Alternative Project Delivery Methods Gaining Ground

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The U.S. Environmental Protection Agency (EPA) has awarded CalPortland Company the National ENERGY STAR® Award for Sustained Excellence in recognition of its continued leadership in protecting our environment through energy efficiency. CalPortland’s accomplishment over six consecutive years is a feat that has never been matched by any other U.S. building materials company.
Tracking the Trends in Project Delivery

AGC has always taken a proactive approach to actively work on policies and/or best practices for project delivery methods available to the construction industry. Discussions on innovative project delivery methods and tools like Building Information Modeling (BIM) and Integrated Project Delivery (IPD) have attracted members to AGC's Building Division meetings, where there have been many informative presentations and lively discussions on legislation, resources, design process, integration, and regulatory changes affecting project delivery methods.

A newer project delivery method that has been garnering quite a bit of interest of late is Public-Private Partnerships (P3 or PPP). P3 agreements allow for private construction and operations of various types of projects, and they are designed to leverage the skills and assets of both a public agency and private sector entity to effectively and efficiently deliver facilities or a service that will be used by the general public. Experts have offered that among the key benefits of P3 delivery are that projects can be delivered at a lower cost and often faster than traditional project delivery methods; they often allow for more innovative approaches than projects delivered by traditional means; and by utilizing private funds up front, this can free up funds for other needed projects to be developed and built that might not otherwise have been brought to fruition.

AGC hosted a Public-Private Partnership Forum at the last November State Board meeting in Indian Wells that provided members with a better understanding of what P3 agreements are, their intended use, and the financial and legal considerations owners, public agencies and contractors should consider. There are a number of variations of P3 including funding and operations, funding and maintenance, and funding and availability. Each of these variations represents funding and payment to private investors, while leaving other funding sources available to the state to use as a method of debt control and/or for other public projects.

Public-Private Partnerships are widely used in Europe and Canada. California is on the road to becoming part of this trend. In 2009, I was appointed by Governor Arnold Schwarzenegger to serve as commissioner on the Public Infrastructure Advisory Commission (PIAC) that reviews and advises state transportation agencies on suitable P3 projects, as well as develops best practices. Last year, the California Transportation Commission (CTC) approved the $1.1 billion Presidio Parkway Improvement Project as California’s first P3 project to be undertaken under the authority of Senate Bill X2 4. You can read more about that project, which was awarded to the team that includes AGC member firms Flatiron / Kiewit JV, in this month’s issue of the Constructor. Also in this issue, read about some contractors’ views on the latest project delivery trends and what they see on the horizon in project delivery.

While the future of P3 projects in California is still unknown, we do know that P3’s offer a boost to the state’s economic activity by helping to create jobs and provide revenue through maintenance and operations. AGC will continue to lead discussions for alternative project delivery methods and provide resources and training to our members to ensure they are competitive in today’s market.
The New Regime: Brains Are In, Bald Is Beautiful And No More Smoking Tent

By Greg Lucas

Out with the old, in with the new, goes the timeworn New Year's riff.

In California’s Capitol – the White Sepulcher, to borrow Harry Truman’s description of the White House – the phrase couldn’t be truer.

What are the differences between the current 72-year-old seminary-attending occupant of the corner office and his 63-year-old Austria-born action movie hero predecessor? In a word: Myriad.

Even the word highlights the dissimilarities between Jerry Brown and Arnold Schwarzenegger. The Democratic governor might actually say “myriad” and, quite possibly, use it correctly without an article in front of it.

After three days at the helm of California’s rickety ship of state, the septuagenarian iconoclast is already steering a far different course than the man who declared war on the “car tax” and tore up the state’s credit card.

On the most superficial level, one obvious thing that’s vanished from the corner office in 2011 is hair. Burnt Sienna. Brooding mahogany. All gone. Less is more. Bald is beautiful. What other reason explains John Laird being named resources cabinet secretary?

Cowboy boots. Mood rings. Designer suits. All gone.

It’s now kinda cool to be old. Seventy-two probably isn’t the new 52, but Brown’s frenetic energy makes it seem that way. A related development is that experience, logging some laps around the track, is a plus, not a pejorative. Older folks are more likely to listen to the old hands.

Governor’s office staff also appears to be out. Particularly videographers. Didn’t have those in the ’70s, why would they be needed now? Also out: human resources personnel. Apparently the 39th governor will just pop by the Office Max on 17th and J Street on his way into work to buy pencils and carbon paper.

And there’s another difference. The downtown Hyatt and the suite occupied by the former governor is out; Midtown urban loft living is in. So is walking to work, rather than flying on a private jet.

After his inauguration, Brown went to his loft, kitty-corner from Memorial Auditorium where he took his oath of office, opened the window and waved to passersby, no doubt giving conniptions to the California Highway Patrol security detail assigned to him. Brown and his wife, Anne Gust, were out walking Brown’s sister’s Corgi later that evening.

Those will likely be only the first of many conniptions the CHP will experience from a governor who breezes through Capitol hallways without having them sealed off, as his predecessor did. A governor who walks in the front door of his first floor office instead of entering through the private elevator that comes up from the Capitol’s basement parking lot. Schnitzel is yesterday. Now it’s organic greens, usually eaten off someone else’s plate. Bean dip. Mexican food. Mom-and-pop Asian joints. Lazy Susan’s – makes it easier to get at other people’s food – are all also in the ascendancy.


Hummers and SUVs. Think Crown Victoria.

Geographically, Hollywood is out and Oakland is in. Brown’s victory party was at the beautifully restored Fox Theater. Students from the two charter schools he created as mayor participated in his inauguration.

Hollywood stars - including Oprah and Jay Leno - are also history. Policy wonks now rule. St. Ignatius and Josiah Royce rock way harder than Wag Bennett and Danny DeVito. Treadmills trump free weights. Didactics over sound bites. Improvisation over intricately crafted production.

Carefully scripted media events? Now it’s free-form political mosh pit. Similarly, schedules are out. Just ask the Department of Justice’s legislative unit, whom Brown wanted to meet shortly after being elected attorney general. He was seven hours late.

