

## **The Road to Reform: Five Ways to Fix America's Broken Construction Industry**

By Barry LePatner, author of *Broken Buildings, Busted Budgets: How to Fix America's Trillion-Dollar Construction Industry* (The University of Chicago Press, October 2007, ISBN-13: 978-0-226-47267-6, ISBN-10: 0-226-47267-1, \$25.00).

**Adopt fixed-price agreements.** Construction contracts should 1) be based on 100 percent complete architectural and engineering drawings and specifications, 2) include a fixed price for everything designed and approved by the owner, and 3) apportion all the risks that are expected during construction between the parties. Standard contracts devised by members of the industry are generally insufficient as they fail to properly allocate risk among the parties and provide proven loopholes for contractors to make claims for additional costs. Their shortcomings drove LePatner's firm to create the *Equitable Risk Allocation Agreement*, a fixed-price contract that serves the interests of all parties.

“The right contract for any owner going into a project is one that offers a true fixed price,” says LePatner, “Their absence in today's industry is a huge reason contractors consistently exceed a project's budget. Securing a true fixed-price contract for your project will require your architect and engineers to deliver to you a set of construction documents for bidding that are fully detailed, complete in all respects, and coordinated with each other. Then include language that states the construction manager has reviewed the documents and the contract price offered includes all necessary work, labor, and material needed for the project—this will help protect you against a ‘creeping’ price.”

**Foster the rise of better intermediaries.** Asymmetric information is a huge issue in the construction industry. Contractors simply know more about what costs make up a budget than the owners. The introduction of true intermediaries could alleviate this problem by giving owners an industry-educated advocate who would keep their best interests at heart when working with contractors. LePatner says there are three possible options: 1) construction managers could work cooperatively with architects; 2) guaranty companies could expand their current role and provide oversight of the construction manager; or 3) hard-nosed, independent owner representatives or project managers with extensive practical construction experience could work on the side of the owners to oversee the construction manager and design team and could significantly reduce the information asymmetry.

**Consolidate and integrate.** “Consolidation of the construction industry will start to occur when owners, especially governments, insist on true fixed-rate contracts,” says LePatner. “When contractors can no longer wiggle out of bid terms after all credible threat of competition has ended, construction firms will finally feel the full brunt of market competition. The large, well-managed firms created will come to have a significant presence in the Fortune 1000 and will do everything from manufacturing and stockpiling construction materials to maintaining structures they erected years and even decades before. Construction sites will resemble modern automobile factories more than pre-industrial artisanal playgrounds. Buildings of all types will cost less than they do now, and/or there will be more of them, and/or they will be of higher quality.”

**Increase the use of promising new technology.** “Today advanced design programs offered by modeling and analytical software makers are collectively known as Building Information Modeling (BIM) software,” says LePatner. “BIM software models and analyzes detailed data covering a multitude of building characteristics, such as air flow, heat gain, structural analysis, and related costs, among others. BIM offers better quality information to members of the construction team, increases coordination, and can significantly reduce conflicts between the architect’s, structural engineer’s, and mechanical engineer’s designs before the bid drawings are issued rather than discovering the conflicts during construction when they instantly become costly change orders. The program also can be a lifesaver for owners because it helps them more easily see and understand how long a project will take to build and how much it will cost.”

**Institute a national impetus for increasing the number of engineers and construction experts.** “Right now we’re woefully undermanned,” says LePatner. “America simply doesn’t have the structural and civil engineers it needs to perform the overwhelming amount of infrastructure remediation and general construction that must be done. I would like to see a national effort aimed at increasing the numbers of civil engineers and construction experts needed to fully reform the construction industry. Think of it as a 21<sup>st</sup> century version of the 1950s push for science education in the aftermath of Sputnik. We need to tell our young people that construction is an exciting and noble career and strengthen those areas of our school system accordingly.”

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