could do if the County was handling the bid process itself.

Wexford understands that the firm it selects under the CM At-Risk method will also need to make a good faith effort to comply with the requirements or obligations set forth in N.C.G.S. §§ 143-128.1 (Construction Management At-Risk Contracts), 143-128.2 (Minority Business Participation Goals), 143-128.4 (Historically Underutilized Businesses), and 143-129 (Procedure of Letting of Public Contracts).