Also on the outs, at least at the moment, are tweets, press releases and the governor’s official website. Perhaps, as Brown famously said, he simply prefers to wait for “reality to emerge.”

Frugality and lowered expectations are the watchwords, not “fantastic” and “extraordinary.” “California” returns to its traditional pronunciation.

Leaving Brown for a moment and checking the other branches of government, in California’s justice system guys are looking like Warren Burger in the buggy-whip era, but heading the court and running the Department of Justice are young, ethnically diverse women.

In the Assembly, 28 newbies are in and 28 “veterans” are out. Majority vote budgets are in and Republican super majority vote leverage is kaput.

Eight of the 10 new senators are “graduates” of the lower house.

Republican statewide officeholders? Out. All the way out.

In some cases, though, as the French proverb says: The more things change the more they stay the same.

Blue state before. Blue state still. Democrats are still along the coast and Republicans inland. Six percent of the population still occupies 66 percent of California’s acreage. Chronic imbalance between state tax revenues and spending commitments? Oh yeah.

And returning to the Capitol’s corner office, one family dynasty may be out but another one is in.

“I’ll be back” still works because, well, for good or ill, Jerry Brown is back.

(Greg Lucas, former capitol chief for the San Francisco Chronicle, has been the speaker at AGC Board meetings on several occasions, writes his own California Capitol blog, and is a contributing writer to several political newsletters, including Capitol Weekly (www.capitolweekly.com), for which this was written. His blog, California Capitol, can be found at: www.californiascapitol.com)
CIFAC Goes After Job Opportunities

By David A. MSCosker, CIFAC President and AGC Past President (1980)

In Southern California, in the Spring 2010 CIFAC Newsletter, the front page article showed the City of Los Angeles being awarded over $120 million in American Reinvestment and Recovery Act (ARRA) funds. The regulations require that ARRA projects must be competitively bid. The City immediately applied for waivers to have its employees do the work. Because of CIFAC’s intervention, the work will be bid; $20 million worth of work has been bid so far. Simply put, CIFAC earns back far more than it receives; it is a good investment of industry funds and one which our industry needs – especially in these tough economic times.

CIFAC’s field representative influenced the City of Santa Paula not to use the County’s work force to perform street paving improvement tasks, resurrecting a 1980 agreement. The City was attempting to split a $159,000 project into three parts: city, county, and materials. CIFAC objected on the basis that the City is signatory to the California Uniform Construction Cost Accounting Act (CUCCAA), and the total project exceeded the City’s force account limit. The City bid the work and awarded the new three-year contract to a Ventura County AGC member.

Our legislative record is also impressive. Eight CIFAC sponsored bills have been signed into law, and we received two favorable California Attorney General’s opinions. CIFAC is the experts on the Public Contract Code. In the past you may have thought CIFAC only investigates public works projects, so why should I contact them? Well it appears to be a violation of the Public Contract Code.

My wish for 2011 is that more contractors will contact CIFAC when they observe what appears to be a violation of the Public Contract Code.

“Eliminates requirements to award public works contracts to the lowest bidder; Contracts can be awarded to the most qualified bidder [in violation of existing law and very subjective]; May use City employees to construct public improvements; Ordinances and city codes may be adopted in a shorter time frame; May establish its own election procedures such as the option of voting by mail on certain matters.”

My wish for 2011 is that more contractors will contact CIFAC when they observe what appears to be a violation of the Public Contract Code. In the past you may have thought CIFAC only investigates public works projects, so why should I contact them? Well it seems these hard economic times, public works is the only game in town. By keeping your eyes open for potential violations, and by calling the Construction Industry Force Account Council, we can be even more vigilant and successful on your behalf.

Contact information: www.cifac.org; dmccosker@cifac.org; 1-800-755-3354.
Presidio Parkway Project: 
AGC-Member Team Moving Ahead with Groundbreaking P3 Project in San Francisco
By Carol Eaton

The second phase of San Francisco’s long awaited Presidio Parkway reconstruction project is slated to break ground later this year, representing the first transportation project in California to be delivered through a public-private partnership under the authority of Senate Bill 24.

On January 3, 2011 the California Department of Transportation (Caltrans) and the San Francisco County Transportation Authority awarded what is known as the Doyle Drive Replacement project to bidder Golden Link Partners, comprising Hochtief and Meridiam subsidiaries. The project’s design-build team, led by AGC member firms Flatiron (a subsidiary of Hochtief) and Kiewit, holds an approximately $254 million contract for design and construction of the high profile job. Groundbreaking is currently slated for October 2011, with substantial completion and opening to traffic slated for December 2014, according to Matt Girard, Executive Vice President - Business Development of Flatiron in Firestone, Colorado.

Clearing Last Legal Hurdle
The Presidio Parkway Project is expected to soon clear its last legal hurdle in the form of a court challenge by the state engineers’ union, Professional Engineers in California Government (PECG), which has made known its standing opposition to the public-private partnership (PPP, or P3) approach. On January 3rd an Alameda County Superior Court judge dissolved the temporary restraining order on the project obtained by PECG in December. As of this writing, a full hearing was set for January 28th regarding PECG’s efforts to deem the contract void.

As outlined by Caltrans, the contract entered into by Golden Link Partners calls for the concessionaire not only to design and build the second phase of the Presidio Parkway project but also to operate and maintain the facility for a term of 30 years after construction completion. Terms include a lump sum payment upon completion of construction as well as annual, fixed “availability” payments as long as the roadway continues to meet certain specified standards and guidelines.

The project entails the replacement of the 1.5 mile Doyle Drive with a modern...
parkway facility comprised of a mix of roadway at-grade, two short cut and cover tunnels, a high viaduct, a low-causeway and landscaped medians. The new facility will largely utilize the Doyle Drive’s footprint. The existing Doyle Drive was constructed in 1936 with narrow lanes, no shoulders and no structural median and is seismicly deficient by current highway standards. Doyle Drive lacks the capacity to handle its 120,000 vehicular trips per day and is anticipated to reach the end of its useful life in 2011, according to a study conducted in 2008.

