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A Costco® fuel tank installation presented unique challenges. The project required that the pit accommodate five large fuel tanks placed closely together. Contractor Wayne Perry also designed an “L”-shaped configuration for the 60’ x 70’ pit to save both labor costs and reduce the amount of expensive rock fill.

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When this notice from the Contractors State License Board (CSLB) crossed my desk last month, it caught my eye and seemed like something SCCA should get behind.

All our contractors are licensed, and in fact, many of us have multiple licenses to cover specialty trades, as well as our general practice.

Helping CSLB is a part of our DNA as an organization, dating back to our founding in 1974 when we hired Al Atwood, a former CSLB veteran and leader for 15 years. Even in retirement, he continued to assist us with CSLB issues, including keeping track of our renewal dates, something that has become even more important since the changes in the licensing laws that say clients don’t have to pay contractors for unlicensed work.

CSLB is reaching out to all licensed contractors to help them find locations to perform undercover operations to catch the people who give our industry a bad name – not only for their poor quality work but also for their failure to operate within the law, all of which places our potential customers at risk.

Licensed contractors have long been one of CSLB’s main sources of properties, whether occupied or unoccupied, for the one and two-day sting operations. The agency hopes that more licensees will back CSLB’s commitment to leveling the playing field for licensed contractors that follow the rules by helping identify and secure “sting” properties.

There’s a need to find properties in areas affected by disastrous wildfires, as well as properties in Imperial, Los Angeles, Orange, Riverside, and San Bernardino Counties. Ideal properties include single-family homes, small commercial buildings, especially in strip malls, and industrial buildings.

Undercover stings are the best way for CSLB to catch individuals in the act of attempting to contract without a license. To continue these efforts to curb the underground economy, CSLB needs access to more residential and commercial properties to use as sting sites.

The stings are conducted by CSLB’s Statewide Investigative Fraud Teams (SWIFT) with the assistance of state or local law enforcement agencies. To learn more about these operations or offer a property for a future sting, please contact the SWIFT office for Southern California at (562) 345-7600 or by email at SWIFTSouth@cslb.ca.gov.

Passing the Baton

It been an honor to serve SCCA as President this year. I want to thank all of the past presidents, officers, board members and committee members who provided their unique insights and invaluable advice throughout the year. And thank you, too, to the SCCA staff for all of their support and help. It’s been a pleasure.
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Executive Vice President’s Report

How CARB Is Spending Cap-and-Trade Money

By Wes May, Executive Vice President

There is a California carbon tax collected under what the California Air Resources Board (CARB) calls a “cap-and-trade” allowance program that is netting the state billions of dollars, which are, in turn, spent on a diverse variety of “California Climate Investments (CCI).”

In mid-August CARB announced that it had spent nearly a billion dollars on CCI projects, saying the pace “has picked up significantly.”

“State agencies implemented $914 million in projects during the first six months of 2019, compared to $1.4 billion for all of 2018 and $720 million for all of 2017,” CARB said in a release announcing the expanded spending.

The money is collected from oil-industry giants, factory operations and utilities, among other firms, through a series of quarterly “auctions,” in which CARB offers “allowances” for businesses to continue to violate the state’s strict carbon emissions standards. The Air Board sets the prices for these allowances, which at the August Auction was $15.62. Competition for the 66,289,515 “current” allowances sold, raised the price to $17.16, $1.54 above the price set by CARB. All told, the auction raised $729 million which, if it’s averaged, would yield about $3 billion annually. The companies, in turn, pass along the cost of the “allowances” to customers, whether in the cost of a gallon of gas or a can of tomatoes produced in-state.

This money is one of the most hotly debated topics in each session of the General Assembly as the legislature distributes the money through the state budget process. Then more than 20 state agencies are involved in program development, project selection, and implementation of 60 CCI programs that focus on reducing “climate pollution,” a catch-all phrase for carbon for the most part.

CARB funded these programs with some 95,000 grants this year, ranging from $635 million for high-speed rail to $1,500 for subsidies for some 40,000 electric cars. More exotic investments in “reducing climate pollution” include building affordable housing (near transit), helping to control wildfires and a lot more. You can see the entire list of these investments at www.caclimateinvestments.ca.gov/annual-report/.

