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Our Transportation & Infrastructure Needs

Neglected roads in California’s urban areas are among the worst in the nation, and it is estimated that they cost Californians who use them $700 per person each year for increased maintenance on their cars. It also is no secret that our public infrastructure of water systems, bridges and levees are deteriorating faster than they are being repaired, often placing the public at great risk if they fail. And make no mistake, we will be seeing more failures if the trend is not reversed.

California’s situation is also being repeated across the United States, and national action is needed. In the past 18 months, the Transportation Department has allocated $38.6 billion to more than 14,600 projects, most of which are under way. Of that funding, California has been given $3.7 billion for transportation and infrastructure. This funding does not even begin to address the comprehensive restoration needed to restore the ability of our nation’s infrastructure to safely serve the public both now and in the future. From an employment perspective, even with this spending construction unemployment still stands at over 17 percent nationally and is much higher in California. There can be no doubt that action needs to be taken now.

An interesting interplay exists between the state of our aging public infrastructure, the economy, and the need to create more jobs. By funding transportation and infrastructure projects, we can bring unemployed workers back into the workforce and stimulate other sectors of the economy, all while improving the highways and infrastructure needed to protect the public and to support the future growth of the California economy. Much of this work is already in the pipeline and only needs funding to proceed, so the effect on unemployment will be immediate.

The construction industry has the highest unemployment rate of any sector, and it also provides the most leverage for dollars invested. For every dollar spent on infrastructure, the economy receives or sees three dollars back in terms of taxes and services/materials purchased, and for every billion dollars spent, nearly 28,000 jobs are created. This means that we can help lead our state and nation out of the recession more effectively than any other expenditure of funds.

AGC of America is making an all-out effort in this area, and several officers of AGC of California brought this message to three California Congressional Representatives during the recent National Leadership Conference. Our emphasis was on creating jobs, approving a multi-year highway and transportation bill, and enacting responsible regulations that enable businesses to grow and thrive.

As an industry and as individuals, we must deliver the message that it is good policy to invest in transportation and infrastructure projects. And while shovel-ready projects are needed to provide an immediate economic effect, our state and national legislatures must commit to long-range, multi-year programs. In doing so, these programs must avoid the temptation for lawmakers to look only at their constituents’ needs but to focus on the needs of the public at large. There is also a role for the private sector investment. In a time when most public entities are operating at a deficit, we cannot expect government alone to fund these projects. The private sector must be given the opportunity to participate in the rebuilding of America as well. Government agencies at all levels should encourage and enable creative public/private partnerships.
AGC Scores Victories as 2010 Legislative Session Comes to a Close

By Dave Ackerman

Even though the state budget had not yet been enacted, just before midnight on September 30 Governor Schwarzenegger finished signing and vetoing over 900 bills sent to him during the last hours of the regular legislative session, including five bills sponsored by AGC. Here is a quick run-down on AGC’s bills and several other actions taken by the Governor.

**AGC Sponsored Bills signed by the Governor**

**Incorporation as Limited Liability Companies** – SB 392 (Flores) – allows contractors, starting no later than January 1, 2012, to incorporate as Limited Liability Companies.

**Meal Period Flexibility** – AB 569 (Emmerson) – provides meal period flexibility for contractors and several other employer groups who have collective bargaining agreements.

**Local Government Plan Fee Charges** – AB 2036 (Berrynill) – prohibits state and local agencies from charging contractor plan rooms for an electronic set of plans.

**Competitive Bidding by Local Government** – SB 694 (Correa) – extends the time limit for the California Uniform Construction Cost Accounting Commission to review a public agency project that is to be performed after rejection of all bids, and to review work for which evidence was provided that the work has exceeded the force account limits or has been improperly classified as maintenance.

**One AGC Bill Vetoed**

The lone AGC-sponsored bill that the Governor vetoed was AB 2060 (Calderon). The bill would have provided future protection against sales tax increases if the contractor holds a fixed price contract. Public agencies would have been required to compensate contractors for any increase and the bill allowed for an adjustment if the sales tax rate goes down.