Funding Milestone

Golden Link Partners, in collaboration with Caltrans, is now engaging in a “deb competition,” a process that Girard explains is mostly unique to P3s in which the concessionaire will bid and secure the most competitive funding available for the project. Among other sources the project’s owner is seeking to line up low cost federal TIFIA funds as part of the financing package. The project also received $46 million in funding from the American Recovery and Reinvestment Act of 2009 (Recovery Act).

As the first major transportation project authorized under California’s SBX2 4, which became law in 2009, the Presidio Parkway project will be closely watched not only in California but across the U.S. There is little doubt that success on this job will be used to help persuade other states and government entities – as well as a sometimes reluctant public – about the ability of public private partnership contracts to bridge the gap between the nation’s vast infrastructure needs and its limited public resources.

Contractor Incentives

Once the project gets underway this fall, the construction team will face a host of expected challenges that include coordinating the work with a variety of stakeholders, among them the city of San Francisco, Caltrans, Golden Gate Bridge Commission, the Presidio Trust, utilities and more, as well as traffic management among other things.

But chief among the challenges of this and any P3 project is the much greater level of risk shouldered by the design-build contractor and the concessionaire should there be any delays or other issues on the project, Girard notes. “There are pretty extreme financial ramifications for finishing late,” he says. “Probably the biggest challenge we face as the design-builder is making sure we finish on time. The repayments from the owner once we’re done are key.”

Ensuring that the quality is high is equally significant, Girard points out. “The implementation of the project under this (P3 delivery) method, with an availability based payment mechanism, incentivizes the private sector to not just design and build the road in an efficient manner, but also to operate it to high standards and keep it open and available to the traveling public over a long period of time,” he comments. “If the road’s not open or isn’t up to the required performance standards, the contractor doesn’t get paid. I think that’s a really good benefit to Caltrans, the traveling public and the tax payers overall.”

Freeing up Funds for Other Jobs

Dr. Adrian Moore, Vice President of the Reason Foundation in Los Angeles and an expert on public-private partnerships, discussed the benefits of P3s during a session devoted to the delivery method held during the AGC of California meetings in Indian Wells last November. “One of the biggest upsides to a public-private partnership is that it enables you to build a project that otherwise wouldn’t get built. In the case of the Presidio Parkway project, that money that the state would have used to pay for this goes to the next project. So there is another project that is going to be built with that money that wouldn’t have been built without the P3. And they tend to be faster and cheaper too.”

Getting more projects off the drawing board and into construction is a good thing for the state’s lagging construction industry, as well. Flatiron estimates that 85 construction workers will be employed on the Presidio Parkway phase 2 project over the course of three years.

Extensive Experience in PPPs

Flatiron itself has extensive experience in the design-build and PPP projects; Girard estimates that “40 to 45 percent of our work is either design-build or P3 kind of alternative delivery.” The company has recently completed two other P3 projects in Canada, including Calgary Ring Road (Northeast Stony Trail); and Kicking Horse Pass, in Golden, BC; while the Northwest Anthony Henday Drive in Edmonton, Alberta is scheduled to be completed later this year.

Girard says he expects to see the U.S. following Canada’s lead and for there to be a major jump in the P3s throughout the U.S. in coming years. “What we’ve experienced in Canada is that the general public tended to ask a lot of questions about the P3s at first. But once the questions were asked, and at the end of the day when the project was built in a very timely manner and it was of high quality, the public doesn’t really focus on those questions anymore; they tend to focus on the timely completion and quality of the new product, which they enjoy.

“I think it’s just a matter of time for P3 projects in the U.S. to have the same effect,” he adds. “We have the critical job of making sure with this one we do finish on time and that we do produce a quality project, to ensure it does help sell future P3s – not just in California, but across the U.S.”

“The implementation of the project under this (P3 delivery) method, with an availability based payment mechanism, incentivizes the private sector to not just design and build the road in an efficient manner, but also to operate it to high standards and keep it open and available to the traveling public over a long period of time.”

Matt Girard, Executive Vice President - Business Development of Flatiron
Alternative Delivery Methods Gaining Ground

Contractors See Major Shifts in How Projects are Being Procured, Delivered in California

By Carol Eaton

Whether it is the healthcare market, public/government building construction, or the education sectors, a broad cross-section of owners today are seeking better ways to procure and deliver their projects in order to maximize their limited capital funds and build greater value, quality and lower life cycle costs into their facilities.

Contractors throughout California report seeing a major shift toward project delivery methods that focus on bringing them into the design and development process earlier on and finding innovative ways to shave cost and build value within a collaborative project environment.

Design-build in particular has come into increasing and widespread favor in many diverse market sectors. Design-assist, negotiated “CM at risk”, integrated project delivery (whether formal or informal), lease-leaseback and, in certain specific sectors, public-private partnerships all seem to be gaining ground as owners search for alternatives to the traditional low bid approach.

And for the most part, that suits experienced contractors just fine. Many of them are looking for opportunities to meet client needs in a way that won’t compromise their financial viability as they seek to stay competitive – or in some cases, just stay afloat – in today’s often overheated, overly competitive marketplace.

So what do contractors see as the biggest project delivery trends, what are their preferred delivery methods, and what are the biggest opportunities and most significant challenges when it comes to delivering projects in California today? The California Constructor talked to several companies, including McCarthy, Swinerton Builders, Blach Construction, Hensel Phelps, Flatiron and others, to find out what they had to say and what notable projects they have in the hopper that are being delivered by “unconventional” means.

Design-Build Surges Ahead

The number one project delivery trend that most contractors cited was the increased use of design-build across a wide
array of sectors. While the reasons may be varied and not always entirely clear – ranging from ongoing passage of new legislation that allows for wider use of design-build on public projects, to owners simply seeking more value for their dollar – the outcome is apparent.

“Design-build has really taken off from a very diverse client field,” comments Frances Choun, Vice President of Business Development for McCarthy Building Companies in Northern California. “I’m seeing so many more opportunities now where they are using design-build, from federal to state to local projects. Maybe half of our projects [in McCarthy’s Northern California region] are design-build now, compared to one out of four or five in the past. And it’s really across the board.”

