

BUILD

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HOUSTON

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The Revere is a boutique condominium located in the River Oaks area of Houston. A unique feature of the project is the use of oversized (16" x 24") burnished concrete masonry units (CMU). Originally 49 different shapes were specified. Knowing that site storage space and logistics were going to be major issues and that the supplier's schedule would be unduly lengthened by the sheer number of shapes, the project team decided to reduce the 49 shapes to a more manageable 22 shapes. Multiple meetings were held to identify which shapes could be field fabricated. Then, the drawings were re-mapped to specify where the manufacturer's 22 shapes would be used and directions were developed for the field fabrication of the remaining 27 shapes. The façade design was further enhanced with a field of utility brick on the south elevation that is interrupted with protruding burnished CMU pilasters. Cast stone is used throughout the upper floor banding, coping and landscape planters. The north, east and west elevations are highly detailed and incorporate picture framing, recesses, angled pieces, and chamfers which together create a sophisticated appearance.

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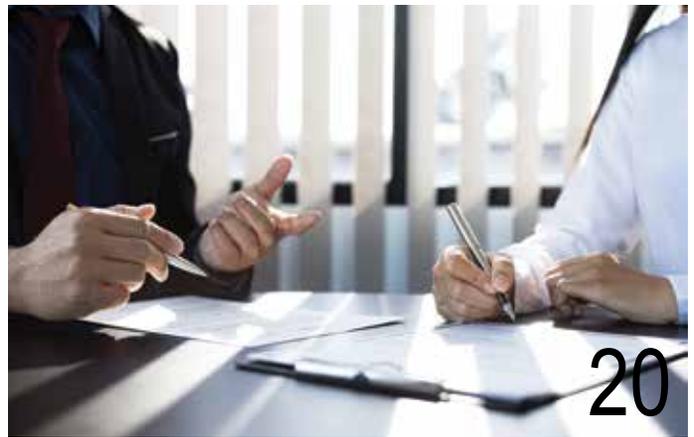
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JOHN GLAZE
ABC Greater Houston
2022 Board Chair

As 2022 comes to a close,

As 2022 comes to a close, I am honored to reflect on my year as chairman of this great organization. This year, we welcomed Jeffrey Nielsen as our new chapter president, and wished Russell Hamley the best in his retirement.

Also this year, we planted ABC Student Chapters in Prairie View A&M University and Stephen F. Austin State University, while continuing our relationships with the student chapters at Texas A&M University, and University of Houston. We expect to have a commitment from Sam Houston State University by the end of the year. As I look to the future, I'm excited about what is next:

- **High School Outreach.** ABC Greater Houston and its affiliate, Construction & Maintenance Education Foundation (CMEF), are in 60 Houston area schools, and that number is growing.
- **Government Advocacy/Political Action Committee.** We are solely focused on free enterprise and merit shop philosophies. We support candidates that align with these principles. 90% of our candidates were elected following the midterm election. We also surpassed our cycle fundraising goal by over 5%.
- **Craft Training.** CMEF is the vehicle through which industry and craft professionals receive formal training. Our goal is to recruit new entrants and up-skill existing workers through various programs focused on assessment, training, and continuing education.
- **Membership.** The LOGIC (Ladies Operating for Growth in Construction), Diversity & Inclusion, and Young Professionals committees are building relationships and shape our organization for the future. LOGIC had a 58% growth in membership this year and increased women representation at ABC events by nearly 10%. The Diversity & Inclusion Committee recently hosted a Membership Breakfast with over 300 attendees and highlighted Diversity & Inclusion in Our Workplace. The Young Professionals Committee hosted a toy drive for donations to a local charity and plans to grow their committee membership in 2023.
- **Safety.** ABC members are leaders in safety. All contractors should get involved with the safety committee and become an OSHA partner. The ABC Greater Houston chapter is a national leader in safety, and the #1 chapter in the nation for Diamond awards. We also partner with The University of Texas at Arlington to provide safety training opportunities at the ABC Office. 126 contractor members participated in STEP this year.
- **HireSMART/WorkSMART (Student, Military, & Reentry Training).** The new HireSMART program started early this year and has successfully recruited several member companies. This initiative will help fill the workforce shortage

“I want to express my appreciation for the opportunity to serve as chair, and I look forward to seeing what Rusty Barnhill with Force Corporation will accomplish as your 2023 Chairman.”

gap and promote the industry through skills training and job placement to assist individuals seeking a new career path. The program has a goal to increase participation to 50 members in 2023, and to add additional schools to their outreach.

This list of opportunities wasn't hard to come up with. Just like anything, they started with an idea. That idea was followed by a commitment to make a difference in the industry so that we can provide opportunity for the future.

MEMBERSHIP

Get involved in the high schools and ABC college student chapters, allow the students to meet someone in the industry, and mentor them. Be an example. It breaks barriers. You could be that one person that changes the trajectory of their life.

EDUCATION

Get trained to better yourself as a leader, a craftworker, a project manager, a superintendent, or invest in someone else to help them along their journey.

SAFETY

Get involved with the safety committee. Meet other contractors and do peer reviews to better your company's program and pursue STEP accreditation, and ultimately be an OSHA Partner.

POLITICS

Get involved politically and help get laws shaped around free enterprise and merit shop. We don't address any other issues outside of construction, free enterprise, and merit shop.

LOOKING AHEAD

So, what does the future hold? ABC Greater Houston is well-positioned for the future to be your partner in meeting the future and present needs of our city through the HireSMART program. You, as an ABC Member, have the opportunity to do something. The question is, will you?

My challenge to the membership is to get engaged. If you don't know how, then just ask! We have several events to look forward to such as the January 12th Inaugural Celebration and the January 26th PAC Luncheon.

I want to express my appreciation for the opportunity to serve as chair, and look forward to seeing what Rusty Barnhill with Force Corporation will accomplish as your 2023 Chairman.

