



Construction Plus Inc.

August 18, 2009

Knox County Commission &
Tennessee State Representatives
City County Building, Suite 603
Knoxville, TN 37902

*****SENT VIA EMAIL WITH ATTACHMENTS*****

Dear Commissioner or Representative:

Last night I was handed (from an anonymous source) a copy of a letter (attached) written by Dale Smith in response to my letter to him, dated May 13, 2009. I am puzzled that Mr. Smith responded with a letter to the people I cc'd in my letter to him and did not extend me the courtesy of sending me a copy.

I want to start by saying that this is not a personal issue between me and Mr. Smith. I do not know him and he does not know me. That said, he is a public figure, running a public entity. As a taxpayer I believe I deserved a response to my letter written to him. I find his actions of writing about my opinions and stated facts without including me, to be insulting and indicative of the PBA's general attitude of autonomy, when in fact they are a public entity supported by tax dollars.

I must address the responses Mr. Smith documented in his letter, as they are filled with contradictions, discrepancies and in some cases inadvertent admissions of my points.

First, Mr. Smith addresses PBA procurement procedures, and in one paragraph says that in his 9 years with the PBA he can "state with authority" that "subcontractor work performed under a CM is required to be competitively bid, as a matter of policy"....in the very next paragraph he admits that "a couple of contracts at Hardin Valley Academy were awarded prior to working drawings being fully completed by the Architect." He then states that this practice is "neither inappropriate nor uncommon on certain projects." So which way is it? Always competitively bid or "except" on "certain projects?" Who decides?

Mr. Smith clearly confirms that contracts WERE awarded by PBA on HVA without being bid! These contracts for concrete footings and electrical and HVAC systems were substantial in size... millions of dollars worth of contracts. If the contracts were awarded based upon drawings that weren't finished, what scope of work were the contracts based upon? He alludes to the fact that "those decisions complied with applicable statutory authorization."

I think this clearly substantiates my concern that the PBA DOES IN FACT on occasion award contracts without bids and by his own admissions....even worse.... without complete drawings! **I have never said this practice is illegal...that is my pain, it should be illegal! Because it is wrong!**

Later in his letter, after stating several times the statutory latitude which the state laws allow PBA's to operate under, Mr. Smith moves on to address my position on the many varying construction delivery methods in the marketplace today. Consistent with the current county administration's tactics of discrediting anyone who challenges the status quo as being self serving; he plays the "he is promoting the method his firm uses and promotes" card.

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Your Vision ... Our Commitment

I am not promoting any method as the best. **I am promoting transparency for public projects.** If one method provides transparency while another either doesn't or is less transparent, the greater transparency is the desired result, not the process or method.

For the record, my firm (Construction Plus Inc.) is a General Contracting, Design Build and Construction Management firm. We provide ALL three types of contracting methodologies. Under the CM banner, we provide both CM at risk and CM agency services. For example, currently all of our business falls under the CM at risk or GC category. I promote the CM agency method when it makes sense... and frequently, for public work, it makes sense because it is very transparent.

Consider the facts as State statute TCA 49-2-203(a)(3)(C) has clearly already addressed:

- o State statute TCA 49-2-203(a)(3)(C) addresses how LEA's (Local Education Authorities) may use CM for schools. What it says follows, **per the State Comptroller's clarification** obtained through Senator Jamie Woodson's office:
 - The LEA may select a CM through the RFP process based upon qualifications.
 - The CM may assist the LEA in procuring and analyzing bids, but the bids must be awarded by the LEA. **In other words the contracts will be between the contractors and the LEA.**
 - The CM may assist the LEA in the determination of the validity of invoices from the contractors and the fact that they are ready for payment **but the invoices must be paid by the LEA.**
 - **The CM will only be paid their fee and no other funds will flow through the CM.**

These key elements clearly describe the CM agency method (also often called the multiple prime contract method). The underlined and bold parts above are what differentiate CM at risk from CM agency. I am simply pointing out that according to state law this is the way **a private firm may be used to provide CM services for schools;** so why does another state law allow for a PBA to contract for CM services for schools in a manner which contradicts this statute? The insertion of a PBA between a CM and an LEA shouldn't change the logic. I think it is just common sense, that this contradiction makes no sense. What the PBA is doing "may" be legal, but I believe it is wrong and costing our state millions of dollars annually.