**Legislative Victories**

All AGC victories did not depend on the Governor’s final actions. AGC lobbyists successfully amended or defeated numerous bills during the legislative year. Some of those victories include:

- **Private Works of Improvement: Retention Proceeds** – Defeated legislation that would have prohibited private contracts from containing a withholding provision of more than 5% retention, and required all subcontractors submitting a final payment claim to be fully paid within 45 days in advance of the final completion of the project. (SB 629)

- **Suspension of Contractor’s License** – Negotiated amendments to allow the Contractors State License Board (CSLB) time to notify and accommodate a company if their license is in jeopardy due to unpaid taxes of their qualifier. (AB 2038 and AB X8 8)

- **Highway Financing** – Negotiated provisions of the “gas tax swap” legislation to protect all transportation financing and generate an additional $650 million for highway construction beginning in 2011-2012.

- **Best Value Contracting** – Negotiated amendments with the Los Angeles Metropolitan Transportation Authority to limit the authority to award contracts based on “best value” rather than low bid. (SB 1341)

- **Design-Build** – Secured amendments to limit the use of false claim information in prequalification questionnaires. (SB 879)

- **Public Works Contracting License** – Defeated legislation to require a second contractor’s license to do public works. The bill was amended to deal with prequalification for school construction. (SB 258)

- **Mechanics Liens** – Negotiated amendments to resolve the concerns of the construction industry to overhaul the entire body of law dealing with mechanics liens. (SB 189)

- **Split Roll Property Tax** – Opposed legislation as part of a business coalition that would have increased property taxes on commercial property. (AB 2492)

- **State Contract Preferences** – Exempted construction from legislation establishing a preference for hiring California residence workers on public works projects. (SB 967)

**Local Road Funds** – Supported legislation to allocate road funds to cities and counties. (AB 186)

**Employment: Heat Illness Prevention** – Opposed legislation that would have incorporated heat illness regulatory provisions into statute. The legislation would have additionally specified requirements for employers to provide employees access to shade when the temperature exceeds 75 degrees Fahrenheit and to implement designated high-heat and extreme-heat procedures when the temperature equals or exceeds 85 or 95 degrees Fahrenheit. (SB 477)

**Governor Uses Veto Pen**

It is good that Governor Schwarzenegger didn’t run out of ink – because he needed all of it to write veto messages on the nearly 300 bills he rejected this year. During his tenure, some of the bills followed by AGC that were vetoed by the Governor included:

- **Sweatshop Labor** – SB 1231 (Corbett) was originally opposed by AGC until AGC successfully exempted public works contractors from having to certify that neither sweatshop nor slave labor was involved in the production of materials used in the building of a project. The Governor vetoed the bill anyway.

- **Employment: payment of wages** - AB 2187 (Arambula), opposed by AGC, would have created a separate prohibition against a person or an employer who, having the ability to pay, willfully fails to pay all wages due to an employee who has been discharged or who has quit within 90 days of the date of the wages becoming due.

- **Contractors: licenses** - AB 2332 (Eng) would have authorized the Contractors State License Board to suspend a contractor’s license for a licensee’s failure to resolve outstanding financial liabilities assessed by the Board of Equalization.

- **Employee’s right to bereavement leave** - AB 2340 (Monning), opposed by AGC, would have allowed employees the right to take time off for bereavement leave. ☎️
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With the summer months coming and going and with no state budget in sight, contractors doing business with Caltrans and local agencies with state-funded projects were once again threatened with possible work stoppage due to the lack of authority for state transportation funds to be expended.

At first, when it became clear that the debate over the state budget was going to drag into the fall, Caltrans Director McKim notified contractors that the state was confident they would have adequate authority to reimburse contractors for work completed in September, but the department was very cautious about whether they would honor payments into October. Even though Caltrans and the industry have arrived at a stable funding source to finance our transportation programs, we continue to find ourselves captive to the annual state budget battles, where the cumulative, ongoing general fund deficits are proving to be confounding for the administration and legislative leaders, and the result is delayed budgets.

