



nerrej

Associated Subcontractors of Mass. president's message: Advocacy is top priority

May 17, 2012 - Construction Design & Engineering

In our ongoing efforts to improve the membership experience, ASM recently asked its members to complete a survey rating the importance of the benefits and services we provide to our members. We were not surprised that "advocacy" once again topped the list in importance, as it has for 60 years. Though advocacy, itself, is difficult to value, the outcome of ASM's legal and legislative efforts has undeniable value - directly affecting a company's bottom line.

Take the Construction Prompt Pay Law that passed in 2010. Now nearly two years later, new payment procedures are well established, and are speeding up the flow of payment on construction projects - most notably, payment for change orders, which has long been one of the greatest challenges for subcontractors.

Following up on that success, ASM is now pursuing new legislation to address the last and most important payment on a project - retainage, usually 10% of the contract and often not released for 6 months or more after completion. ASM's message is simple: the amount held for retainage is too much, and it's held for too long. Our bill would cap retainage at 5%; and call for final release within 30 days of substantial completion, except for amounts to cover incomplete or defective work, or claims.

We see this bill is the "missing piece" to the Prompt Pay law; and like Prompt Pay, it would apply only to projects over \$3 million in value. While we face opposition, we believe that it is based largely on reluctance to change, as with Prompt Pay. To date, 29 other states have adopted laws setting restrictions on retainage in private construction, including Connecticut, which has exactly what we propose - with no harmful effects. We continue to reach out to our opponents in an effort to reach common ground on the bill.

In the legal realm, we are currently working to protect subcontractor payment bond rights on public projects. Recently, the state's Supreme Judicial Court took a case on appeal, where a lower court had ruled that it is permissible for a subcontractor to waive its payment bond rights. ASM filed an amicus brief in the case urging the SJC to overturn the lower court decision, because we recognized the potential disaster for subcontractors if waiver of bond rights is allowed, and becomes the norm. A decision in the case is expected in about 3 months.

These are just a few of our advocacy initiatives - with still more in the works. If you are a subcontractor, I urge you to join ASM and be part of our efforts to improve industry practices and business climate for all of us.

David Cannistraro is president of the Associated Subcontractors of Mass., Boston and is president of J.C. Cannistraro, LLC, Watertown.