In no way, as suggested by Mr. Smith in his letter, do I dismiss the value of the CM at risk method. I value CM at risk as a valuable service and practice it, according to the stringent standards of the CMAA I might add. For private owners it often provides the most viable delivery system. The CM agency method is more transparent typically and therefore I believe it is a better fit for most public projects.

That said, CM at risk could be implemented effectively on public projects **if the rules of the bidding processes are closely modeled to resemble CM agency,** including public advertising and opening of bids, as it is in these areas where transparency is required the most. The second attachment to this email is an article from the most recent CMAA's bi-monthly newsletter which addresses the two CM methods for public projects as "kissing cousins." This is written by someone I do not know, from another state. I hope you will take the time to read it and in particular review the summary of things the CMAA does promote as being the best of both worlds for public projects.

Regardless of these arguments over semantics my main point is we as taxpayers are being told one thing is happening with the process of spending our tax dollars... while another is in fact happening. This is not transparency.

Mr. Smith also admits that the Knox County PBA has indeed worked in other jurisdictions or municipalities outside Knox County and states very eloquently that it was "legal". He further boasts that this practice saved Knox County money via funds earned being used for his staff etc. I submit taking work away from



local businesses, who paid for Mr. Smith's gasoline and car to go to the interview, while legal, is just plain wrong. See David Moon's quote (former PBA treasurer) in an article he wrote for the KNS where he agrees, attached.

Mr. Smith also claims to have provided these "services" for 25% of what private practice would have required. I must say this is a bit absurd. If this were the case, Mr. Smith should share the secret with the private sector of how to quadruple their efficiency by following a government agency's model. This contradicts the same logic Congressman Jimmy Duncan quoted in his recent submission of legislation to prevent government entities from competing with private industry. Sen. Duncan stated his belief that it was common knowledge that private business is traditionally more efficient than government. See his quote in the attachment of a KNS article.

Mr. Smith also claims that my concern over this practice is self serving, as my firm was soliciting this same work from these counties. Not true.

My firm NEVER solicited the work PBA procured in Loudon and Sullivan Counties. The work they provided was that which would be provided by Architectural firms not construction firms. In one case, the PBA actually sub-contracted with a local Architectural firm to perform the work they contracted with Sullivan County to provide. Reducing the scope of work and later being paid additional funds to complete the survey, the final costs, in fact exceeded the costs the local Architectural firm could have provided the same services for without the PBA being added in as a markup layer.

Architectural firms in Knox County are afraid to make noise about this travesty because they are afraid of reprisals by the PBA on awards of future contracts. Many have applauded my desire to shed light on this issue in private, and given anonymity would do so to you as well. If you notice the scan of Mr. Smith's letter has no addressee on it because the person who handed it to me, an elected official, doesn't want it to be known that they handed it to me. What does that tell you? Why are our elected officials afraid of someone who works for them?

Mr. Smith goes on to say that I believe that PBA's shouldn't be allowed to represent municipalities on construction projects. While I have found other states with PBAs (absent one) do limit the scope of their PBAs to financing and property management, my point was IF the PBAs in TN are going to be allowed to supervise design and construction then **they and the contractors they employ should be bound by the same rules and procurement laws as private firms not working under a PBA**. When private firms work for a PBA, as a CM for example, that CM entity should be made to follow the same laws as though the PBA were not involved; they should not be allowed to skirt procurement laws because a PBA is in the mix. The example is the contracts which Mr. Smith admits were awarded through a CM on HVA without bidding and even worse, with no clear drawings completed. How can turning contractors loose on a \$40-50MM project, without complete drawings, be an efficient use of tax dollars?

Mr. Smith closes stating his agreement that PBA is a public entity; if so, how can he disagree with my points made to him previously and restated herein? **If in fact the Knox County PBA intends on following these rules of transparency in the future why would Mr. Smith, or anyone at any PBA, object to some simple clarifications in the laws to make sure we have consistency across the state?**

I believe my credentials qualify me (resume attached) to address the various delivery methods in the marketplace today. My interest is not to discredit Mr. Smith or PBA's, **but to solicit the clarification of the laws in place in a manner which will provide the best value for our tax dollars across the board**. I am particularly interested in finding ways to build educational facilities as efficiently as possible as this is the foundation of our future in my opinion.



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I hope you will consider this information in a positive manner for the improvement of our state and local laws to an end which will deliver the best possible facilities for our hard earned tax dollars.

My mobile phone is (865) 803-8940 and I would welcome your call at any time.

Sincerely,



Sanford C. Loy, CCM

President

Construction Plus Inc.