Overall, CARB says, more than 60 percent of the money now goes toward projects that benefit “disadvantaged and low-income communities.”

There are complaints about the allowance auctions. The complaints don’t come from the companies forced to purchase these “allowances,” because they pass the costs to us, but rather from academia and the environmental community who call them “a license to pollute.” These same groups are critical of CARB’s “carbon offset credits,” but that’s a story for another day.

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Dig Safe Board Update

By Todd Bloomstine, Bloomstine & Bloomstine

It’s very rare for the State of California to create a new government entity, be it a new department, agency or board. Not so unusual is the rebranding of a department. The California Department of Corrections changed to the California Department of Corrections and Rehabilitation a few years ago. The cost to make that change must have been in the millions.

But the idea of a new state entity with a new and innovative function rarely happens. However, it did in 2017 when the legislature created the California Underground Facilities Safe Excavation Board, commonly called the Dig Safe Board. SCCA was deeply involved in its legislative formation.

After the San Bruno pipeline explosion in 2010, the state became more aware of underground utility safety. To be clear, the cause of the San Bruno accident had nothing to do with excavation. Federal investigators determined the cause to be faulty installation and faulty welds on a 30-inch diameter natural gas pipe.

But the focus on underground utilities had begun. Reports from across the state were finding that California’s natural gas pipelines were being damaged in 7,000 incidents every year. That figure is likely much higher when other underground utilities, such as electrical and telecommunication lines, are included.

What was the state doing to reduce the number of incidents causing damage to underground utilities, colloquially called dig-ins? Not much. The law authorizes the California Attorney General and local district attorneys to prosecute for violations of the Call Before You Dig Law. But they never pursue violators because the violation is such a low priority, according to the California District Attorneys Association. More attention was needed to not only protect underground utilities but, most importantly, to protect the safety of construction workers excavating around them.

California has had a law since 1980 that provides a free underground utility locating service to contractors and other excavators. The law is simple – an excavator delineates the area where it wants to dig 48 hours before the start of excavation. The excavator then contacts one of two Call Before You Dig Call Centers and they dispatch utility workers to locate and mark any underground utilities in the excavation zone.

The law works great when it’s used. Both the Northern and Southern California Call Centers receive approximately 2 million requests to locate and mark, called tickets, every year. Reports indicate there are around 10,000 incidents of damage and of those about half did not contact the Call Before You Dig service.

Ten thousand of 2 million tickets is a low percentage, but it’s a high number when it’s put into perspective. It equates to almost 30 incidents of damage every single day in California. That’s high and it could be significantly reduced if more contractors used the service.

That’s the conclusion the legislature arrived at in 2016 when it decided to create the Dig Safe Board. The board was charged with educating the public, investigating incidents where damage occurred in order to determine causation and develop standards for safely excavating around underground utilities.

As you can imagine, the creation of any new government agency, department or board is slow and cumbersome.

Although the board held its first meeting in January 2018, it’s still not fully functioning. But it’s held monthly meetings and promulgated its first set of regulations.

SCCA has participated in almost every meeting. Engaging in the board’s early meetings is critical. The board will be in its operational stages later when it’s fully functioning and fulfilling its charges. Influencing the board early helps steer how it will function later.

Although the statutes are clear in the board’s charge, it shouldn’t be a surprise that the board has been somewhat distracted with other priorities. Recently one board member declared his intent to have the board operate both regional call centers although both are functioning exceedingly well. This direction seems to be ill-advised and counter-productive to the goal of increasing the number of calls to the call centers.

Most surprising is the extent to which the board has deviated from its legislatively mandated functions and dabbled in the unnecessary and superfluous. One regulation mandates that in the event of a significant accident causing damage to an underground utility, the contractor must contact one of the call centers within two hours of the incident. The law already requires the contractor to contact 911 and the utility, so why contact the board too? The reason is so that the board can potentially dispatch their investigators. It estimates there will be around 4,000 incidents that meet the significant standard, meaning it will receive about 11 calls per day. Unless the board has an army
of investigators, this regulation is unnecessary and will only bury the board in investigatory paperwork.

