Subtle Strategic Changes Yield Significant Results

BY STUART BINSTOCK, PRESIDENT & CEO

Last year, CFMA's new Strategic Plan included a few subtle yet significant differences from our previous Strategic Plan. There is now even more emphasis on looking for ways to benefit member companies and to promote our role as a thought leader in the construction industry.

To that end, CFMA theorized that construction contractors are wrongfully perceived to be largely at fault in causing delays and cost overruns on federal projects, which stemmed from an article published in the Washington Post last year that implied that construction contractors were the cause of many of federal disputes.

CFMA contracted with Anirban Basu, our Economic Advisor, to conduct an analysis on behalf of the entire construction industry, and published a report in the fall of 2015 entitled “Analysis of Construction Projects with Federal Agencies and the Cause of Disputes.”

Findings from this federal dispute report, which analyzed 107 cases from 2000-2015, concluded that federal agencies' procurement practices are actually a large part of the problem. Some of the report’s key findings are:

- Contractors are partially vindicated in these cases more than half the time.
- Damages sought by either party are only 6.9% of the original contract amount.
- Disputes with certain agencies are less likely to be resolved in favor of contractors.
- In terms of producing better legal outcomes for contractors, the design-build method of procurement has no advantage over the design-bid-build method.
- Many of the disputes center on misunderstandings regarding specifications.
- Contractors were most likely to be denied an award due to a lack of evidence.

CFMA presented these findings on September 29, 2015, during a press conference at the National Press Club in Washington, D.C. CFMA's Chairman Brad Robinson and I spoke about why CFMA initiated this study and the implications of its findings. We concluded that a lack of communication between the federal agencies and contractors is a frequent cause of disputes.

We strongly feel that this report should spur conversation between the federal agencies and the construction community to determine how to reduce disputes and avoid litigation. This endeavor supports CFMA's new Strategic Plan by not only placing our Association in a more prominent role as a thought leader in the construction industry, but also supporting our members’ companies.

We have spent the past few months distributing this report at the AGC/CFMA Annual Construction Financial Management Conference, to other construction industry associations that consult regularly with federal construction agencies, and to the press where it has received additional coverage.

I encourage you to visit www.cfma.org/federal disputes to view the report as well as a video of the press conference in Washington, D.C. We welcome your thoughts and opinions about this initiative as we continue to work on behalf of the entire construction industry.