

Building reform can save big bucks

By Nick Littlefield

In 1980, the Ward Commission published its landmark report on public construction in Massachusetts in the wake of a massive corruption scandal. Most of the reforms we proposed promptly became law. As a result, these projects, which account for more than \$3 billion in annual public expenditures across the commonwealth, have been largely corruption-free for nearly a quarter century.

But one major recommendation was not adopted: the elimination of filed subcontractor bidding. When the commission was convened, New York was the only state with a similar law. It has since been eliminated and today Massachusetts stands alone.

Filed sub-bids require that the commonwealth or a municipality create a separate set of plans for each of 17 subcontractor trades involved in any vertical (buildings as opposed to roads) construction project. Those packages are then put out to bid prior to selection of a general contractor.

The Ward Commission investigated about 4,000 contracts worth around \$4 billion that were let during the decade prior to its establishment.

Our findings regarding filed sub-bids were unambiguous. They encouraged shoddy work and discouraged competition by granting a near-monopoly to a small group of subcontractors, discouraged participation by minority and women-owned firms, and required lengthy litigation to assign blame for the faulty work they promoted.

“The filed sub-bid arrangement has the net effect of active recruitment of shoddy performers into public construction,” reads the commission report.

Over 40 percent of the buildings we surveyed had major roof defects. Even with more than 450 roofing companies operating in Massachusetts at the time, the filed sub-bid law resulted in the selection of only three firms for 48 percent of state roofing projects.

Given the anti-competitive nature of filed sub-bids, their impact on minority and women-owned businesses comes as no surprise. Again, the Ward Commission could not have been clearer:

“For black, Hispanic, and women subcontractors, filed sub-bidding is by far more the problem than the solution. It has effectively impeded both equal access and affirmative action.”

Filed sub-bidding increases costs by requiring the impossible task of artificially dividing the work of interlocking subcontractor trades into 17 distinct sets of plans; resulting in multiple change orders, claims and litigation. We found the law had cost taxpayers a minimum of \$83 million in the decade prior to formation of the Ward Commission. In today’s dollars, that translates to \$344 million.

It’s easy to see why we called filed subcontractor bidding “the kind of law that gives government regulations and operations a bad name.”

Filed sub-bids have survived several attempts at repeal in the 24 years since the Ward Commission, but special legislation has exempted certain projects from the requirement.

The Massachusetts Information Technology Center in Chelsea and the Reggie Lewis Track at Roxbury Community College were completed on time and on budget under the exemptions. Another allowed four Chelsea school projects to be built for 15 percent less per square foot than the state average at the time, and the schools were completed without a single lawsuit being filed.

We currently have what might be our best opportunity to right this wrong. The Romney administration has proposed to eliminate filed sub-bids as part of a construction reform proposal that is tied to a plan to clear the School Building Assistance program's \$4 billion backlog by fiscal 2009. This can only be achieved if we realize 10 percent savings from improved public construction practices.

At the same time, a special commission comprised of industry experts and representatives from the executive and legislative branches of state government is expected to report back within about a month.

Hopefully the commission will join the administration in a long-overdue effort to eliminate this unfortunate vestige of a dark era.

The members of the Ward Commission understand that the protections against corruption we put in place in 1980 would need to be updated from time to time, and the current efforts to do so by the Romney administration and the construction reform commission have much merit.

Twenty-four years ago, we wrote, "Filed sub-bidding should be repealed. It is an experiment that has conclusively failed. It is the least desirable of any known alternative for the selection of subcontractors. Its continued use will result in the building of more defective construction at taxpayers' expense."

Reforms always need to be revisited periodically. But fixing the commonwealth's public construction laws will require going back to clean up the unfinished business of repealing filed subcontractor bidding before we can truly move ahead.

Nick Littlefield is an attorney at Foley Hoag LLP; he was chief counsel to the Ward Commission.

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