Another crazy proposed regulation authorizes an appeal of the board’s decision to sanction a party found in violation of the law. The party can request an informal hearing by the board or request an administrative law judge. However, the proposed regulation requires the violator to pay for the board’s legal costs if it chooses the administrative law judge. This is entirely unfair and violates the basic American tenet that parties in judicial, regulatory or administrative disputes pay their own costs. It will also likely dissuade violators from pursuing the administrative law judge avenue.

SCCA commented on this and other regulatory proposals and indicated its concern. For the most part, however, the creation of the board will increase the awareness of the Call Before You Dig Law and the importance of safely excavating around underground utilities. SCCA will continue to engage and serve as a resource to this newly created board.

Todd Bloomstine is a California registered lobbyist. He is the owner of Bloomstine & Bloomstine LLC and has represented SCCA in Sacramento since 2001.
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A Tale of Two Contractors
By Dan Huckabay, President, Commercial Surety Bond Agency

One of the really interesting things about the surety business is that you get to look behind the curtain of a ton of contractors’ operations. Daily, we get to hear the opportunities and struggles that our customers face while at the same time seeing how the financial results play out.

A few years ago, our agency compiled the data from our customers’ financial results to determine what market trends we could gain from the information. The trend for the last several years has been consistently upward, and 2018 was no exception. In fact, every area we measure showed continued improvement. Profits and backlogs are up virtually across the board, and based on the numbers coming into 2019, there is reason to believe this year will be strong as well.

What the positive results don’t show is the many challenges and increased risks contractors face including:
- An extremely tight labor market
- Increased environmental and labor compliance regulation
- Greater use by owners of outside construction management and inspection firms to run work
- Subcontractors being stretched thin and not performing

These challenges along with the higher volumes of work have led to an increased occurrence of profit fade on projects and have strained some organizations to the brink of closing their doors.

So, what can contractors do to maximize the good years we have left in this economic cycle? The most important thing is probably to limit growth, as that will only require more highly capable, qualified people, which are hard to come by.

We’ve seen some of the most profitable contractors focus on the following basics that drive their bottom line.

Raise Gross Profit Margins
When many contractors read this, they’ll simply dismiss it as not possible. I can tell you firsthand that I’ve seen several contractors try it over the last year and succeed. Not only that, many have maintained their current volume of work. Those that did see a decrease in volume had the higher margins more than make up for it. This isn’t just because of the higher margins, but because they were able to execute the work they had more effectively at the lower volume.

Stick to Work You’re Best at with Owners You Know
Now is the time for contractors to be selective, to focus on jobs where there is a higher probability of success. Taking on new types of work, in new areas, for new owners with new untested staff is a recipe for disaster.

One of our clients, did an analysis of all the types of work they’ve performed over the last couple of years broken down by market segment and owner type, and they compared the gross profit margins. They found certain types of work were the most lucrative and have shifted their resources to do a greater proportion of work in those areas. The result, their gross profit margin increased by 6 percent in 2019 compared to the previous year.

Tighten Project Controls and Accounting
As workloads have increased, everyone is getting stretched thin. This doesn’t just include contractors, but construction managers, owners, engineers and architects. As a result, staying on top of change orders and receivables becomes that much more important.

We’ve had several clients hire people to focus on these tasks to ensure cash flow stays manageable. Growth eats cash and if your pay cycle for receivables and change orders becomes longer at the same time, it will strain your cash flow resources, which is like cutting off oxygen near the top of Everest.

Prequalify and/or Bond Back Subcontractors
This is another area that many contractors will dismiss, believing if they put the cost to bond subs in their bid, they won’t get the job. What I can tell you is we have many contractors that do bond their subs, and they make equal to or greater profit margins than those that don’t. These clients don’t necessarily bond all subcontractors, such as trades they can self-perform, but they do bond those trades that are critical path, are high risk and/or are a large portion of the project.

In the end, bonding subs is very cheap insurance. A couple of our clients have had unbonded subs fail recently, and it cost them each more than $500,000 to replace the subs. That money could have paid for a lot of bond premiums and saved a ton of heartache in time and energy.

Conclusion
In Jim Collins’ book, How the Mighty Fall, he outlines five stages that lead companies to failure. Stage 2 is “the un-disciplined pursuit of more” and stage 3 is “denial of risk and peril,” which describes perfectly the trap many contractors fall into. But there is hope, Collins says, of reversing this fate by focus and discipline on the basics just like the things outlined here. It isn’t glamorous but it is effective.