Examples of McCarthy’s Northern California project being delivered via design-build include the recently completed San Mateo Community College District’s Capital Improvement Program 2; the College of San Mateo’s Allied Health and Wellness Building completed by McCarthy / Kwan Henmi Architecture/Planning; and a recently awarded design-build parking structure project at the UC Davis Medical Center.

Collaborative Teams Fostered

Swinerton Builders sees the same trend, according to Senior Estimator Chris Murphy. “We definitely see an upswing in design-build, and we also see an increased interest in collaborative team approaches within all forms of traditional delivery methods,” he notes. Just two examples of current projects that Swinerton has underway via design-build are Sunroad Centrum, an eight-story, 200,000-sq.-ft. class “A” office building project in San Diego, and Dameron Hospital, a design-build project currently under construction in Stockton.

Hensel Phelps Construction Co. also continues to pursue a wide range of projects that utilize alternative delivery. Among the company’s notable projects currently underway in Southern California are the $170 million Harbor Medical Center Surgery / Emergency Replacement Project in Torrance for the County of Los Angeles – DPW via design-build; the $130 million design-build Alaska Airlines LAX T6 Renovation in Los Angeles due for completion this June; and the $350 million-plus Kaiser Anaheim Medical Center – Hospital in Anaheim, which Hensel Phelps is delivering via CM-at-Risk.

Wayne Lindholm, Executive Vice President, Pacific Division for Hensel Phelps Construction Company, comments, “We see design-build starting to take hold in the building sector as legislation is passed allowing the method, and as owners experience the results of teaming relationships as opposed to the traditional design/bid/build. The PECG group of public employees is blocking this legislation for the infrastructure side, so we don’t see it as much on roads and horizontal projects.”

Leo Bandini, Senior Executive, Project Development, of Hensel Phelps, adds, “The federal and public works opportunities appear to be embracing the design-build delivery of construction projects. There have been recent examples of major healthcare projects, such as the Camp Pendleton Hospital project [awarded to Clark / McCarthy joint venture] utilizing a competitive design-build project delivery method. This and other examples of healthcare projects delivered design-build were almost non-existent three years ago. And public and higher education agencies have experienced the benefits of completed design-build and continue to support the trend.”

Continued on page 10
BART Connector Via Design-Build

Design-build is the method of delivery for one of largest upcoming transportation projects in the Bay Area, the Oakland Airport Connector (OAC) for the Bay Area Rapid Transit system (BART). That contract was awarded this past fall to a joint venture of Flintron and Parsons, with Doppelmayr Cable Car as technology supplier and Turner Construction Company as a major subcontractor.

More than 25 years in the planning, the $351 million automated people mover project will link BART’s Coliseum Station with the Oakland International Airport via a mostly elevated automated people mover system along Hegenberger Avenue. The project consists of two broad components: the Flintron / Parsons Joint Venture will design and construct the fixed, elevated guideway, and Doppelmayr will supply the Automated People Mover technology as well as operate and maintain the system for up to 20 years.

Curt Weltz, Flintron West, Inc.’s Western Region President based in Benicia, comments, “Advancing the OAC was a real partnership effort, a coming together of community leaders, community based organizations, public officials and funding partners. The result is a project that will be an investment for generations to come, that will improve the quality of life, improve mobility and help the region continue to grow.”

Early Involvement Is Key

For Mike Blach of Blach Construction in Santa Clara, the leading trend in project delivery that he has seen is owners bringing the key team members on board earlier in the process.

“The most important trend we see is that sophisticated owners are finding ways to select and involve their contractor earlier in the design phase, and in some cases, even before the design has commenced,” Blach says. “In the private market, owners can deliver projects in any way they wish, and most are using design-build or a negotiated contractor selection based on a qualifications/best value selection process. In the public market, especially in the public education market where we are very active, we’ve seen a massive shift from the old “design-bid-build” method to lease-leaseback and design-build. We also still see CM-at-risk and CM-as-agent, but both of these delivery methods are losing popularity to lease-leaseback and design build.”

Examples of two notable current projects by Blach include the new San Antonio Elementary School in San Jose, a $17.5 million project for the Alum Rock Union School District, and the Multi-Disciplinary and Arts Building for San Jose City College, a $26 million design-build project that is scheduled to break ground this spring.

Favored Delivery Methods

So what project delivery methods did these AGC member contractors say they prefer? Blach says his company is partial to “any delivery method that allows owners to make a selection based on qualifications, experience and team, as well as value, and that enables the owner to select us early in the design phase so we can help lead the entire project team to a design and construction solution that truly meets or exceeds the customer’s expectations.” For Blach those methods might include IPD, design-build, lease-leaseback, and even CM/builder.

Swinerton’s Murphy comments: “As a company, it’s difficult to say that we prefer any one approach over another. What we do prefer are opportunities where owners see the value of early team assembly. It’s crucial to design-build, IPD and “IPD-ish” projects, but can have a huge positive impact on almost any delivery method outside of pure hard bid.

“Being able to bring the right partners to the table at the right time can dramatically affect project outcomes with regard to cost, schedule, quality, and building performance,” Murphy continues. “We also prefer highly collaborative
approaches, regardless of actual delivery method, where the project is able to get the full benefit of having all those team members on board.

Variety of Markets Tap into Alternative Delivery

While contractors see a full spectrum of markets now successfully utilizing alternative delivery, some stand out for their widespread adoption of new delivery methods. The healthcare and education markets in particular have embraced design-build recently, and Murphy says that healthcare “has been the incubator” for IPD and other integrated approaches.

“Projects in both sectors tend to be unique, complex efforts where success is defined not only by finishing under budget or on time, but in the outcome, in the actual function of the building – what it costs to operate, how its design and amenities support its role as a place of learning or healing,” he says.

Advantages and Challenges

The benefits of alternative delivery are many, including better control of the cost and schedule and better ability to build team relationships and work collaboratively. “From our perspective, to have the opportunity for our folks to get on board early, to bring our subcontractors on board as well as architects and engineers – it’s a win-win situation, as long as you have the right team formed,” says McCarthy’s Choun.