In closing, I want to extend my sincere thank you to my wife and the entire staff of Fast Track Specialties, LP for filling in for me when I was out so much over this past year. ◀

For the Merit Shop and Free Enterprise,



John Glaze
Fast Track Specialties, LP
2022 ABC Greater Houston Chairman



DRILLING LARGE DIAMETER HOLES AT GREAT HEIGHTS IN BAYTOWN, TX

Your Employee's Brain— **FRIEND OR FOE,** It's Your **CHOICE**

PART II: DISCIPLINARY ACTION

BY TARA MARIA AMAVI



In my previous column, I resurrected a topic due to the ongoing issue of fatalities and shared information about the traditional approach to safety and how it rarely influences meaningful change. I used the data from one major capital project in years past as an example so, in this issue, I want to broaden the data base upon which I rely to firmly establish the evidence.

Since the inception of the OSH Act of 1970, we've had 52 years to improve outcomes, yet there is still no meaningful change. But, that doesn't stop some people from using statistics to spin it as if it is improving. You can always use statistics to mislead people, because the body count can appear to be going down if compared as a percentage of population even though it is actually rising. This is a tactic noted by Michael Wheeler in his book *Lies, Damn Lies, and Statistics: The Manipulation of Public Opinion in America*, a title spun from former Israeli Prime Minister Benjamin Disraeli's famous quote, often misattributed to Mark Twain.ⁱ

The fact is, workplace fatalities are going up. In decades past, workplace fatalities hovered in the 4,000–5,000 range year over year, slowly edging upward in a dance of “two steps forward, one step back.” This slow but steady climb has now settled in the 5,000–6,000 range, and this has been going on for decades. Consider:

Workplace deaths

1997	5,285 ⁱⁱ	2019	5,333 ^{iv}
2007	5,488 ⁱⁱⁱ	2020	4,764 ^v

The year 2020 stands as an anomaly but only proves the rule of “two steps forward, one step back” and how stats mislead because, as you may recall, the better part of 350 million people were locked down and not allowed to go to work. And, despite that, they still managed to have 4,764 deaths.

Focus 4 Unchanged

In addition to the deaths not materially decreasing in any meaningful way, the Focus 4—OSHA's list of the top four causes of workplace fatalities, has not changed in decades. For people actually engaged in a work task at the time of the fatal accident, versus driving on open roadways, the Focus 4 continues to be falls, electrocution, struck by, and caught in between.

Searching for Solutions

So, if traditional safety approaches have had virtually no meaningful impact, and the most serious causes of death remain unchanged, what are we all to do? I'd suggest you seek to better understand what truly motivates and influences human behavior and quit wasting time on things that don't.

The human amygdala, which is that part of your brain that decides what is and is not safe, operates on autopilot. It cares only about experience, not knowledge. In fact, it completely bypasses the frontal lobe altogether. If you have ever driven down a busy freeway and suddenly had your body take over the steering wheel in a way to narrowly escape a collision, you have seen your amygdala in action. You did NOT consciously think: “Oh my, that 18-wheeler is moving at 70 miles per hour toward my lane without sufficient acceleration forward to avoid smashing into me. I think I should see what my options are and move out of its way.” In the time it takes you to just think that sentence, you will be mangled in your car waiting for someone to come cut you out, assuming you even survived.

And so goes your employee's amygdala. **No amount of knowledge directed toward his frontal lobe will override the environment in which he must apply that knowledge. The environment informs the amygdala and, therefore, the environment rules.**

If the environment is threatening—such as a “zero tolerance” mentality—then the amygdala will believe reporting unsafe

acts or conditions is **dangerous**. No amount of “words” via talking, writing, power-pointing, or training the frontal lobe, will change that.

What will change this?

- 1) **Transform culture.** REWARD employees emotionally and psychologically, not financially, for **reporting** unsafe acts and conditions.
- 2) **Find solutions.** Most issues are not due to willfully unsafe workers. Deming and Juran, the fathers of international quality systems, proved rogue workers are typically responsible for issues only 3% of the time and 97% of the time it has to do with management and environment. Conduct team-based exploration as to why specific unsafe acts and conditions occur and resolve the “why” in order to prevent them. Punishing people simply **because** unsafe things happen will not work.
- 3) **Explore new ways of training employees that emotionally inform the brain and therefore reach the amygdala.** Get creative. Try anything. Here are some ideas:

“Remember Charlie” is one widely available video of an emotionally powerful story that is known to make a

difference. It is about the amazing journey of Charlie Morecraft who went from being a habitually unsafe worker, to inspiring millions worldwide to take their safety seriously. Some providers of training videos actually specialize in these types of stories. Further, even a simple Lessons Learned can be powerful when it strikes close to home, thus the stories of fatalities in your area, often made available by the area OSHA Outreach Representative, can be very moving as well.

In years past, TCA presented a safety program to some CCISD students. It was a spinoff of The Fertle Family from the much beloved, and now retired, Houston entertainers at Radio Music Theater. We called it The Faker Family™. They “faked safety.” We did one on seatbelts and led with comedy. At the appropriate moment, the comedy stopped and a graphic PowerPoint began. The scene unfolded with bloody photographs from an auto accident and was narrated by a fellow student describing what it was like for him to survive flying through the windshield at 70 miles per hour because he wasn't wearing his seatbelt. The silence was deafening.

This is training that emotionally informs the brain.

So, in the quest for improvement, first things first. Will your approach leave an employee's brain feeling safe, or unsafe? Friend or foe, it's your choice. ◀

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Tara Maria Amavi is the Founder and President of TCA/ The Compliance Alliance L.P. TCA has provided services to almost 1,000 companies nationwide, and TCA's proprietary tools, methods, and means have been ranked number one in the world for managing contractor safety. The TCA Safety System® is peer acknowledged as a method based upon TCA's own trade secrets which get better results than traditional safety methods and, therefore, save lives. Ms. Amavi has been named one of Houston's 50 Most Influential Women by Houston Woman magazine and has also been named one of the Who's Who in Safety by Compliance Magazine. Ms. Amavi is a sought-after public speaker, has appeared on local & national radio and television programs including five appearances on The BusinessMakers, a radio show hosted by John Beddow & Russ Capper. Ms. Amavi may be contacted at tara2014@tcamembers.com or 713.263.7661.