Dan Huckabay can be reached at Dan@commercialsurety.com or at (714) 516-3603.

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3 Things You Should Know About Your Investment Portfolio Before the Next Market Downturn

By Mark A. Chandik, President/Chief Investment Officer, FDP Wealth Management

In order to have an efficient market, buyers and sellers have two basic opposing motivations – one to sell at the highest possible price and the other to buy at the lowest possible price. This constant tug of opposites creates a competitive market. The stock and bond markets are great examples of this dynamic.

As investors, we are exposed to information daily that influences our opinions as to both the short- and long-term prospects for the investment markets.

Ultimately, this plays out by creating volatility in markets with a bias to either the upside or the downside. Many long-term investors choose to ignore the daily barrage of information and instead focus on their long-term financial goals.

While this is a sound approach, as an investor you should know three things about your investment portfolio:

1) The expected long-term return of your investment portfolio (net of fees)
2) The volatility characteristics you can expect while the investment dollars are in the market, i.e. the magnitude of the ups and downs
3) The maximum “drawdown” potential of your portfolio. In other words, in a down market, what loss percentage might you experience

Long-Term Return Expectation

All portfolios can be analyzed to determine what the expected return is based on what type of assets are in the portfolio. Stocks, bonds, real estate, etc., all have long-term return characteristics and historical returns that can be mathematically calculated to arrive at a combined expected portfolio return. The return of your individual portfolio, in my opinion, should be in alignment with attaining your specific financial goals.

Retirement income, for example, is a common goal. Do you need a 5 percent, 6 percent or 7 percent average return over the long haul to achieve your goals? You should know that number. Once you know that number, you can compare it to your investment portfolio and make any course corrections that are necessary.

The numbers could surprise you. You might have a portfolio that has return characteristics that are much greater than what’s necessary. You’re then in a position to make a mindful decision whether to keep the portfolio as is or make a change that aligns the expected return with your financial goals.

Volatility Characteristics

I call this one the “sleep quotient.” What amount of volatility can you live with and what amount will keep you up at night? Understanding what amount of volatility your investment portfolio may experience is key to living a life that isn’t full of surprises.

There are many mathematical standards and tools for determining portfolio volatility. One common calculation is called Standard Deviation. This tells you how much return, for both the up and downside, you can statistically expect in any given year. Volatility is another way of saying, “How much risk is in my portfolio?” It is well known by seasoned investors that in order to achieve a higher return you must accept a higher level of risk and, therefore, higher potential volatility.

Potential Drawdown

In my opinion, this is the one portfolio characteristic people are unaware of. Perhaps it’s because the investment community would rather not share this number with you for fear that you wouldn’t invest in the first place.

That said, you must understand the worst-case scenario and have peace of mind that your financial goals will not be in jeopardy should that scenario play out.

Potential drawdown or “loss” is mathematically calculated and is expressed by way of a percentage. Once you see the number and can be comfortable with that number, then the portfolio is probably a good fit. If the number sends chills down your spine and you begin to hyperventilate, then perhaps you should remove some of the risk thereby reducing the potential drawdown amount.

Take Aways

First, let’s try and learn from the past. In 2008, many investors that were close to retirement age were “asleep at the wheel” when it came to their portfolios and they were completely caught off guard by the volatility and drawdown they experienced. They were blind-sided and shocked at the consequences of the downturn. Many had to work more years than they’d planned to. That’s a hard pill to swallow.
One of the lessons learned in 2008 is that investors should be much more aware of the characteristics of their investment portfolio.

While we can certainly point fingers at many guilty parties for what happened in 2008, one of the lessons learned is that investors should be much more aware of the investment portfolio characteristics their advisors have put them in, or if you are a DIY person, then you need to do the math yourself.

Currently, the markets continue to climb to new highs. While the market climb may be supported by macro-economic data, investors are becoming increasingly wary and may have a feeling of “doom and gloom.” When is the next recession going to come? How deep will it be? What is the impact on my business or my employment?