You may ask why our contracts continue to be threatened? Essentially, ever since the state started to see a mismatch in state general fund expenditures and revenues in the early 1990’s, the annual budget act has included a provision that ties up all transportation appropriations until a budget is developed and approved each year. The purpose then was to be able to borrow or use transportation funds to partially “paper” over the general fund deficit. Now, it is a means to have the construction industry management and labor add “political” pressure to the annual budget process.

Well, with the final passage and approval of the state budget act on October 8, Caltrans now has the spending authority they need, as well as access to gas tax revenues and other sources of state transportation funds, to again pay their bills.

This is indeed great news.

However, on another front, due to the late approval of the budget act, the State Treasurer’s Office has not been in a position to go to Wall Street to sell much needed transportation and infrastructure bonds on their regular schedule.

We now find ourselves in a position where new projects ready for funding from Proposition 1B will continue to wait for specific authority from the California Transportation Commission for permission to move forward.

So, although gas tax funded contracts and new gas tax funded projects will be able to move forward, we will still have to wait on the timing of the Treasurer’s ability to get back to selling infrastructure bonds to let that part of the ready-to-go pipeline open again. We believe this can happen as soon as the end of the month!

In summary, with the final budget in place for 2010, contractors and allied labor will see the many transportation improvement projects continue throughout the state, and shortly, the new project pipeline will be open with hundreds of millions in new projects authorized to go to contract in the coming months.
A Quality of Life Issue: Fixing California’s Infrastructure Problems

By Dan Himick

After the budget crisis two years ago, I started asking myself, “Why is our transportation construction industry so prone to the roller coaster ride of fluctuating revenues?”

What started for me as an endeavor to determine how to fund infrastructure in a reliable and predictable way has turned into an assessment of our quality of life, and more importantly, the legacy we are going to leave our children, grandchildren and their children. It is an undeniable fact that the infrastructure in California is crumbling and failing to meet the needs of our current population, much less the growth we are anticipating. We have major roadway congestion in our urban areas that requires us to consider “traffic” in almost every aspect of our daily scheduling. If we do nothing, the vehicular travel within California will become completely gridlocked; our ability to move goods and people efficiently will cost the taxpayers more; more employers will move away taking valuable jobs with them; and the quality of life in this state will continue to deteriorate.

To put today’s economy in perspective, I did some research on the Great Depression and found some extremely interesting facts. The Stock Market Crash of 1929 was not the sole cause of the Depression. (The market was actually beginning to recover some of its losses by the end of 1930.) Throughout the 1930’s, over 9,000 banks failed, all of which were uninsured, so people lost their savings. The surviving banks stopped providing new loans, and individuals of all classes stopped purchasing. People lost jobs, resulting in unemployment going from 4% to over 25%. The government created the Smoot-Hawley Tariff in 1930 in an attempt to help protect American companies, but this led to less trade between America and foreign countries. Finally, the drought that occurred in the Mississippi Valley in 1930 was so devastating that farmers and supporting companies could not pay their taxes or debts and were forced to sell. Does this all sound familiar?

Next question: How did the United States get over the Depression? Primarily through President Franklin D. Roosevelt’s “New Deal,” a series of programs designed to put people back to work building much-needed public works projects. The New Deal program that epitomized the progressive notion of “priming the pump” to encourage economic recovery was the Public Works Administration (PWA). The PWA concentrated on the construction of large-scale public works with the goals of providing employment, stabilizing purchasing power, and contributing to the revival of American industry. While the PWA was relatively short-lived due to political haggling, between July 1933 and March 1939 the PWA funded and administered the construction of 34,000 projects! These included airports, dams, bridges, 70% of the new schools and one-third of the hospitals built during this time. In each year of the building boom, these projects consumed roughly half of the concrete and a third of the steel of the entire nation. The New Deal put some three million people to work while building infrastructure (such as the Oakland-Bay Bridge) that remained vital to the nation for over seven decades.