Sources:

ⁱ While there appears to be a big reduction moving from the years prior to 1997 to those afterward, this is an illusion as what really happened was, in 1997, the government changed the mathematical formula for how it counted deaths in the workplace, thus leading to the temporary appearance of a significant reduction

ⁱⁱ www.cdc.gov/mmwr/preview/mmwrhtml/mm5016a4.htm#:~:text=During%201980%2D%201997%2C%20103%2C945,1980%20to%205285%20in%201997

ⁱⁱⁱ www.bls.gov/news.release/archives/cfoi_08202008.pdf

^{iv} <https://aflicio.org/reports/death-job-toll-neglect-2021#:~:text=5%2C333%20workers%20were%20killed%20on,the%20job%20than%20all%20workers>

^v www.bls.gov/news.release/cfoi.nr0.htm

^{vi} <https://workinginjurysource.com/workplace-injury-statistics-2019>

^{vii} Out of the Crisis by W. Edwards Deming

2022 YEAR IN REVIEW

BY LAUREN HARRELL

2022 is almost over, and the Houston chapter of Associated Builders and Contractors is looking forward to the year ahead.

In January 2022, ABC/CMEF Board members took on the responsibility to set policies and goals that guided the association, ensuring those policies are carried out by the board.

- In January, the 2022 Inaugural Celebration welcomed our new Board of Directors and Chairman, John Glaze. We also started fundraising at the annual PAC Luncheon.
- The HireSMART program launched in February, and plans to increase participation by 50 members in 2023 and add additional schools to their outreach. We also welcomed new ABC Team Members to champion this initiative: Regina Campbell, Director of Workforce Development, and Ana Frank Garvett, Workforce Systems Coordinator.
- In March, the chapter welcomed new chapter president, Jeffrey Nielsen, who previously served as the Executive Director of Houston Contractors Association. Nielsen replaced Russell Hamley, who retired in June. Also in March, Bill Brown, D&I Committee Chair, was recognized by ABC National with a Beam Award for recruiting 22 new members in 2021.
- The Spring and Fall Clay Shoots and October BBQ Cookoff events were the largest ABC events in over ten years.
- In October, we welcome Susana Salgado as our Member Resources Manager.
- Also in October, thirty-three ABC Greater Houston member construction projects were recognized at the 22nd Annual Excellence in Construction Awards.
- In November, we started working with the University of Houston regarding the relocation of the construction management program.
- In December, we hosted our annual Political Action Committee (PAC) Christmas Party and were joined by several elected officials. This event also raised funds for the PAC.
- Also in 2022, we received the ABC National Grassroots Gold Award for having some of the highest political advocacy engagement. This award was only given to 2 ABC Chapters, so we are honored to have been one of the selected chapters for this prestigious award.

We are thankful to our members for their support of the association and industry and are very pleased with the year we have had.

As the chapter looks forward to 2023, we are excited to welcome new chair Rusty Barnhill with Force Corporation at the January 12th Inaugural Celebration. ◀

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INFLATION REDUCTION ACT OF 2022

IMPACTS TO THE CONSTRUCTION INDUSTRY

BY TODD SELBY, CPA MELTON & MELTON, LLP

The **Inflation Reduction Act of 2022 (IRA)** includes several provisions that impact the construction industry. The IRA modifies and extends tax credits and deductions for energy efficiency and alternative energy. Many of the incentives are increased if prevailing wage and apprenticeship requirements are met. Additionally, the IRA extends the limitation on excess business losses of noncorporate taxpayers. This article will highlight selected provisions of the IRA relevant to the construction industry.

Investment Tax Credit IRC Section 48

The Energy credit was extended for one year for projects that begin construction through the end of 2024. The Energy credit is intended to encourage the use and conversion of business equipment to energy sources other than oil or gas. The IRA reduces the credit rate previously at 30% down to 6% for large energy projects (net output of

more than one megawatt). If certain prevailing wage and apprenticeship requirements are met, the 30% credit rate, or more, may still apply.

Energy Efficient Commercial Buildings Deduction IRC Section 179D

The Energy Efficient Commercial Buildings Deduction calculation is modified from a maximum of \$1.88 per square foot to \$1 per square foot or \$5 per square foot if the prevailing wage and apprenticeship requirements are satisfied. Additionally, certain tax-exempt building owners (such as nonprofits) can allocate 179D deductions to the person primarily responsible for designing the property. Previously, only governmental entities were able to allocate the deduction.

New Energy Efficient Home Credit IRC Section 45L

The new energy efficient home credit was modified and extended until

2032. The credit for each home or unit depends on a revised, two-tiered energy savings criteria summarized as follows:

Energy Star

- Single family homes: \$2,500
- Multifamily units: \$500

Zero Energy Ready

- Single family homes: \$5,000
- Multifamily units: \$1,000

For multifamily projects meeting the prevailing wage requirements, the credits are increased 500%. The requirement for multifamily projects that are three stories or fewer has been removed.

Limitation on Excess business Losses IRC Section 461(l)

The excess business loss limitation is extended for two years, applying to tax years beginning before January 1, 2029. Passthrough and self-employed taxpayers may deduct

“If certain prevailing wage and apprenticeship requirements are met, the 30% credit rate, or more, may still apply.”

\$270,000 (\$540,000 married filing joint) of business losses against non-business income. Stated otherwise, business losses are limited to offset non-business income such as wages, interest, dividends and certain capital gains. Losses limited under 461(l) are eligible to be carried forward and the threshold is indexed for inflation.

Increased Credits and Deductions by satisfying prevailing wage and apprenticeship requirements

Prevailing Wage

For increased credits and deductions subject to the prevailing wage requirements, a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage rates, which is commonly known as the Davis-Bacon Act.

Apprenticeship Requirements

For increased credits and deductions subject to the apprenticeship requirements, the IRA provides that each taxpayer, contractor or subcontractor who employs four or more individuals to perform construction, alteration or repair work with respect to a qualified facility must have an applicable percentage of total labor hours from a registered apprenticeship program. The applicable percentage of total labor hours to be performed by a qualified apprentice increases annually from 10% to 15%.

The effective date for most of the provisions of the IRA is January 1, 2023. Generally, the tax incentives are increased five-fold if applicable prevailing wage requirements and/or apprenticeship requirements are satisfied. Penalties for claiming the increased credit or deduction while

not complying with the prevailing wage or apprenticeship requirements are significant. Due to the significant increase in tax incentives, contractors should anticipate developers, building owners, and energy projects requiring prevailing wages and apprentices on projects that could be impacted by these deductions and credits. ◀



Todd Selby, CPA is a senior manager in the tax practice of Melton & Melton. Selby's experience includes tax compliance and planning for complex partnership and corporate tax returns in the construction industry.