In addition to these questions, you should also be asking about the potential impact on your retirement savings and other buckets of investment dollars. Knowledge is power, and it also helps you to sleep better at night!
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The 2019 Scholarship Award Winners

Investing in our youth for the future of the industry.

August 14, SCCA met for the 2019 Scholarship Awards Dinner held at the Phoenix Club in Anaheim. Thirteen scholarships were awarded.

The scholarships are made possible through the support of SCCA members, The Construction Industry Advancement Fund (CIAF), The Fund for Construction Industry Advancement (FCIA), and the Mobile Crane Operators Group (MCOG).

Since 1985, SCCA has awarded $921,000 to 400 students. This year’s scholarship winners are:

- Nicholas Brown is attending California Polytechnic State University, San Luis Obispo, majoring in Mechanical Engineering. Brown was sponsored by National Ready-Mix Concrete.
- Steven Camcam is attending California State University Long Beach, majoring in Construction Engineering and Management. He was sponsored by Sully-Miller Contracting.
- Amanda Constant is attending Oregon Institute of Technology, majoring in Civil Engineering. She was sponsored by Southwest V-Ditch.
- Miguel Cruz is attending California State University Long Beach, majoring in Construction Engineering Management. He was sponsored by Marina Landscape.
- Brianna Flores attends California Polytechnic State University, Pomona, majoring in Construction Engineering and Management. She was sponsored by Silverado Contractors.
- Matthew Lindford is attending Brigham Young University, majoring in Civil Engineering. He was sponsored by Vulcan Materials.
- Alberto Lizarraga is attending University of Redlands, majoring in Environmental Science. He was sponsored by California Earth Transport.
- Klarisse Macabuhay is attending California State University Long Beach to earn a Masters Degree in Accounting. She was sponsored by Dirtonu Inc.
- Griffin Mulvey is attending Arizona State University, majoring in Construction Management. He was sponsored by The J.V. Land Clearing Co.
- Victoria Ochoa is attending Victoria University of Montevallo, to study Business/Project Management. She was sponsored by Clarke Contracting.
- Christian Rhodes is attending California State University Fullerton, majoring in Civil and Environmental Engineering. Rhodes was sponsored by Sukut Construction.
- Anthony Terrell attends Arizona State University, majoring in Engineering Management. He was sponsored by California Spectra Instrumentation.
- Blake Trowbridge is attending Summit College, Santa Ana, to earn his Welding Certification. He was sponsored by ARB Inc.

This year’s scholarship winners are (left to right) Brianna Flores, Nicholas Brown, Steven Camcam, Klarisse Macabuhay, Matthew Lindford, Alberto Lizarraga, Amanda Constant. Winners not pictured are Miguel Cruz, Griffin Mulvey, Victoria Ochoa, Christian Rhodes, Anthony Terrell and Blake Trowbridge.
Since 1985, SCCA has awarded $921,000 to 400 students.

Left to right are Kurt Kroner of Kroner Environmental Services, Paul Von Berg, Lonnie Clausen, SCCA Local Government Liaison and Travis Clausen of Sully Miller Contrating.

Left to right are Todd Bloomstine of Bloomstine & Bloomstine, Alejandra and Gerald Mouzis of The Mouzis Law Firm, and Steven Ward of Pavement Recycling Systems.

Left to right are Andrew Gwilliam of Marco Transport and Bobby Weyers of Bragg Companies with Tim McVay, Tony Armenta and Bob Reed of Marco Transport.

Left to right are Sharon, Amanda, Chris and Josh Constant of Southwest V Ditch.

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Left to right are John Cooper with SCCA, Denise Cooper of Cooper Engineering and Jeffrey Atwan with JMH Engineering and Construction.

Left to right are Eric Elvira and Ricky Baccerra of JMH Engineering and Construction with Josh Telle of United Rentals Trench Safety.

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2019 Membership Appreciation Mixer

SCCA’s chance to say “Thank you” for all you do.

September 11, SCCA held its third annual Membership Appreciation Mixer to thank our members for all they do to support the association and the industry.

Held outside at the Phoenix Club in Anaheim, the event theme was Oktoberfest and the weather was ideal. More than 150 registered for the event. SCCA Executive Vice President Wes May welcomed the group, expressing the association’s appreciation.