There can be challenges, however. “We struggle when an owner believes it significantly reduces their staff requirements with alternative delivery methods,” says Lindholm. “The decisions still have to be made, just in a compressed time frame. Alternative delivery methods should also not be used to significantly shift risk; the contractors can coordinate documents and construction, but certain risks such as unforeseen site conditions should be clearly defined.”

Integrated Project Delivery has its own unique set of challenges. “The big challenge with IPD is just getting past the legal and risk management approaches, which can be quite different from traditional scenarios,” Murphy says. “Many in our industry just aren’t ready to go all the way with IPD and would much rather test the waters by selectively deploying aspects of IPD without a true multi-party contract.”

The Outlook for Public-Private Partnerships

One of the newest project procurement and delivery methods to the California marketplace is undoubtedly public-private partnerships, also known as PPPs or P3s. While many contractors see this method as still in its infancy in the state, there is plenty of potential for its growth given the lack of public resources and the vast public sector needs.

There are several measures in place that authorize the use of P3s on public projects in California. Among them is SBX2 4, whose passage in 2009 allowed for a limited number of major transportation projects to be delivered through public-private partnership and design-build. The first to be approved under this authority is the Presidio Parkway project, which was recently awarded to Golden Link Partners, whose design-build team includes AGC member firms Flatiron and Kiewit. (See page 6 for more.)

Another earlier law, AB 2660, authorizes local governments to do P3s. However as attorney and P3 expert Fred Kessler of Nossaman LLP, Los Angeles pointed out during an AGC panel forum on P3s in November, that law has not been utilized much in California. “At the local level, there is a lack of understanding of how these things work and a reluctance to relinquish control,” he commented.

First U.S. Courthouse to Be Delivered Via P3

One governmental entity that is testing the mettle of P3s is the Administrative Office of the Courts (AOC). It recently finalized an agreement for the first U.S. Courthouse to be delivered in Long Beach via a performance based infrastructure. The P3 agreement signed with Long Beach Judicial Partners (LBJP), a consortium that includes Meridiam Infrastructure as the sole sponsor and developer, AECOM Design as architect/engineer, and Clark Construction Group, LLC as the construction partner, encompasses a 35-year services agreement. After the court occupies the new building, LBJP will op-
erate and maintain the facility and will be paid an annual service fee from the state.

Such public-private partnership projects will become more commonplace in the near future, predicts Jim Madrid, Director of Business Development for McCarthy’s Southern California Division. “On the government side what we’re seeing is definitely a trend into P3s, where the government doesn’t necessarily have the capital budget available [to build the facilities], but they do have operating expenses available,” he says.

Madrid cites two projects that McCarthy has built recently for Griffin Structures, Inc. a program and construction management firm. On the recently completed, $21 million Hon. Jerry Lewis County of San Bernardino High Desert Government Center and the $19 million Hesperia Police Department Headquarters projects, Griffin worked closely with the City and County of San Bernardino to plan, design, finance and build the project. The project’s architect was Irvine-based LPA. McCarthy also worked with Griffin Structures on the Westminster Police Department Headquarters, a project that is being implemented as part of an Infrastructure Revitalization Plan and which is being delivered “at risk” using Integrated Project Delivery.

Madrid says McCarthy is currently pursuing additional P3 projects with the County of Orange and the Los Angeles County Department of Public Works and plans to compete for future P3 projects with the AOC, among others. And while the company’s overall percentage of work in P3s is relatively low when looking at total annual volume, Madrid sees promising opportunities to grow that business in the near future. “Of our $4 billion of work that we’ve tagged to pursue in 2011, a substantial amount of that is in this P3 delivery method,” he concludes.

Blach Construction is underway with the Multi-Disciplinary and Arts Building for San Jose City College, a design-build project depicted in this rendering.
Being “The Voice of Safety in the Construction Industry” is the guiding principle that drives the Safety & Health Council. Backed by over a hundred members encompassing all areas of the construction industry, the voice is powerful and well versed. Given the new standards and laws that have gone into effect and are on the horizon, this voice has never more needed to be heard.

Effective this year a new and more stringent crane standard will be put in place. This standard comes in the wake of the new standard adopted by OSHA on the federal level. This standard has an emphasis on training and certification of signal persons and riggers. A new section on operational aids is proposed to be added and deals with inspections and safety devices. The proposed standard spans over 100 pages. A committee has been developed and is currently working on keeping up to date with the changes to the language of the proposed standard and how best to prepare the members of the AGC to maintain compliance.

Also on the forefront this year is the passing of AB 2774. The previous law stated that a serious violation was “deemed to exist if there was a substantial probability that death or serious physical harm could result from a violation.” With the passing of AB 2774 the new language changes the requirement of a serious violation to “rebuttable presumption that a serious violation exists if Cal/OSHA demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.”

With the new legislation that is being passed and the new standards being implemented, a strong working relationship with Cal/OSHA has never been more important. A committee has been started to bring information from the contractors who already participate in the Cal/OSHA voluntary programs to the council to inform others of the benefits of participation in the programs. These programs include the Golden Gate Award and the VPP Program. Both are excellent tools to maintain a safe and healthy worksite while fostering a positive relationship with Cal/OSHA.

On the training and education front, AGC is producing training programs to help educate the membership. In 2010 AGC delivered a “Train the Trainer” class on heat illness. This revamp to the old heat illness standard brought many changes that not only had requirement issues to consider, but financial ones as well. The publication of “Safety Snaps” also provides a great tool to be utilized in keeping the membership informed. These articles are written by industry experts that sit on the Safety & Health Council and provide insight to many safety and health issues.

The Safety & Health Council will continue to be the voice of the construction industry by informing the membership of issues, developing training programs to keep workers and managers safe and up to date, and working to be a value added service to the AGC. If you have any questions or comments, please do not hesitate to contact me at (714) 484-2302 / cbykoski@dyna-la.com.
New Law Exempts Union Construction Employees From California’s Meal Period Requirements

By Robert R. Roginson, Attorney Atkinson, Andelson, Loya, Ruud & Romo

The New Year brought California union construction employers some much needed relief from California’s meal period requirements. Effective January 1, 2011, Assembly Bill 569 (AB 569) took effect amending California Labor Code section 512 to exempt union employees in construction and other specified industries from California’s meal period requirements where the collective bargaining agreement (CBA) contains specific provisions. AB 569 effectively restores and broadens an exemption which originally existed under the applicable wage order covering on-site construction but was effectively lost in 2006 when the California Court of Appeal concluded the exemption was invalid.