Selby graduated with honors from Abilene Christian University earning a Master's in Accountancy in December 2013. Selby is a member of the American Institute of Certified Public Accountants, Texas Society of Certified Public Accountants and a member of the education subcommittee for Associated Builders and Contractor's Diversity and Inclusion committee.



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5

“Remember, a website alone will not generate leads for you, but a robust strategy that includes SEO best practices like link building and social media, will.”

Wouldn't it be nice if you could just set and forget your business's SEO? As lovely as this would be, we all know that SEO (Search Engine Optimization) is an ongoing process—especially in 2022 when more businesses are online than ever before.

Did you know that Google looks at over 200 ranking factors when deciding where to place your site? How are you supposed to know which ones will have the greatest impact on your ranking?

The following are the top five most important ones to focus on when it comes to improving your website's SEO optimization strategy.

1. Speed

If your website loads slowly, you run the risk of losing a lot of potential visitors and revenue. Research shows that when the Amazon website slows down by just one second, the company can lose \$1.6 billion in sales per year. Another study found that a four-second delay in page load time can reduce page views by 11.02%.

Google's best practice is to aim for a load time of under 1.3 seconds. If it takes longer than this for your website to load, people are going to lose interest, click away, and look at one of your competitor's websites instead.

None of these outcomes sound very good for your business or your long-term goals, do they? There are lots of ways to speed up your website, including getting rid of plugins you no longer need or use. Compressing images and files helps to decrease load times as well.

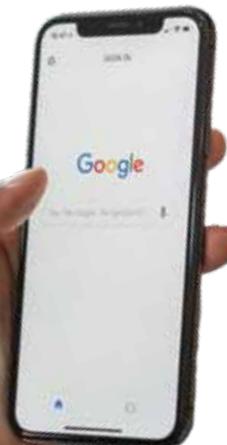
2. Link Building

Link building is a fundamental part of any business's search engine optimization strategy. Do you usually like it when someone is trying to sell something to you, or do you prefer when someone else is talking about how great that product or service is?

For most people, the second option is more likely to result in them actually buying a product or service. Link building works similarly.

Link building involves another high-quality website talking about your brand, your products, or your services.

The website will also feature a link that directs users back to



Naturally incorporating keywords into your content helps to increase the quality and improve your search ranking as well. Using the right keywords helps your content to show up in more search engine results. If you overdo it, though, your website might be penalized, and you'll rank lower than you would have otherwise.

5. Mobile-Friendliness

At least 60% of online searches come from mobile devices, so it makes sense for brands to prioritize making their sites easily accessible through mobile web browsers.

Changing your website theme to a mobile-friendly one is a good first step.

You can also compress images and files (this also gives you the bonus of increasing your page load speeds), use a large, readable font, and increase space between your paragraphs to make your content more mobile-friendly.

Let's Recap

As a business owner, your ultimate goal is to generate qualified online leads on a consistent basis.

The only way to accomplish that is with a solid digital marketing strategy. Remember, a website alone will not generate leads for you, but a robust strategy that includes SEO best practices like link building and social media, will.

Need help getting started? If so, we offer a free marketing assessment to help you identify the key initiatives that will help you generate revenue this year! Do you have more SEO optimization questions? If so, our team at Boral Agency is here for you. ◀

your website. This process is similar to word-of-mouth advertising, but it takes place online.

Start by creating a list of authoritative blogs—such as chambers of commerce, industry associations, etc. Then, reach out to them and offer to add a link to their blog on your website. They may be willing to return the favor one day. Remember, link building is all about quality, not quantity.

3. Social Signals

A lot of people think that social media is not important for SEO. However, those people couldn't be more wrong!

Imagine that in your niche industry, you share a post with high-quality content, such as an important guide on how to improve your manufacturing process. People will start sharing it, talking about it, and creating links to your blog page and website.

This, in turn, will lead to more traffic on your website, more people reading and engaging with your content and more time spent on the site across the board.

4. Content Quality

Link building is about quality not quantity, and the same is true of content creation. It's important to publish content regularly on your website if you want to grow your audience, increase website traffic, build credibility, and boost your search engine ranking.

One way to increase your content quality is to focus on going deep into specific subjects rather than going broad. In other words, do a deep dive into one topic rather than covering a bunch of topics in a shallow way.



Brenda Boral is an entrepreneur, marketer, online expert, and co-founder of Boral Agency. Brenda has helped more than 200 companies create their marketing strategy, online presence, and sales strategy. Since starting Boral Agency, Brenda along with her sister and business partner, Patricia, has been recognized as Emerging Business of the Year by the Houston Hispanic Chamber of Commerce, and 2016 Houston Dynamo Hispanic Business of the year during Hispanic Month. Brenda has helped more than 200 companies create their marketing strategy, online presence, and sales strategy. Her clients have increased their sales and revenues by an average of 25%.



Patricia Boral is an entrepreneur, online marketing expert and co-founder of Boral Agency. She has presented at conferences, associations, and organizations throughout Houston, as well as taught classes in universities and colleges. Her goal in life is to be able to inspire masses to pursue their dreams to become entrepreneurs. She loves everything organic, including Search Engine Optimization. She's a true believer that you can reach the first position in Google results with a well-planned digital strategy, without having to rely on Google Ads. And yes, her clients can attest to that.

THE SANDBAGGING TRAP

BY MATTHEW SCHEPS

2022 has had rising material and labor prices that has affected many construction projects throughout the year. Looking ahead, these increased input prices will likely continue to place an increased burden on project teams. An increased focus in 2023 on accurate and timely cost/quantity reporting may help teams successfully execute projects. This article explores one of the associated pitfalls I have witnessed in the field.