Thank you to our generous event sponsors:

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- Cooper Engineering
- Marco Transport
- Pavement Recycling Systems

For information on sponsoring the Appreciation Mixer in 2020, contact Tino Vasquez at tvasquez@sccaweb.org.
Left to right are Karen Salsbury of Salsbury Engineering, Anita Adriano of California Earth Transport and Greg Salsbury of Salsbury Engineering with Elizabeth Hartnett and Chris Adriano of California Earth Transport.

Madisyn Lane, granddaughter of SCCA Secretary/Treasurer Steve Ward of Pavement Recycling Systems, sang the National Anthem to great applause.

Alden Beck (left) and Chuck Chapman of Railworks Track Services.

Left to right are Derek Miller of Quinn Co., with Dan Leara, Tony Contreras and Kelly Miller of Alexis Oil.

Left to right are Roman Vargas, Alex Rodriguez, and Tom Vukojevic of Pipe Tech with Branimir Kovak of Thompson Pipe Group.

Erik Dickerson (left) of American Business Bank with Daniel Moore of Blois Construction.
Left to right are John Feikema of California Spectra Instrumentation, Steve Atkinson of AALRR, Jim Gasparo of Cooley Equipment and Jim O’Kane of Precision Cold Planing.

Brittany Andrakowicz (left) and Chris Zehnder of Wood Guttman and Bogart Insurance Brokers.

Left to right are Brent Bjornstad of Ritchie Bro. Auctioneers with Tim McVay, Bob Reed, Andrew Gwilliam, and Robert Allred of Marco Transport.

Peter Mendoza of Mendoza Business Enterprises enjoys the excellent buffet.

Left to right are Rex Endrizzi with Endrizzi Enterprises, Past President Mike Rodriguez of Security Paving, Dave Ugalde of California Earth Transport and Paul Von Berg.

Matt Pimm (left) of Riverside Construction with Eric Mendoza of Mendoza Business Enterprises.
Left to right are Kirin Barnett with JHS CPAs, Melissa Sommers of Crime Prevention Program of SoCal, Louis Bravo of JHS CPA’s and Paul Bland of GMGS Risk Management & Insurance Services.

Patrick Shaw (left) of Blois Construction with Tony Morelli of CIFAC.

Left to right are Paul Marshall with Veterans Engineering Services; Warren Schmidt, guest of Security Paving; and Nick Marshall of Veterans Engineering Services.

Denise Cooper of Cooper Engineering with Wes May, SCCA Executive Vice President.
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The Move to “Best Value Delivery”

The Best Value Delivery Pilot Program presents a unique opportunity for SCCA members to work with policymakers and participating counties.

By Suzanne Scheideker Cook, Strategic Ventures

In 2016, California amended the Public Contract Code, Section 20155.1 to allow the use of “Best Value Delivery” as an alternative to Design-Bid-Build (DBB) for construction projects as a pilot program for Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba Counties.

The amendment defines “Best Value” as a procurement process whereby the selected bidder can be selected using objective criteria for evaluating the qualifications of the bidders with the resulting selection representing the best combination of price and qualifications.

The evaluation criteria can include but is not limited to the following:
- Qualifications including those of the proposed subcontractors
- Quantifiable measurements
- Safety record for the past three years

Subsequently, on March 8, 2017, the Los Angeles County Board of Supervisors adopted Best Value Delivery as an alternative to using DBB for construction projects. Close on the heels of this action by the Board, California passed State Senate Bill (SB) 793, which expanded the use of the Best Value pilot program to include the County of San Mateo.

Additionally, SB 793 expands the use of Best Value Delivery to include annual construction contracts that are more commonly known as Job Order Contracts used for repairing, remodeling, and other repetitive construction work. A contract cannot exceed $3 million per year. The maximum contract value for the term of each contract cannot exceed $6 million. As a result, on August 14, 2018, the Los Angeles County Board of Supervisors adopted Best Value Delivery for Job Order Contracts.

Currently, California doesn’t seem to have any standard guidelines for the Best Value Delivery Pilot Program except for designating the participating counties and specifying that Best Value Delivery can be used by these counties as an alternative to DBB and on Job Order Contracts.

