

The Public Construction Law Source Book

Editors Michael K. Love and Douglas L. Patin (CCH, 2002)

Reviewed by Lawrence C. Melton



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Fifty states! Fifty legislatures! Fifty supreme courts! Fifty public procurement codes! Fifty sets of regulations! Whose idea was this? You call this a country? Even coming from a state that bears more responsibility than most for the persistence of states' rights, I inevitably despair of ever becoming even minimally competent on more than a local level.

In fact, at a recent seminar taught by an expert on European commercial law, I was struck by the fact that the laws of the fifty United States are more diverse than the laws of the member states of the EEC. So much for *E Pluribus Unum!*

Given the present disarray of "our federalism," those of us who practice public construction law at the state level can be grateful to Mike Love and Doug Patin for piecing together *The Public Construction Law Source Book*. With fifty chapters and 1,534 single-spaced pages of 10-point, bifocal-straining font, this book is no lightweight. The editors note—probably with understatement—that the process was "more involved and protracted than anyone had anticipated."

Arkansas and Oklahoma share the brevity award at thirteen pages each. California—who else?—claims the longest chapter at seventy-two pages. Texas weighs in at a paltry fifty pages, which makes one wonder if everything down there is as big as it once was. Maine, on the other hand, at twenty pages, undercuts the stereotype of the taciturn Yankee.

For ease of reference, the chapters are commendably arranged in uniform order by topic: Architect/engineer procurement processes; authority for nontraditional construction techniques—design build, multiple primes; socioeconomic requirements; subcontractor issues such as prompt payment and pass-through claims; bid, performance, and payment bonds; claim issues; dispute resolution; statutes of limitation; bid protests; and a final section in most, but not

all, chapters, called local "traps." The format usefully allows a quick comparison of one state with another, an exercise that is frequently useful for practical as well as academic reasons.

By way of an unnecessary disclaimer, I did not read all fifty chapters. I did read the chapters about the states where I am admitted to practice (South Carolina, Virginia, and the District of Columbia). All were well written and apparently accurate. I was pleased to note that Howard Van Dine effectively used the decisions of the South Carolina state engineer, a legal resource available only to those who know how to order the CD from the State Budget & Control Board and that would not be available to most out-of-state practitioners. I assume that other state chapter authors were equally well informed.

I also read the Arkansas chapter because it was short. And I read the California chapter both because I wanted to see what the seventy-two-page fuss was about and also because I have an interest in the California False Claims Act. Again, both chapters were very well written. The Arkansas legislature, it seems, has pretty much stayed out of the construction business. The folks in Sacramento, on the other hand, must not do much but debate construction industry problems, a fact that may explain the California "energy crises" of a few years ago. At any rate, material on the California False Claims Act was where one would expect to find it, concise, and useful.

Some authors added special touches. Special commendation should go to Robert J. Symon and Eileen G. Akerson for including a list of South Dakota state officials and telephone numbers. Statutes and cases certainly have their place, but state law gets to be local law very quickly and no amount of research can justify omitting that last vital step of talking personally with a local official, particularly when it comes to locating unpublished materials.

Venturing into the law of a state where one is not admitted to practice is always problematic. It is, however, frequently useful to know something about the law of other states before hiring local counsel. This book meets that need admirably. As the editors note, the book is intended for experienced construction professionals who will know how to read and update the materials and also will know to seek out local counsel when necessary. Used as intended, *The Public Construction Law Source Book* will be a valuable addition to every construction law library. ■

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