When I began my career in construction working for a large general contractor, knowing project cost was a condition of employment, and one could not truly know cost without accurate and timely reporting. The project manager gathered the project staff to discuss why it was not acceptable to sandbag. Sandbagging is the practice of holding unreported quantities of work performed in one's "back pocket" to report during future, less productive time periods, or hiding labor and equipment cost overruns on a certain task by coding excess costs to an unrelated cost code. While sandbagging may appear enticing to a project team so that its periodically reported progress looks more consistent, four project execution reasons that necessitate accurate and timely reporting are:

1. TO FACILITATE COST TO COMPLETE (PROFIT) PROJECTIONS

Forecasting a project's cost at completion requires accurate knowledge of actual cost-to-date and percent complete. More accurate forecasting requires this level of detail on a cost-code basis. Accurate and timely reporting results in a straightforward calculation, using the cost incurred per percent complete to forecast the cost at 100% complete. However, if costs or quantities are sandbagged, this calculation will be inaccurate. For example, if installed quantities are not reported, projected cost to complete would result in an inflated cost at completion. Similarly, if incurred costs are not reported timely, or are reported to a different cost code, the projected cost to complete will yield an underestimate of the cost at completion. Project managers and company executives rely upon accurate and timely cost and quantity reporting to forecast accurate expenditures and earnings projections.

2. TO FORECAST REMAINING SCHEDULE

Similar to cost-to-complete projections, forecasting remaining work durations requires accurate percent complete calculations. This requires the knowledge of installed quantities and total quantities in order to calculate activity percent complete and remaining activity durations. If quantities are sandbagged, the calculation will result in an overestimate of the true remaining duration. This overestimate of the remaining duration might then further impact profit projections by overestimating the remaining time-based costs.

3. TO IDENTIFY THE GREATEST IMPACT FOR ADDITIONAL RESOURCES

Field supervisors use project reporting to identify appropriate resource allocation to achieve the greatest impact on profitability, schedule, or both. However, if project quantities or cost components are not accurately reported, that opportunity is lost. Sandbagging prohibits field supervision from optimally allocating labor and equipment resources.

4. FOR ACCURATE HISTORICAL COSTS

Many contractors track each project's final individual work item productivity rates into a database, which then provides their estimating teams with reliable data to bid upcoming projects. The estimating team looks for performance history from similar work performed on completed projects to estimate the productivity per item on a bid for an upcoming project. Field teams sometimes complain that certain activities were underestimated. The underestimating may have resulted from sandbagging.

For example, perhaps on a previous project the field team inadvisably coded dewatering cost overruns to the excavation code because it had been outperforming on the excavation work and thus had budget to spare. The estimate on the next project will likely again be bid using the insufficient dewatering rates, but the project team will be working in a literal and metaphorical hole if excavation is awarded to another contractor.

In addition to the project execution pitfalls, sandbagging might prohibit a contractor from recovering all of its damages in the event of a time and material change order, request for equitable adjustment, or claim. When issues develop beyond the control of the contractor and a productivity claim arises, a measured mile analysis is often implemented. A measured mile measures productivity during the unimpacted, or least impacted period and compares it to the impacted period. This data is used to calculate the economic damages resulting from productivity impacts.

The measured mile must reflect an accurate history of the project, as shown through contemporaneous project documents. Sandbagging results in inaccurate

and untimely reporting, which will affect the reliability of the analysis. For example, many projects experienced productivity impacts because of COVID-19. If a project team sandbagged quantities prior to COVID-19 and then claimed those additional quantities after COVID-19, the measured mile may not accurately reflect the productivity impacts. Project teams can set themselves up for success in the future by not sandbagging, despite its tempting nature. ◀

Interface Consulting's diverse professional backgrounds include considerable experience analyzing project risks, reporting and measuring progress, and quantifying productivity impacts. Our team remains available to assist owners and contractors with evaluating their unique projects.



Matthew Scheps, PE, PMP, is a senior consultant with Interface Consulting International, Inc. A former project engineer and project manager, Mr. Scheps provides construction expert services and claims analysis, specializing in project management, cost analysis, change order management, planning, and procurement. To learn more, call 713.626.2525 or email Mr. Scheps at mscheps@interface-consulting.com.

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GEN Z & CONSTRUCTION

BY MOLLY MUTH, E&M CONSULTING, INC.

Between shifts in workforce demographics and continued issues with the skills gap, the construction industry is in need of new workers.¹ Gen Z workers—the eldest of whom are now in their mid-twenties—have proven difficult to recruit to the construction industry. With the current backlog of 650,000 skilled trades workers needed in the United States, management is moving quickly to make careers in construction more appealing.² A full rebrand may be necessary; reportedly, less than 20% of Gen Zers would consider a career in the trades.³

To appeal to Gen Z, it is important to know what they value. Two major factors that Gen Zers consider during the job search are stability and work-life balance.⁴ Members of Gen Z have grown up surrounded by financial fluctuations and are less likely than Millennials to prioritize work as their main source of fulfillment and instead couch their identities in other aspects of their lives.⁵ Four additional areas to focus on in changing Gen Z's perceptions of the industry are exposure, financial stability, accessibility and gender equality.⁶ Construction companies, as well as schools and counselors, should present Gen Z with information about the benefits of a career in construction. ◀

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MULTIPLE POLICIES, MULTIPLE PARTIES:

BASIC INDEMNITY AND INSURANCE

CONSIDERATIONS IN THE CONSTRUCTION CONTEXT

BY JULIA EDWARDS AND BRIAN WATERS

Construction companies spend countless hours drafting agreements requiring indemnification and insurance for their projects. These obligations are prevalent for all tiers of construction industry members—from subcontractors and suppliers, to project owners. The purpose of this article is to address some considerations in anticipation of a claim being made after an incident on a construction project.

The starting point.

When a claim is made against you, or an incident occurs that is likely to generate a claim, you should

immediately review the insurance and indemnity provisions in both your upstream and downstream construction contracts. As soon as possible, you must determine to whom you agreed to provide indemnity and/or insurance coverage, and conversely, who owes you indemnity and/or insurance coverage for such claims. For example, a general contractor often—if not always—will have agreed to indemnify the owner of the project for claims and to include them as an additional insured on the general contractor’s policy. Likewise, a subcontractor likely will have agreed to indemnify the general

contractor and make it an additional insured on the subcontractor’s policy.

Putting all parties on notice.