Due to this, the Best Value Delivery Pilot Program presents a unique opportunity for our members to work with policymakers and the participating counties to establish benchmarks, rating criteria, and outcomes that favor companies that are construction-focused and union contractors.

“Quick Builds” Gaining Momentum

“By rethinking streets, localities can deliver better economic performance, new transportation choices, and a higher quality of life,” say Quick Builds supporters.

Cities such as San Francisco and Seattle, and groups such as PeopleForBikes, are leading the charge in pushing “Quick Builds” as a new project delivery model for better streets. Supporters, some of whom refer to Quick Builds as “tactical urbanism,” say cities should rethink the purpose of streets and recognize that the freeway era is gone. (Evidently, they haven’t been in Southern California during rush hour traffic.)

Supporters say streets should be designed for pedestrians, bicyclists, and of course, the occasional car and that “by rethinking streets, localities can deliver better economic performance, new transportation choices, and a higher quality of life.”

San Francisco’s Metropolitan Transit Agency’s Livable Streets Unit uses Quick Build for both small and large-scale capital projects, as well as for a number of what it calls “hybrid” projects that incorporate both geometry changes and large-scale construction changes. The work is performed by San Francisco’s Livable Streets Unit and its Department of Public Works. The Livable Streets Unit does the installations, such as pavement color or plastic delineators, while Public Works does the concrete pouring and asphalt resurfacing. Based on initial research, it appears that Quick Build projects use force account labor rather than bidding out the work.

Quick Builds supporters look to local sources of funding instead of state and federal sources because of the delays and because state transportation departments question the new street designs and their implementation strategies. Also, many states control highway routes that double as city streets, which adds another barrier to the use of Quick Builds as a delivery method. In response to these obstacles, cities such as Seattle are working at the state level to arrange state and federal funding support specifically for Quick Build projects.

On this note, it’s interesting that the City of Los Angeles Council discussed a report for maintaining and expanding the bike path network in Los Angeles. This report was 36 pages in length. During the same meeting, the council received and filed a report entitled “Fiscal Year 2019-20 Failed Street Reconstruction” which was one page.

In this report, one of the items discussed is that failed streets with previous liability payouts and service requests will be one of the priorities and that these streets will include coordination with the city’s Department of Transportation to include elements of their programs and bike lanes. (Los Angeles defines “failed streets” as having a Pavement Condition Index of 40 or lower.)

The use of Quick Builds as an alternate delivery method by municipalities deserves watching.
Fatigue in the Construction Industry

By Diana M. Dron of Monteleone & McCrory, LLP

In July, I came back from vacation to deal with a settlement in a very large case that had fallen apart. That lead to trips to San Francisco, numerous conference calls with mediators, calls with the client and carriers, and a lot of arguing about the settlement offer that was eventually put back together, after falling apart a second time.

On the second Friday, I was not only angry and physically tired, I was mentally exhausted. I needed to go home and sleep. Fortunately, I ride the train back and forth to downtown Los Angeles, so I didn’t have to drive for 90 minutes in heavy traffic and put my life and possibly yours in danger with the chance I’d fall asleep at the wheel.

When I was rested, I started to wonder about employees who do construction work when they are as exhausted as I was. Do they run heavy equipment or operate dangerous tools on a jobsite in that condition? What is the impact of fatigue in the construction industry? Here’s some of what I found from my research – it’s startling, at least to me.

Fatigue is far more serious than my frequent desire to take a nap in the middle of the afternoon. Being tired can be a symptom of fatigue but being tired is not the same thing. Fatigue is a state of mental or physical exhaustion that prevents a person from functioning normally.

Fatigue is usually caused by lack of an adequate amount of good quality sleep over an extended period. But, it can also be caused by a myriad of other things such as extended work hours, spending long periods of time awake, working at night, shift changes, repetitive work, work that requires a high level of concentration, working in high heat or extreme cold, long commutes to work, too much overtime, as well as fatigue impacts mood and, a negative mood or emotional state has been shown to decrease complex cognitive performance, clouding risk perception.” (Tixier et al. 2014)

In October 2018, the National Safety Council issued the report “Fatigue in Safety-Critical Industries: Impact, Risks and Recommendations” stating that 69 percent of workers across construction, manufacturing, transportation, and utility industries are tired at work, which causes an increased risk of injuries and incidents on the job.

