

Loy questions non-bid contracts

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Sandy Loy, CCM, who founded locally operated Construction Plus Inc. in 1988, has concerns about the process by which many new schools are being built. Loy says the confusion is the result of how a 1971 law is being interpreted and applied.

The statute, (Section 12-10-122), also called the PBA Law, allows the Public Building Authority to circumvent the public bidding process for public projects in Tennessee. The "broad stroke law" allows the Public Building Authority to be formed for projects financed and built by municipalities without putting the contracts out for public bid.

Loy says there is too much mystery in the use of public dollars. As costs for new construction continue to soar into numbers that seem more fitting for the space program than for schools, something needs to be done to provide a more efficient way of using the hard earned dollars of the taxpayers. Within the last half decade, the price of a typical new high school has risen from around \$25 million to over \$50 million. The Loudon County School Board recently proposed a 5 year \$100 million price tag for their school building program. As we know from history, costs always go up and never go down, so they may be looking at \$100 to \$120 million in expenditures.

Loy thinks despite the legality of the PBA act, it is too ambiguous and is being applied in a way which makes it harder, not easier, to see how our tax dollars are being spent.

It usually takes someone inside an industry to understand how these sort of misinterpretations result in the wasting of tax dollars. Loy has



Entry of Chuckey-Doak High School in Greene County, opened in the Fall of 2004 for \$94 per square foot.

applied his expertise as a Certified Construction Manager to call attention to this issue and has asked State Legislators to consider clarifying the PBA act to require all public projects be bid, whether managed solely by a PBA, a PBA/CM combination or by a construction manager alone.

What exactly is the problem? Loy explains:

"Opportunity for confusion exists because there are two State Statutes concerning construction for schools which conflict with each other. One was a broad stroke law written in 1971 (Section 12-10-122) allowing Public Building Authority's (PBA) to be formed for projects financed and built by municipalities (PBA law). The other written in 2002, Section 49-2-203(a)(4)(C)(ii), was written describing specifically how Construction Management should be used for schools (CM law). The 2002 CM law allows a construction manager to be selected based upon professional qualifications, but still requires the CM to publicly bid the project out in pieces.

The PBA law was challenged in 1997, Appeal 01-A-01-9609-CH-00387, and the appellate court upheld the law which says a PBA may build projects without bidding any part of the work. The court seemed to understand the law granted an unusual amount of

power, but put the responsibility on the legislature to correct it. Since that 1997 opinion, this has remained unaddressed by the legislature.

Some counties have used the CM method of delivery for schools under the umbrella of the PBA law, ignoring critical parts of the 2002 CM law. PBA's have often selected a CM, then allowed the CM to operate as if they had the same power provided a PBA (under the PBA law); allowing the construction manager to award the contracts for the work to people based on interviews or other subjective methods.

Surely the legislature never intended for a government entity to use the PBA law to circumvent the transparency of the public bid process; and to have both a PBA and a CM on the same project makes even less sense. Not only is there duplicity of costs, it creates an opaque firewall as to who the vendors are and what their scope of work is. This type of arrangement circumvents the bid process; which the 2002 law clearly intended (not to mention common sense).

For a PBA to award contracts using public dollars based upon "who they like" is questionable enough. Allowing a CM to operate with the same latitude of ignoring bid laws (as if it were the PBA itself) is beyond

questionable, it creates a fertile ground for corruption and misuse of public dollars.

To add insult to injury, when a PBA or a CM does not publicly bid contracts for public work they also preclude many firms, proprietors and individual tax payers from being able to compete for these contracts. The work is awarded to whoever they "like".

What's the bottom line? Costs for high schools using the 2002 CM law (exactly as it is written) have recently ranged up to \$115/SF. Recent costs using a PBA/CM combination (ignoring critical parts of the 2002 law) range from \$160/SF to \$185/SF depending on who you ask. There is a message in the fact that cost information using the later system is not easily obtainable and conflicting numbers are the rule.

Clarifications are clearly needed to protect the transparency of how our public money is spent and assure school systems know what process is ultimately in the best interest of the students as well as the taxpayers."

Loy, who earned the internationally recognized designation of Certified Construction Manager from the Construction Management Association of America last April, has used the Construction Management (CM) process to build 10 schools throughout East Tennessee since 2002. Loy's issue is not who is building our schools, but it is with the process used building the schools. The wrong process can cost counties millions of dollars. With budgets already tight and cutbacks being discussed, where are counties going to find the money? Even more relevant, why would they want too? ■