If a claim is made against you—that is, you receive a demand letter or are named in a lawsuit based on an incident occurring on your project—immediately notify both your carrier and any parties who may owe you defense and indemnity. In the notice letter to parties who owe you indemnity, you should demand a defense and refer to the provisions in the construction contract that require the other party to provide defense and indemnity. You should also include in the letter a specific reference to

any insurance that the party may have and request that the party immediately put its insurance carrier on notice and provide you with a copy of the policy or contact information for its insurance carrier.

Sending a timely notice of the claim to your carrier is particularly important if your insurance policy is “claims-made”—meaning there is only coverage for incidents that happen during the policy period and are reported to the insurance carrier during the policy period (or a stated time after the policy period). Failing to put your carrier on notice may mean you lose coverage for that claim.

Conversely, if a claim (demand or lawsuit) is made against someone else—e.g., upstream contracting party—who demands indemnity from you, you should likewise place your carrier on notice. Your commercial general liability policy may cover the indemnity claim against you as an exception to the Contractual Liability Exclusion. The claim for indemnity is an indirect route to coverage for your indemnitee (that is, the person you agreed to indemnify) under your policy, separate and apart from that party’s own potential claim as an additional insured on your policy.

Coverage for an additional insured.

Whether you are trying to get coverage as an additional insured on another’s policy, or another party is trying to get coverage as an additional insured on your policy, there are two differences in additional insured endorsements that may change an insurer’s coverage analysis. For example, one standard version of an additional insured endorsement provides that an additional insured is only covered “with respect to liability arising out” of the named insured’s work. Another version of an additional insured endorsement provides that an additional insured is only insured where the damage is “caused, in whole or in part, by [the named insured’s] acts or omissions.”

Courts interpret the language of each differently, which should be considered when drafting contractual insurance requirements and when procuring coverage.

The “arising out of” coverage language is broad. Typically, any claim resulting from an injury to the named insured’s employee is said to “arise out of” the named insured’s work if the employee was present on the jobsite by virtue of the named insured’s work on the project, whether or not the named insured’s work proximately caused the injury. On the other hand, the “caused...by” language requires that the named insured’s work proximately caused the injury. These differences often affect whether an insurer will undertake the duty to defend or ultimately provide any coverage.

Who’s paying defense costs?

Insurers are generally obligated to defend their insureds in a lawsuit by paying for legal counsel. However, insurers usually only have the duty to do so when the allegations in the lawsuit fit within a basis for coverage under the policy. And, as discussed above, the specific policy language will determine when that duty arises. This is Texas’s so called “Eight-Corners Rule.” It requires the insurer to provide a defense based on the policy language and the facts stated in the lawsuit, regardless of whether such facts are true and without looking at outside evidence or facts.

Which facts are alleged can have serious impacts on the coverage provided. In a recent Texas Supreme Court case, *Monroe v. BITCO*, the Court expanded the “Eight-Corners Rule” and held that Texas courts may consider outside evidence, “if the underlying petition states a claim that could trigger the

duty to defend, and the application of the ‘Eight-Corners Rule,’ due to a gap in the plaintiff’s pleading, is not determinative of whether coverage exists,...provided the evidence (1) ‘goes solely to an issue of coverage and does not overlap with the merits of liability, (2) does not contradict facts alleged in the pleading, and (3) conclusively establishes the coverage fact to be proved.’” 640 S.W.3d 195 (Tex. Feb. 11, 2022). In theory, the Monroe Exception may be used to both create or avoid the insurer’s duty to pay for its insured’s legal defense where the underlying pleadings lack key coverage facts.

Remember, if the carrier does not pick up defense costs—whoever owes that party indemnity may have to pay those costs as part of their indemnity obligations.

Why it matters: expanding the available funds.

Insurance policies have limits. If a general contractor and owner are both sued for \$2 million, as a result of an incident during construction,

“If the general contractor also owes the owner indemnity for that claim, the general contractor is then at risk to pay out of pocket for both its and the owner’s liability over policy limits.”



and both make claims on the general contractor's policy with a limit of \$1 million, either or both parties may not be covered for the full value of their potential liability if the policy has a limit "per occurrence." If the general contractor also owes the owner indemnity for that claim, the general contractor is then at risk to pay out of pocket for both its and the owner's liability over policy limits. However, if the general contractor has coverage available to it under another policy—such as a subcontractor's—then the general contractor does not necessarily have to expend its own funds or insurance coverage, and can utilize a separate bucket of available funds. It is important to spread the loss across policies where exposure is high.

In summary, there are many moving pieces to determine who has what financial responsibility for a claim following an incident. It is important to keep these notions in mind during both contract negotiations and after a claim arises. ◀



Julia Edwards focuses her commercial litigation practice primarily in the construction and insurance industries. Edwards assists her construction clients with payment disputes, lien and bond claims, delays and defect claims. Edwards also assists her construction clients on the front end of projects with contract drafting and negotiating on their behalf. Her client list includes all players in the industry, including suppliers, subcontractors, general contractors and project owners. She also counsels clients on

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Brian Waters is experienced at both the trial and appellate court levels, and has handled many real estate litigation and construction matters including claims for construction defects, breach of contract, fraud in a real estate transaction, misrepresentation, DTPA violations and negligence as well as a variety of commercial lease disputes. He also helps carriers and policy holders resolve insurance coverage disputes in state court, federal court, and arbitration. Waters is based in Gray Reed's Houston office and can be reached at bwaters@grayreed.com.



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2023 HOUSTON CONSTRUCTION OUTLOOK

BY CONRAD HAMMOND, PATRICK DENNIS, AND HYDE GRIFFITH

This year has brought uncertainty to the AEC industry unlike we've seen in recent history. At the same time, the demand for construction continues. As we move into 2023, financial alignment, early decisions, and innovation in how we build and support our clients will be critical to bringing certainty of results. The JE Dunn Houston team provides insights on what they're seeing in the market through the lens of energy, multifamily, and healthcare.