So where is California today? A May 2010 draft report by TRIP, a national highway transportation research group, identified the top surface transportation issues in California as:

1. California was rated in poor condition, the second highest in the nation, behind only New Jersey. Another 31% of the state’s major roads were rated in mediocre condition. In 2009, 13% of California bridges and overpasses were structurally deficient and an additional 16% were functionally obsolete.

2. Among all major urban areas in the nation with a population of 500,000 or more, six of the top 10 urban areas with the roughest pavement conditions are in California; San Jose and Los Angeles top the list.

3. Five of the 10 most congested urban areas in the nation are in California.

4. While California’s 170,000 miles of roadway is second only to Texas in the number of lane miles of roads, it is the busiest system in the nation, carrying 327 million vehicle miles of travel each year.

The cost to taxpayers is huge. Again, TRIP reports that traffic congestion costs motorists $18.7 billion annually; poor roads cost motorists $13.5 billion annually due to repairs and accelerated depreciation, and serious crashes cost motorists $7.6 billion annually due to lost productivity, lost earnings, medical costs and emergency services. What is the total price tag? Traffic congestion, poor roads and serious crashes cost Californians a whopping $39.8 billion annually.

These statistics are only going to get worse. California’s population is expected to grow 32% by 2030; vehicle miles traveled (VMT) is expected to grow 20% by 2020. To meet the needs of repairing roads and eliminating congestion, the Governor’s Strategic Growth Plan of 2006 and Caltrans estimated surface transportation funding projections currently show the state falling short by some $160 billion over the next 10 years, and for every year something isn’t done to fix this problem, the shortfall increases.
We have one obvious solution before us. The current gas tax is 18 cents-per-gallon, which has not been raised or adjusted since 1994. To have the same buying power today as 1994, this fee needs to be adjusted to 26.3 cents-per-gallon. This increase would cost the average California driver an additional $62.60 per year and raise approximately $1.5 billion of revenue. But, consider these points:

- The average tax on fuel in the U.S. is $0.50 per gallon and in virtually all other industrialized nations, the tax ranges from $3.50 to $5.50 per gallon.
- Californians purchase 18 billion gallons of gas/diesel fuel per year.
- Traffic congestion, poor roads and serious crashes cost Californians $40 billion per year, or $2.22 per gallon.
- A $1.00 increase would generate $18 billion of revenue annually.
- A 2007 analysis by the FHA found that for every $1 billion invested in highway construction, 27,800 jobs are created in the construction industry and non-constructed related sectors. Caltrans numbers show that 180,000 people are put to work in construction and non-construction industries for every $1 billion in work they put out in projects.
- Current unemployment in California exceeds 12.3%; in construction it exceeds 20%. A $1.00 increase would put 500,000 people back to work.
- A $1.00 increase would save $2.22 over time by improving our roads and making them safer and more efficient in terms of motor vehicle travel.

A $1.00 increase may sound high, but it is an idea that is long overdue. We have not invested in restoring or improving our infrastructure for almost 20 years, and our population growth and the VMT are dramatically growing. To reiterate, $1.00 may sound high, but consider this: It is one example of what could be accomplished if we have the desire and leadership to restore the quality of life that Californians once had and improve upon it for the generations ahead who will call California “home.”

Dan Himick is president of C.C. Myers, Inc., Rancho Cordova.
Feature

Nation’s Largest Design-Build Airport Project Successfully Completed in San Jose

This past summer, Mineta San Jose International Airport celebrated the grand opening of its new Terminal Area Improvement Program (TAIP), a massive undertaking that ranks as the nation’s largest design-build airport expansion project to date and one that was completed in record time.

