

# PBA Documents for Hardin Valley Academy

The documents concerning Hardin Valley Academy (HVA) I am going to be referencing include: (All procured from PBA)

- My Open Records Request dated Jan. 11, 2011.
- PBA's reply letter dated Jan, 21, 2011.
- Email A-concerning the concrete bids (6-7-06).
- Bid tab A-Mechanical Proposal Bid Results (7-5-06).
- Bid tab B-Electrical Proposal Bid Results (7-5-06).
- CM contract A - showing the contractual directives the PBA gave the construction manager (12-8-05).
- Progress report A dated 6-6-06.
- Progress report B dated 7-11-06.
- Change orders one through eleven dated from November 19, 2008 through November 12, 2009. (Yes, 15 months after the project was finished).

First let me review what would represent a normal bid process for public work by typical government procurement standards.

1. The scope of "work" is identified clearly. (Drawings and specifications)
2. The intent to solicit bids is advertised in a locally circulated newspaper.
3. The Drawings and specifications are provided to bidders for their bid preparations.
4. At a publicly declared date, time and place, the bidders assemble, submit their bids and watch a designated person open those bids following the rules of state law.
5. The data required from the bidders is tabulated and the lowest responsible bidder is awarded the contract for the bid amount they submitted.

Because HVA is such a large project I only extracted 3 segments to examine for simplicities sake, electrical, mechanical and concrete. All three have issues.

Here are the highlights of the documents I have seen to date:

- ❖ "Bid" tabs A and B:
  - Both have the words "bid" and "proposal" in the same title.
    - That is like oil and water. A bid is a firm price commitment; a proposal contains an estimated budget for an indefinite scope of work.

- Note at the bottom of both documents, “(the CM) deems the THEORETICAL costs...” here the CM is clearly acknowledging that the costs listed are not objective bids but THEORETICAL numbers.
- Note on Bid tab B, “(the CM) and PBA interviewed both (Contractor A) and (Contractor B).”
  - There is no need to interview bidders...the bids speak for themselves.
- The final line in Bid tab B, “(Contractor A) failed to produce a surety letter...”, and in Email A the CM communicates to the PBA about one of only two companies who supposedly “bid” on the concrete work, “(Contractor C) did not include a bid bond with their bid. I checked their license limit with the state this morning and it appears their license limit is not large enough for this contract.”
  - By state law, in a bid opening, the contractors must submit their bids in an envelope with their state contractor license numbers, license limits and classifications listed on the outside of the envelope; any errors or omissions require the bid remain unopened, unread and rejected.
  - For public work a bid bond is the first thing someone opening the bids must inspect after opening the respective envelope, if the bond is not valid for any reason, the bid must be rejected, remain unread and rejected.
  - In other words in a true public bid setting neither (Contractor A) nor (Contractor C) would have been considered longer than it took to review the bid envelope and the bid bond inside. Instead the PBA allowed these contractors to submit “proposals” which were “evaluated” by the CM and PBA behind closed doors, not in the sunshine.

❖ Contract A:

- 2.1.10 States “The CM does not warrant or guarantee estimates and schedules.
- 2.2.1 States “When the Drawings and Specifications are sufficiently complete, the CM shall propose a Guaranteed Maximum Price (GMP), which will be the sum of the estimated Cost of the Work and the CM’s fee.”
  - This clearly shows the drawings and specifications were not even contemplated to be complete at the time the CM contract, as well as many subcontracts, were to be executed.
- 2.4.2.1 Discusses at length the manner in which the CM will procure bids from subcontractors. Nowhere does this section state the work will be bid by public standards, it uses the term “competitively bid” which is less demanding than a “public bid standard” but even that lower standard was not met.

❖ Progress report A (6-6-06):

- Page 3 section 27.02 states “(The CM) noted that these contractors (electrical and mechanical) will need to be under contract before the final documents are completed for bidding.” Later it states, “(The CM) will solicit proposals from contractors in the next two weeks.”

- Contracts were executed before final drawings are completed for bidding. The contractors had only schematic design data to use in developing their “bid proposals”. Which is why the numbers were described as theoretical.
- Page 3 section 1.14 states “The current construction estimate provided by (the CM) is approximately \$1,300,000 over the planned budget.”
  - This was reported on 6-6-06, about the time the grading was being completed and the “budget” was already blown. Yet, the entire county commission was told numerous times by PBA that HVA was on time and under budget.
- ❖ Progress report B (7-11-06):
  - Page 4 section 1.14 “The GMP (Guaranteed maximum price) process will begin in October.”
    - This was written in July, 2006 stating the CM and PBA would start working on a GMP “proposal” in October...10 months after signing the original contract. They finally agreed upon the GMP 14 months after that. So for two years the contract amount was in the state of flux.
- ❖ Change orders one through eleven:
  - Note the project was completed in July of 2008 yet the first change order was submitted 4 months later on 11-19-08 and approved on 1-22-09. Change order 1 added \$1,530,071.00 for over 170 items which were “not included in the guaranteed maximum price (GMP).”
    - Four months after the project was complete there were more than 170 items worth \$1.5mm identified which were not in the GMP.
      - The GMP (per the fine print) was set on 12-4-07, 18 months after the project was well under way. In other words up until that time, no one knew the total cost of the contract or what the estimated exposure to Knox County was.
    - Change order 3 dated 3-20-09 added \$145,334.00 with no description of what it was for.
    - Change order 4 dated 4-13-09 added \$103,858.00 with no description of what it was for.
    - Change order 5 dated 5-11-09 added \$64,312.14 with no description of what it was for.
    - Change order 6 dated 6-7-09 added \$16,771.24 for “additional services”.
    - Change order 7 dated 7-7-09 added \$898,726.00 for a ticket booth “allowance”, Concessions modifications “allowance” and the DELETION of the “lockers, ceramic tile, and fencing allowances”.
      - They deleted the lockers, tile and fencing and added a ticket booth and concession stand and it ADDED almost \$900,000?
      - Why were they using “allowances” a year after the building was complete?
    - Change order 8 dated 7-7-09 added \$6,629.44 for additional services.

- Change order 9 dated 8-14-09 added \$3,205.14 for additional services and fee.
- Change order 10 dated 10-14-09 added \$38,534.11 for additional services and fee.
- Change order 11 dated 11-12-09 added \$5,991.98, for additional services and fee.
  - The final change order was approved by Dale Smith of PBA on 2-1-10. A year and a half after the school was completed.

❖ Summary of the timeline:

- The original construction contract was signed on 12-8-05.
- The CM compiled data from “proposals” (not “bids”) for the award of electrical and mechanical contracts (worth over \$8.5mm) in July-2006 (before the electrical and mechanical drawings were completed). This clearly shows that PBA, through the CM, awarded over 20% of the work without publicly submitted and publicly opened bids where a low bidder is clear and objective.
- Final construction documents weren’t completed until after 9-1-2006.
- The GMP was set 2 years after the original contract on 12-4-07.
- The school was substantially completed in 8-08.
- The final contract amount of \$39,620,668 wasn’t finally determined until 2-1-10. This was an additional \$500,000 more than the GMP set in 12-07.
- The total paid to the PBA by Knox County for this project, according to the PBA’s reply letter is \$49,959,161.

**The problem is all the above is legal!** How?

The state PBA statute allows PBA to ignore any or all local laws.