Conrad Hammond, Client Solutions Manager, JE Dunn Houston: A growing energy market and an opportunity to expand design-build delivery

Houston continues to move in the direction of sustainable and greener forms of energy production, which is a balancing act for a market that dominates the oil and gas industry. Moves are being made to bring development of carbon-capture and renewable energy programs to Houston-based energy companies as they look toward a future diversified alongside oil. No matter the political divide, there is understanding that the earth's climate is changing, and it is time that we all put our best foot forward and work on innovative solutions. Additionally, trends show that more businesses are focused on Environmental, Social and Governance (ESG) disclosure and implementing responsible policies (ULI Emerging Trends Report)—trends that are going to require technologically sophisticated

contractors who have the resources to keep pace within this evolving environment.

We expect to see (Energy 2.0 or Energy Transition) renewable project opportunities in the next year, but they won't be limited to the typical re-purposing of existing, outdated buildings. There will be a need for new greenfield projects as we usher in the transition toward Energy 2.0 with construction of these facilities incorporating enhanced technology and sustainability requirements within their facilities. Building tomorrow's facilities will necessitate that owner, design and construction teams work hand in hand from the inception of a project, ideally working in a format that will allow for full collaboration and transparency.

The challenge of mitigating cost and schedule risk during fluctuations in material prices and availability, as well as labor shortages from a shrinking workforce, can be alleviated by choosing the right team and a delivery method such as design-build. We have implemented a specific design-build delivery process that will streamline the project delivery and timeline by focusing on developing smart design bid packages while focusing on early release of key components, concurrence of systems installation and infusing our project teams with the tools and technology that will allow them and ultimately our clients to see around the corner.



Patrick Dennis, Director of Client Solutions, JE Dunn Houston: The microunit solution and enhancing prefabrication's role

The Houston market is starting to see demand shift away from high-end, luxury products toward living environments that provide more affordable solutions for today's average renter. There remains a healthy demand for multifamily units as the population steadily grows and interest rates for loans remain high. According to Colliers International, rent has increased quarterly in Houston, and there are more than 15,000 units under construction with more than double proposed for the future. How these future units are conceived will be key for the quality of the development, the overall affordability for tenants, and for the developer's financial investment.

To meet the expected 331,000 units needed annually in the United States through 2035 (ULI Emerging Trends Report), smaller overall unit sizes with a lower monthly rent are a crucial next step in the multifamily market. These types of smaller units will need to strike a balance of still offering connectivity to the urban experience without the high prices and could call for the opportunity of retrofitting the right kind of existing building. We may also see a shift to multifamily living with shared amenity spaces, like what we see in student housing,

where well-designed and sociable environments offset smaller units with cutting edge amenities.

Given the current status of the financial markets, the ability to build fast and pre-procure labor, materials and contracts will be critical for multifamily projects that look to move forward over the next 15 months. Overall, the multifamily market can benefit from more robust prefabrication, such as bathroom and kitchen assemblies, and other unitized systems constructed off site and delivered to the project concurrent with other ongoing operations. Each of these strategies can work toward enhancing the quality of the finished product, reduce construction duration and potentially cost.

By combining the efforts of our construction business and our JE Dunn Capital Partners investment group, JE Dunn is in unique position to understand cost and constructability concerns as they relate to the business planning and risk mitigation that is required for each unique development.



Hyde Griffith, Office Leader, JE Dunn Houston: Health care's competition for the suburbs and programmatic alignment

Today, hospitals are focused on operational efficiencies, retaining staff, competing for local market share, and improving patient outcomes. Often these categories are prioritized and part of centralized campus-wide developments with complicated components and multi-year construction operations.

However, the specific area of diagnostic work and preventative care offers a different direction.

This health care service came to a halt during the pandemic and has only recently started to rebound with an influx of patient demand. Not to mention that overall, there are more insured people since the start of the 2010 Affordable Care Act and a growing aging population (ULI Emerging Trends Report). Now hospitals are competing to recapture this market share and will need to build in the communities where people live. Not only that but as technology in healthcare advances, these medical spaces must be able to support and sustain the ever-evolving technology.

This is the path for Houston as the population continues to sprawl and new communities are built or communities that did not have the advantage of local healthcare now have the population to sustain the investment.

Colliers International reported that providers are "increasingly taking on retail space as part of the outpatient clinic real estate strategy, particularly in Houston's fast-growing suburban submarkets." The Woodlands, Katy, League City are prime examples of areas building these spaces.

Health care has been one of the most stable and forward-moving markets for construction despite the pandemic, so the race is on to build these facilities. The general contractor has the role of guiding health care clients through early cost decisions and helping them align their programmatic baseline with the appropriate financial choice. This level of alignment is common on campus-wide construction projects, but these smaller, suburban medical facilities will need the same focus to mitigate cost and escalation and ensure health care providers have their return on investment and still provide quality care for their patients. ◀

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Rising Prices, Supply Chain Bottlenecks, and Material Shortages—the Importance of **Procurement Strategy** in Today's Environment

BY AMANDA LARSON

In an environment of rising prices, supply chain bottlenecks, and material shortages, implementing an efficient procurement strategy on your construction project is more important than ever. Procurement strategies that worked in the past will likely not work now, nor will they likely work in the future. Strategies of the past include, among others, relying on a single supplier or small group of suppliers, sourcing materials from overseas, and just-in-time delivery. In times of uncertainty, projects and companies can take several actions to mitigate the risks of procurement-related delays and disruptions.

Strengthen the Supply Base

Recent events have taught many companies that they have been too reliant on one supplier, one region, or one location. Companies should be looking to strengthen and broaden their supplier base by:

- Diversifying the supply chain to work with more suppliers
- Reshoring or nearshoring the supply base to mitigate delays resulting from supply chain bottlenecks
- Engaging with large-, medium-, and smaller-sized suppliers to understand the benefits and risks of working with each
- Collaborating with suppliers to address challenges and put adequate contingencies in place
- Identifying alternative sourcing strategies or alternative materials
- Considering prefabricated systems and components to save time and help mitigate potential labor shortages

Stay Liquid

Proactive steps that can ensure sufficient liquidity to weather uncertain times include:

- Improving payment terms: Negotiate more favorable terms with vendors through the procurement process
- Prioritizing spending: Consider whether each expenditure is necessary for the project to progress, or if it can be minimized or delayed
- Establishing unit rates for material pricing
- Early payment milestones: Including early payment milestones in the contract can help mitigate potential cashflow problems
- Communicating: Developing open lines of communication between owner, contractor, and suppliers can help identify any liquidity or cash flow problems early on