The design-build team led by Hensel Phelps Construction Company and Fentress Architects delivered the $695 million, 2.7 million-sq.-ft. TAIP project within its fast track 42-month design and construction schedule. The project entailed system modernizations and expansion/renovation of Terminal A, a new Terminal B to replace Terminal C and airport roadway and parking improvements, including a new 3,350-space consolidated rental car facility known as ConRAC.

The TAIP project is the key component in the overall $1.3 billion airport expansion and improvement project at the nation’s 10th largest airport, an essential transportation hub for the many leading high-tech companies that call Silicon Valley home.

Myriad Challenges

The design-build team faced myriad challenges on the project, including:

- A fast track 42 month design and construction schedule;
- Managing design and construction within a fixed budget;
- Collaboration with over 30 stakeholder groups, not including design and construction firms, involved in the program;
- Performing construction operations in a manner that did not disrupt airline or airport operations and maximized the experience of passengers while traveling during airport improvements;
- Coordination and management of over 166 firms providing construction services on site equaling 2.5 million work hours;
- Replacement of legacy systems such as fire alarm, security, building management, while the existing facilities remained operational;
- Phased construction throughout the campus to reduce impacts to Airport operations; and
- Deployment of first generation state-of-the-art baggage screening equipment.

These challenges and hundreds of others were met by a cohesive team that was committed to the common goal of delivering a new gateway to the Silicon Valley. The Hensel Phelps / Fentress Architects design-build team was supported by numerous other construction and design firms, including five key design-build subcontractors: Rosendin Electric, Granite Construction Company, Critchfield Mechanical, Transbay Fire Protection and AGA. The team worked in a collaborative environment with owner, the City of San Jose, saving an estimated $290 million and shaving at least a year off the project by utilizing the design-build delivery process rather than the traditional design-bid-build approach.

ConRAC Facility

The Hensel Phelps / Fentress Architects team managed, designed, and constructed a variety of project elements starting in 2006. The single largest element of the program is a new 1.5 million-sq.-ft. Consolidated Rent-A-Car Facility (ConRAC).
This state-of-the-art, 3,350-space rental car garage includes a seven-story precast parking structure and an adjacent four-story precast rental car service facility with fueling, car wash, and maintenance stations. Vehicular access to each level of the facility is provided by two seven-story cast-in-place concrete spiral helix ramps.

**Terminal A**

The Terminal A work included expanding the existing facility by approximately 62,000 square feet; renovation of 52,000 square feet of the existing space, as well as providing a new automated in-line baggage handling system. This new baggage system is one of a kind in the world and includes the first ever deployment of the next generation of screening equipment. The team faced unique challenges in this portion of the work, which required extremely close coordination in order to maintain an operational terminal throughout the 24-month construction process. This portion of the work was done in phases during both day and night shifts.

**Terminal B**

The new Terminal B is a three-level terminal/concourse facility that is connected to, and immediately south of, the Terminal B Concourse project. The facility’s ground level footprint of 150 ft. by 510 ft. overlaps the Terminal B Concourse. That overlap required extensive coordination with the Terminal B Concourse construction sequence (which was under construction by another contractor).

The project also included a reconfiguration of existing Terminal C spaces with the goal of consolidating all of the passenger check-in functions. The three security checkpoints scattered throughout the facility were consolidated into the main terminal food court area, creating a more efficient process. Both significant terminal changes were required in order to facilitate the demolition of a portion of the existing terminal facilities to the north of the existing check-in lobby restrooms. The demolition was required to clear the way for the footprint of the new modern Terminal B facility and its two additional gates. Finally, once Terminal B was open and all airlines residing in Terminal C were moved either to Terminal A or B, Terminal C was demolished to make way for future terminal expansion to the South.