Fatigue impacts the ability to think clearly, decreases attention, and slows reaction time. The report also indicates that up to 13 percent of workplace injuries could be tied to fatigue. Further, workers’ lack of sleep costs $410 billion annually in “societal expenses” related to accidents and reduced productivity, among other things.

And, I would bet that the impact on businesses due to the annual change from standard time to daylight savings time is far more significant than we realize. I can’t be the only one who takes an entire week to adjust to a one-hour time change.

What is noteworthy is that 93 percent of all employers believe that fatigue is a safety issue, but only 72 percent of employees agree, leading to the conclusion that employees are not qualified to determine their own levels of fatigue or the inherent danger of working in a fatigued state. Therefore, supervisors must be vigilant observers of worker fitness.

According to Trekker Group, these are some of the most common signs of fatigue: repeated yawning, nodding off at work, inability to concentrate, loss of strength or stamina, slowing reflexes or reaction times, declining productivity, difficulty communicating, poor judgment or decision-making, needing frequent breaks, experiencing headaches or feeling lightheaded, and blurry vision. Both supervisors and workers need to be trained on the signs and dangers of fatigue, and the measures that can be taken to prevent it.

Most of us blow off fatigue as no big deal. Our culture is founded upon and admires hard work and putting in the hours. However, based on the inherent risks in working dangerous construction jobs in a fatigued state, we all need to reconnect with what fatigue is and how it can adversely impact our lives.

1 Fatigue Management by WorkCover Tasmania, March 2013.
2 Drowsy Driving is Impaired Driving, National Safety Council.
6 Top Tips to Prevent Construction Worker Fatigue, March 23, 2018, Trekker Group.
Ensuring Payment for Change Order Work

by Paul Rogoff and John Darling of Hunt, Ortmann, Palffy, Nieves, Darling & Mah, Inc.

Over time, judges and arbitrators have proved themselves sufficiently aware of the hurdles and imbalances contractors are often forced to assume due to the, at times, onerous change order provisions present in construction contracts. As a result of these provisions almost always requiring the owner’s written consent to changes, courts have proven themselves willing, in certain situations, to conclude that an owner has waived enforceability of the writing requirement.

For instance, when the contractor has followed many of the contractual extra work provisions, and has been able to prove that it reasonably believed that the extra work performed was authorized or necessary, courts have found it would contradict the principles of equity to force contractors to incur the extra costs where the owner is plainly enjoying the benefit of the extra work.

And thus was born a long line of cases ruling that these contractual writing requirements can be waived orally or via oral change directives, the parties’ conduct, or due to facts specific to the projects at issue. One of the more recent California cases to signal that this doctrine continues to be robust was G. Voskanian Const., Inc. v. Alhambra Unified Sch. Dist., 204 Cal. App. 4th 981, 992 (2012). There, the court found that a contractor is entitled to recover for work beyond that required in the contract where such work was necessitated by incorrect plans and specifications furnished by the owner. Because the furnishing of defective and/or deficient plans and specifications constitutes a breach of contract by the owner, notice requirements by the contractor are waived in connection with work required as a result. D.A. Parrish & Sons v. County Sanitation Dist., 174 Cal. App. 2d 406,414 (1959).

Don’t Waive Your Impact Costs

It’s a widespread practice of owners to include language in change orders that is meant to preclude a contractor from later attempting to recover impact costs over and above those detailed in a given change order. The seminal case on this issue was Huber, Hunt & Nichols v. Moore, 67 Cal. App. 3d 278 (1977).

In those instances where the change order includes no waiver-of-impact-claim language, however, courts will assume that the price indicated in the change order covers only the listed costs of the changed work. See Appeal of Beaty Electric Co., Inc., EBCA No. 408-3-88 (1990).

Similarly, federal courts have also ruled that if a contractor doesn’t intend to waive impact costs, the contractor must expressly reserve those rights in the change order; in the absence of an express reservation, broad waiver and release language will extinguish the claim. See John Massman Contracting Co. v. United States, 23 Cl. Ct. 24 (1991).

Thus, to protect themselves against waiver of impact costs, contractors must be diligent about reserving their rights to avoid later ambiguities in the change order language.

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