The Associated General Contractors (AGC) co-sponsored AB 569, along with the United Parcel Service, which sought similar relief in the transportation industry. AGC sponsored the legislation to address the various interpretations of meal period law by the courts and enforcement officials which have led to significant confusion and litigation in the construction industry. AGC argued that in order to avoid liability, contractors are being forced to police their workforce to ensure employees took their meal periods without interruption. Although many construction companies operate under collective bargaining agreements, they have lost their ability to bargain on the meal period issue due to recent case law. Finally, AGC pointed out that, in this difficult economic climate, providing flexibility for collectively bargained contractors was necessary to provide key relief from litigation, especially class action litigation.

Former Governor Schwarzenegger vetoed previous versions of union opt-out bills, however, because he believed that a comprehensive reform of California’s meal period requirements affecting all employers was necessary. His willingness to sign AB 569 likely resulted from the inclusion of several industries and the recognition that comprehensive reform was not possible before he was to leave office in 2011.

Affected Employers and Employees

AB 569 affects four different categories of union workers: (1) construction industry workers, (2) commercial drivers, (3) security officers, and (4) gas and electrical company workers. The new law specifically defines the “construction industry” to be consistent with California’s construction’s licensing requirements, including within its meaning: “all job classifications associated with construction by Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair, and any other similar or related occupation or trade.”

This definition of the construction industry is also consistent with Wage Order 16, which is the occupational wage order issued by the California Industrial Welfare Commission to apply to on-site construction workers. The new law may also impact a construction employer’s unionized trucking operations. Under the new law, a similar exemption exists for “commercial drivers” who are defined as employees who operate a commercial vehicle, paratransit vehicle, or commercial motor vehicle as those terms are defined under the California Vehicle Code.

Collective Bargaining Agreement Requirements

AB 569 specifies that in order to meet the exemption, the affected employee must be covered by a collective bargaining agreement and the agreement must contain provisions expressly providing for:

1. The wages, hours or work and working conditions of the employees;
2. Meal periods for the covered employees;
3. Final and binding arbitration of disputes concerning application of its meal period provisions;
4. Premium wage rates for all overtime hours worked; and
5. A regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate, which is currently $8.00 per hour.

The Master Labor Agreements negotiated by the AGC with the Northern and Southern California crafts satisfy each of these requirements. Contractors signatory to any of these agreements, however, remain obligated to comply with the specific meal periods requirements set forth in the agreement, which in some cases may be equal to or more restrictive than California law.

Effect on Wage Order 16

The new law effectively restores the express opt-out for union represented employees that is already contained in Wage Order 16. Wage Order 16 was first promulgated in 2001 and governs the on-site occupations in the construction, mining, drilling, and logging industries. The meal period provisions in Wage Order 16 contain an express exemption for employees covered by a valid collective bargaining agreement. In 2006, however, the California Court
of Appeal in Bearden v. U.S. Borax concluded that this exemption was not lawfully adopted and conflicted with the California Labor Code. A recent appellate decision, Lazarin v. Superior Court, also found that the CBA opt-out was invalid and unenforceable.

New Law Does Not Affect Other Disputed Areas of the Meal Period Requirements

AB 569 makes clear that these new exemptions, or opt-outs, for union employees in specified industries “do not affect the nature and scope of the law related to meal periods, including the timing of the commencement of a meal period” for employees or employers not specifically covered by this new law. Accordingly, this new law expressly adds no clarification to the ongoing debate over what it means to “provide” a meal period, when a meal period must commence, what constitutes a lawful on-duty meal period under the wage orders, or any of the several areas of dispute over meal periods. Unless the legislature acts, employers will likely need to wait for clarification from the courts on these issues. The issue of what it means to “provide” a meal period is currently before the California Supreme Court in the case Brinker Restaurant Corporation v. Superior Court (Hohnbaum), and a decision is expected sometime in 2011.

Nonetheless, the new law makes clear that employees covered by collective bargaining agreements in the specified industries are exempt from the meal period requirements contained in Labor Code 512 if the agreement meets all of the conditions set forth above. Contractors are encouraged to consult with competent legal counsel before making any change in their operations as a result of AB 569.

Robert Roginson is a partner at Atkinson, Andelson, Loya, Ruud & Romo, where he represents and counsels employers on California and federal wage/hour and pay practice laws. From November 2007 until March 2010, he served as Chief Counsel for the Division of Labor Standards Enforcement. He is a member of the AGC State Board, Los Angeles Board, and the Legal Advisory and Legislative Committees. In 2007, he served as the Chair of the Legal Advisory Committee. Roginson can be reached at rroginson@aalrr.com or (562)653-3200.

Los Angeles District Presents Awards

During AGC’s Los Angeles District Board of Directors holiday luncheon on December 10, 2010, in Anaheim, the Board presented two special awards to members for their outstanding service in 2010. Robin Carr, Glenn M. Gelman & Associates, received the Associate of the Year Award, while Tony Campbell, Dynalectric, received the Contractor of the Year Award. In the photo below, left, Carr receives the Associate Award from Jennifer Garcia, Reyes Construction - Chair (right). Below right, Corey Bykoski accepted the Contractor Award on behalf of Tony Campbell, Dynalectric, from Garcia. The Los Angeles District 2011 Board of Directors in attendance are pictured above.

Mark Your Calendar!

Dates to Remember in 2011

92nd AGC of America Annual Convention
March 21-25 – Las Vegas

Spring Board Meetings/Conference
May 12-13 – Monterey Plaza Hotel & Spa/ Monterey

Constructor/ Achievement Awards Gala Banquet
April 9 – Newport Beach
“Safety first” is becoming the new mantra of the construction industry. Rather than regarding safety programs as a necessary burden, companies need to embrace the concept of a “zero accident” workplace and nourish efforts to achieve that goal.

