The Recent AG Office Opinion Regarding Cx Services Procurement

Pete Keithly – BCA Founding Member
Pete Keithly Introduction

• 9 years as a school district M&O Director in Washington State.
• Past President of the Washington Association of Maintenance and Operations Administrators (WAMOA).
• 13 years as a principal owner of a Building Commissioning firm.
• Founding member and on the BCA Board of Directors for 5 years.
• 5 years as the BCA NW Region representative on the OSPI Technical Advisory Committee.
• Currently retired, but active!
Issue Background:

• Sometime around the year 2000, Educational Service District 112 (SW Washington Region) unilaterally created their Construction Services Group (CSG), primarily in response to a new state law requiring all major school construction projects to be construction managed, reviewed for constructability issues, value engineered and commissioned. It is important to note that private firms offering these school construction related services already existed and operated in Washington State.

• Essentially, the CSG operates as a separate ESD 112 division that competes directly with private industry for these construction related services on school district projects. In many cases, they have been allowed to contract directly for this work with school districts without going through any competitive procurement process, through the use of inter-agency agreements.

• Two years ago, I asked my local State Representative (Rep. Michelle Caldier) to request an Attorney General’s Office opinion on the legitimacy of the CSG being simply given this public work without any opportunity for the private sector to compete. Earlier this year the opinion was rendered.
The Attorney General’s Office Opinion

• Within their opinion, the AG defined these construction services as “Other Public Works” and noted that the law currently requires this work to be opened for competitive procurement if the project cost exceeds $100,000.

• Since all major school construction projects exceed this amount, we therefore should expect that all school district project related public works (including commissioning services) shall be competitively procured in a fair and open fashion.

• I would suggest BCA member companies review the current list of proposed projects for Washington State Schools and if interested in this work, contact the appropriate school districts and let them know that based on this recent AG opinion, you will be expecting them to advertise and procure commissioning services in a fair and open competitive manner.