Align the Procurement Schedule with the Owner's Priorities

Managing lead times to avoid delays and cost overruns is a challenge for any construction project. Key to mitigating material and scheduling risks is to involve the owner early in the procurement planning, when schedules are being set. Early owner engagement can include:

- Determining the priority, budget, or schedule: Aligning on the priority of either budget or schedule is crucial for a project's success and will allow for an appropriate procurement strategy
- Identifying long lead items and ensuring financial commitments are in place
- Identifying items that require advanced planning and ensuring engineering schedules are aligned with manufacturing windows to avoid any delays due to late equipment delivery
- Staying informed of materials that are in short supply
- Ensuring transparency by establishing agreements that are fair to all parties involved: If the supplier understands that the owner shares the material escalation risks, the supplier is more likely to give a fair market price instead of an inflated number

Build Loyalty with Multiple Subcontractors and Suppliers

Establishing a broad set of trusted subcontractors and suppliers allows for earlier engagement and results that can help control costs, implement design changes when necessary, and limit exposure to changing lead times and/or limited material availability.

Implement the Appropriate Technologies

Technology enables contractors to build faster and safer with fewer surprises. Technology can also be leveraged to modify designs and incorporate the most appropriate and cost-effective materials available. This can include:

- 3D model-based estimating to establish more accurate quantities
- Integrating business systems through an Enterprise Resource Planning (ERP) system

Conclusion

Procurement-related disruptions and cost overruns are a common occurrence on many large-scale construction projects. Especially in an uncertain economic environment, companies and projects should examine and adjust their procurement and contracting strategies to ensure greater resilience and mitigate the risks of procurement-related disruptions. ◀



Amanda Larson, a senior managing consultant with Interface Consulting International, Inc., has over 15 years of domestic and international construction, engineering, and project management experience. She provides claims consulting and expert services for complex disputes involving design, schedule delay, construction management, quantum, and other issues. To learn more, call

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IN THE KNOW



SATTERFIELD & PONTIKES TAKES THE ACEC NEW YORK DIAMOND AWARD

Satterfield & Pontikes (S&P) is proud to announce that they have won the Diamond Award in the Special Projects category from the American Council of Engineering Companies (ACEC) New York for their work on Delta's New Terminal C at the LaGuardia Airport.

Diamond Awards are presented to projects that encompass both the public and private sector in the following categories: studies, research, and consulting services; building/technology systems; structural systems; surveying and mapping technology; environmental; waste and storm water; water resources; transportation; energy; industrial and manufacturing processes and facilities; and special projects. ◀

IN THE KNOW

THIRTY-ONE PROJECTS RECOGNIZED AT ABC'S 2022 EXCELLENCE IN CONSTRUCTION AWARDS

On October 27, Associated Builders and Contractors of Greater Houston (ABC) hosted its annual Excellence in Construction Awards (EIC), which showcased thirty-one projects built by ABC Greater Houston members that were rigorously judged on an array of criteria. This event, established in 2000, recognizes outstanding projects in the commercial and industrial construction industry.

Categories included general contractor and specialty contractor projects, and the selected projects excelled in safety, quality, ingenuity, and workmanship. With twenty-four categories, and two major awards, the Merit Award and the ICE Award, the selected entries are considered among the best of merit shop construction.

Below are the award recipients.

ICE AWARD WINNERS:

- Camarata Masonry Systems, Ltd.** – The Revere at River Oaks
- Chemex Global, Inc.** – The Encina Pilot Plant Project
- E.E. Reed Construction, L.P.** – Project Whisper
- E.E. Reed Construction, L.P.** – Woman's Hospital Medical Office Building
- Gilbane Building Company** – Texas Tower
- Griesenbeck Architectural Products** – The Ion
- JE Dunn Construction** – The Houston Airport System General Service Facility
- Karsten Interior Services** – Heights Senior Living
- SpawGLass Construction** – The Village of Southampton
- Starcon, a Cianbro Company** – 1592 Turnaround
- Turner Construction Company** – United Inflight Training Center Expansion
- Way Engineering, Ltd.** – The University of Houston: John M. O'Quinn Law Building
- White Construction Company** – Sam Houston State University Mafrige Field House

MERIT AWARD WINNERS:

- Alston Construction** – HOU8
- Austin Commercial** – The College of the Mainland Industrial Careers Building
- Austin Commercial** – Memorial Hermann/The Woodlands Hospital
- Burns & McDonnell** – Sunflower PDC Project
- Burns & McDonnell** – Tucson Airport Fuel Facility

- Camarata Masonry Systems, Ltd.** – The Museum of Fine Arts, Houston – Kinder Exhibition Hall
- Camarata Masonry Systems, Ltd.** – The Revere at River Oaks
- Holes Incorporated** – Trinity Bay: Offshore Cutting & Removal
- Moore Industries** – Air Products Project Pepper Turn-Key Maintenance Building & Equipment Canopies
- Moore Industries** – The Bayou Choctaw Blast Resistant Building Install & Fire Suppression System
- Moore Industries** – STAR EIU South Substation GIS Building Construction
- Roll-Lift USA** – Trinity River Liberty Bridge Replacement
- Satterfield & Pontikes** – HCC Key West Campus Expansion
- Satterfield & Pontikes** – Stratford High School Renovations and Additions
- Slack & Co. Contracting Inc.** – HCA Women's Hospital
- SpawGlass Construction** – Texas A&M University Polo Road Garage
- SpawGlass Construction** – West Pearland Library
- Turner Construction Company** – JPMorgan Chase 600 Travis

ABC members are renowned for their dedication to safety and excellence in the construction field, and the awards program demonstrated that commitment. The projects were evaluated by local owners, architects, and engineers on safety, execution of design, craftsmanship, attention to detail, installation, and other considerations.

ABC Greater Houston also awarded the coveted Best of Houston Award to Starcon for the 1592 Turnaround project. The Best of Houston Award recognizes the highest scoring project that best represents the industry and city. This title holds the highest honor after having been evaluated diligently and Starcon will hold the award until the next winner is announced at the 2023 EIC Awards.



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