A well planned safety program and integrated safety structure will result in improved safety, enhanced productivity and increased employee morale. Other bottom line benefits also will accrue as a result of a zero accident workplace. It is common knowledge that the total cost of an accident is more than the direct cost of workers’ compensation claims, medical treatment costs and higher insurance premiums. The impact of indirect or “soft” costs can be many times the direct costs. If an accident is serious enough, access to the job site will have to be secured for medical personnel, OSHA, or even the police, disrupting the work-flow, and taking the remaining workers’ attention off their jobs. Even in the case of a minor injury, the injured worker will have to be replaced or his or her activity restricted; the accident will need to be investigated; appropriate actions taken; and, of course, insurance claims filed. Given the low profit margins in the construction industry, this productivity loss can significantly affect the bottom line.

How then does one go about implementing an effective, company-wide safety program, instilling in the entire company a culture of safety? Here are a few tips:

Get Everyone Involved

In order to create an organization that values safety first, it is important to actively involve employees on every level. Giving those who have the most exposure to workplace hazards a chance to comment on job site safety and make suggestions on how it can be improved increases their awareness of potentially dangerous work situations and empowers them to think safety at all times. More often than not, it also instills in them a sense of responsibility for the safety of everyone on the work site, especially when they see their feedback is acted upon or recognized.

Managers are key to the safety mission, because they set the tone for how the entire workforce responds. If senior management pays lip service to safety planning, implementation, and communication of safety measures, then the program will not be taken seriously.

Managers are key to the safety mission, because they set the tone for how the entire workforce responds. If senior management pays lip service to safety planning, implementation, and communication of safety measures, then the program will not be taken seriously. If safety is considered a key company priority, then field personnel will follow their managers’ lead.

At University Marelich Mechanical (UMMI), safety performance is a byproduct of our “Changing the Way We Work” program, where improved safety and productivity are achieved through an understanding that accidents result from the way work is performed. When we successfully change the way that we work (task by task, workplace by workplace), we identify the new standard as Good2Go! To be Good2Go!, both safety enhancement and efficiency improvement are emphasized, with a focus on innovation and a review of the processes, products, equipment and tools that make tasks easier and safer to complete. Risk management methodologies are integrated into all such reviews; reduced risk is a natural outcome of these efforts.

Establish a Safety and Productivity Committee

A safety and productivity committee can develop and help track organizational loss reduction goals, objectives, and responsibilities. University Marelich Mechanical’s committee is engaged in a strategic planning process to systematically “change the way we work” in order meet our goals. The strate-
Communicate, Communicate Communicate

Safety and productivity goals should be communicated continuously and consistently. One way of doing this is to employ established hazard analysis tools like a JHA/JSA (Job Hazard/Safety Analysis), or a STA (Safe Task Analysis). University Marelich Mechanical’s STA has the standard hazard prompts and controls, but also included in this tool is a post-task questionnaire which asks: “What problems did you have with today’s work assignment? What can we do tomorrow to improve safety/performance?” Responses are addressed by the supervisor and forwarded to the safety director/committee for review. It is imperative that all comments receive a response so that the credibility of the program is maintained.

University Marelich Mechanical’s “Spot the Trap” and “Spot the Opportunity” program is an inclusive communication tool used to promote participation and personal involvement. Employees have the opportunity to inform, comment and suggest jobsite safety items that need to be addressed or new processes or tools that might enhance safety and productivity. All comments are reviewed and suggestions with merit get published in a monthly “Safety and Quality Newsletter” after the safety committee reviews and discusses the issues, solutions, or suggestions. Every card gets a personalized response from the safety manager, containing the outcome and comments along with a safety incentive item.

Provide Safety and Productivity Education

There is a constant flow of innovative time saving products, from the equipment and materials being installed to the cordless hand tools used to install them. Tool manufacturers have really stepped up with powerful, ergonomic, lightweight tools; they also provide training demonstrations. Pre-fabrication and assembly reduces overhead or “on your knees” work where fatigue becomes a factor with the workforce. It is important to seek out and try to innovate; it may not work out every time, but when it does, it pays off.

It also makes sense to address off-work accidents in company wide training activities and encourage workers to share what they’ve learned at work with their families. We do this through our “Be There For Life” Zero Accident Program which links work place behavior with important life events.

Through efforts to change the way we work and become “Good2Go!” University Marelich Mechanical has gone without an OSHA recordable incident for almost two years in a row. But most importantly, these programs have helped our employees return home safely to their families at the end of each work day.

In summary, to be effective a safety program must be multifaceted, fluid, and adaptable to the changing conditions – and still be consistent in its approach. It is the sum of everyone involved and everything we do to support a work place culture that embraces safety as the outcome of the way we work.

Randy Conley is Safety Manager at University Marelich Mechanical, Inc., an EMCOR Company. Located in Anaheim, UMMI is a leading full service mechanical contractor serving Southern California.

Attention AGC Members:

Do you have noteworthy projects that your firm is building, milestones your company has reached, personnel changes or other news of interest to the industry? The California Constructor spotlights projects and other AGC of California member news throughout the year. Please email your news to the Constructor Editor, eatonc@comcast.net, fax to (707) 789-9519 or call (707) 789-9520.

We want to hear from you!
Independent Contractors and the Construction Industry

By Glenn Gelman

For years employers have had many reasons to try to consider those that provide services to them as “non employees” or independent contractors. Among the benefits of independent contractor status to the entity paying for services are the following:

a. Payroll taxes do not apply to an independent contractor.
b. There are no benefits to be paid to the independent contractor.
c. There are no unemployment benefits being paid relating to independent contractors.
d. Litigation for wrongful termination or discrimination is greatly reduced.
e. The services can be terminated at any time.
f. No tools or work area has to be designated for the provider of the services.

Due to the fact that many independent contractors fail to report the payments made to them as income, the IRS and state authorities often end up with less revenue in the form of payroll taxes and income taxes.

In fact, the most common circumstances California employers face with independent contractors is their assertion to the Employment Development Department that they believed they were employees and thus should be entitled to unemployment. The application for benefits often triggers an audit by the EDD or the Department of Labor (DOL).

The number of “random” EDD and DOL audits in the area of independent contractors has risen greatly over the recent past. In fact, construction contractors are singled out with onerous standards beyond those of other industries.

Contracts that retain subcontractors MUST determine that the sub has a contractor’s license, or it is possible that the EDD will consider the subcontractor to be an EMPLOYEE and taxes would be imputed and be payable by the contractor.

Generally upon audit the EDD reviews all disbursements to those issued a 1099 to determine if indeed these were independent contractors and then adds an additional burden on those issued to subcontractors to determine if the sub is a licensed contractor.

The EDD then examines other disbursements, especially those categorized as outside labor and asks for proof that the individual is indeed “independent”.

The general qualification of someone as an independent contractor includes the following:

1. Does the person have a license to do what they are providing?
2. Does the person provide those services to others besides the company under audit?
3. Are the hours of service dictated by the company or is the independent contractor able to perform at will without supervision or restrictions?
4. Are tools provided by the company?
5. Is the person in appearance an employee or held out as an employee?

The above are over simplified guidelines. To protect yourself we urge you to do the following at a minimum:

a. Obtain a written independent contractor agreement that specifies that the person can provide the service as he or she sees fit without requiring set hours. Be sure to specify that the person understands they are not an employee.
b. Obtain written evidence of a license to do business in your state.
c. Do not list the person on your employee roster or pay them as you would an employee.
d. Be sure to obtain their employer ID number and issue them a 1099.

The independent contractor issue has become a target for the Internal Revenue Service and the Franchise Tax Board due to the tax ramifications. Even if the independent contractor reported the income, the IRS and FTB may still assess a tax to be paid by the employer as if the person was an employee and then require you to submit evidence that the employee paid the tax. The employee/contractor does not have to cooperate and thus you may not be able to obtain this information readily.

Glenn M. Gelman, CPA-MST, CFF, is owner of Glenn M. Gelman and Associates, CPA’s and Business Consultants in Santa Ana. He can be reached at 714-667-2600 (extension 214).

Calendar of Events

February 23
Project Engineering: Boot Camp in Costa Mesa

February 24
Estimating Fundamentals online course

February 25
Lead RRP training in Santa Ana

February 28
Lead RRP training in Oakland

February 28-March 1
Qualified SWPPP Practitioner in Ventura

March 1
Santa Clara District Membership Mixer, Shark’s Game at the HP Pavilion

March 2
Conceptual Estimating course in Concord
8-Hour SWPPP Compliance training in Santa Ana

March 5
Confined Space Competent Person training in Sacramento

March 7-9
OSHA 30 Hour at Global Environmental Network

March 10
Building Information Modeling (BIM) 101 at AGC’s West Sacramento offices
Top 10 Projects Awards

Following are the top 10 public project awards California last month, compliments of McGraw-Hill Construction.

<table>
<thead>
<tr>
<th>Project Title</th>
<th>Company</th>
<th>Reported Low Bid Amount</th>
<th>Project City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harry Tracy Water Treatment Plant Long Term Improvements WD2596</td>
<td>Kiewit Pacific Company</td>
<td>$174,029,000</td>
<td>San Bruno</td>
</tr>
<tr>
<td>CA/DOT Cold Plane Ac Pavement &amp; Place Hma, Replace Pcc 07251804</td>
<td>Granite Construction</td>
<td>$51,760,492</td>
<td>Ventura</td>
</tr>
<tr>
<td>Las Positas Student Services &amp; Admin Building 1106</td>
<td>Zovich Construction Company</td>
<td>$25,210,000</td>
<td>Livermore</td>
</tr>
<tr>
<td>BART Earthquake Safety Program Aerial Structure-R Line North 15PE110</td>
<td>Robert A Bothman Inc</td>
<td>$18,356,688</td>
<td>Richmond</td>
</tr>
<tr>
<td>State Highway 10 At Date Palm Drive A80373</td>
<td>Skanska USA Civil</td>
<td>$17,304,000</td>
<td>Riverside</td>
</tr>
<tr>
<td>Church &amp; Duboce Rail Tracks Replacement (M579E) 1239</td>
<td>NTK Construction, Inc.</td>
<td>$15,353,793</td>
<td>San Francisco</td>
</tr>
<tr>
<td>Capuchino Thtr Renov/Addn-New Humanities Art Satellite Bldg 1400200047</td>
<td>Zovich Construction Company</td>
<td>$16,735,000</td>
<td>San Bruno</td>
</tr>
<tr>
<td>ARC (American River College) Student Center 11011</td>
<td>Broward Builders</td>
<td>$15,592,000</td>
<td>Sacramento</td>
</tr>
<tr>
<td>CA/DOT Resurfacing Pavement (04-Mrn-101-12.8/18.8) 040C8524</td>
<td>O C Jones &amp; Sons Inc</td>
<td>$15,234,598</td>
<td>San Rafael</td>
</tr>
<tr>
<td>CA/DOT Cold Plane Ac - Apply Asphalt Rubber Seal Coat 024C0104</td>
<td>Klamath Pacific Corporation</td>
<td>$13,890,804</td>
<td>Siskiyou</td>
</tr>
</tbody>
</table>

Calendar of Events

March 15
CPM Scheduling for Today’s Construction Industry at AGC’s Bay Area office in Concord

March 16
CPR/First Aid/AED Certification Training in Oakland

March 19
Trench, Shoring and Excavation - Competent Person at Trench Shoring Company

March 19-26
Supervisory Training Program Unit #2 Oral and Written Communication

March 23
Project Engineer’s Boot Camp – CM at AGC’s headquarter office in Sacramento

March 26
Lead RRP course at Global Environmental Network

March 28
Trench, Shoring and Excavation - Competent Person at Global Environmental Network

April 2
Lead RRP at AGC Headquarters Office, West Sacramento

April 7
Mechanics Lien Law at AGC Headquarters Office, West Sacramento
SAN DIEGO
FEBRUARY 23, 2011

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