**Roads and Parking**

On the roads and parking element of the program, the team was challenged to provide a total of approximately 12,000 linear feet of roadway improvements while imposing minimal impact to the traveling public. This work included a phased realignment of existing southern roadways, reconstruction of existing northern roadways, and new roadways in the center of the airport. The addition of two new concrete bridges, as well as improved roadway signage and lighting, provide for more efficient circulation between terminals and ease past vehicle congestion challenges. The new ground transportation island in front of Terminal B provides a higher level of convenience and overall customer satisfaction. In addition, coordination with other project elements has produced a number of utility upgrades to accommodate terminal improvements and effective entrance/exports for the new Consolidated Rent-A-Car Facility. To offset the parking impact of construction of the ConRAC Facility, this portion of the work also included a temporary surface parking lot for airport customers.
Recap of the 2010 Labor Negotiations

By Mark Reynosa,
Field Services Manager – Industrial Relations Northern California

The 2010 labor negotiations were long and challenging. The union construction industry faced pressure from all angles. The Pension Protection Act of 2006, Patient Protection and Affordable Care Act (Health Care Reform), mortgage-backed securities (housing bubble), credit crunch, and bids below engineer estimates became too well-known. It was in this economic environment, which some pundits have coined the “2nd Great Depression,” that labor and management had to meet and negotiate.

The results of the 2010 negotiations depend upon your perspectives, but the fact of the matter is that federally mandated law, which AGC of America is working to address, considerably impacted the memberships on both sides. With that said, the following is a brief review of the new Master Labor Agreements that were negotiated and ratified by AGC’s union signatory membership in 2010 and a comparison of these negotiations to previously negotiated labor agreements.

In total, eight new stand-alone Master Labor Agreements were negotiated in 2010. In Northern California, labor agreements were negotiated with the Laborers (Master, Traffic Control/Highway Improvement & Tunnel Agreements), Operating Engineers, and Teamsters. In Southern California, labor agreements were negotiated with the Laborers (Parking & Highway Improvement Agreement) and Operating Engineers as well as continuing negotiations with the Teamsters. Statewide, the Iron Workers’ agreement was extended for a year without any monetary increases or language changes. On behalf of the industry, the new terms and conditions of these agreements have been or will be published with the California Department of Industrial Relations for their respective prevailing wage determinations.

With slight exceptions, the term length and the monetary increases are trending downwards in comparison with agreements that were negotiated in 2008 and 2009. The value of these shorter termed agreements will be determined in the next labor agreement negotiations. In Northern California, all monetary increases have been pre-allocated to benefits with a freeze to wages.

Looking at the forecast and the historical trust fund data, the contribution hours that are being reported to the plans are near (above and below depending on the craft) the yearly average going back to the early 1980s. This data indicates that the highs we are coming down from were well above the historical yearly average. As a result, labor and management cannot rely on the assumption that work and contribution hours will be increasing any time soon and will have to work together to address the short term competitiveness and the long term viability of the labor agreements.

As the only statewide association and association with national advocacy and resources, the AGC’s IR Departments will be focused on this effort as 2011 will be another busy year. For more information about AGC’s IR services, please visit our website at http://www.agc-ca.org/services/industrial/ or contact the IR Department South at (626) 608-5800 or North at (925) 827-2422.
Blois Construction Celebrates 45 Years

In 2010 longtime AGC member firm Blois Construction, Inc., based in Oxnard, is celebrating its 45th year in business. Founded in Goleta, CA in 1965 by Bob Blois, Blois Construction, Inc. has retained the same core values and practices - an emphasis on quality of service and integrity as the backbone of its daily operations.

Blois is a heavy civil underground contractor and has been involved in a broad range of projects - sewer, water, storm drain, concrete structures and channels, treatment facilities, pump stations, and more - in a variety of markets in Southern California. Project sizes can vary from $100,000 to $30 million.

Jim Blois, president and second-generation owner of the company, assumed control in 2003 in a buy out of his brother, Steve. The company has experienced significant growth in recent years. With an emphasis on collaboration, teamwork, communication, and learning, Blois has made great strides in further strengthening its capabilities and competitiveness over both the short and the long run in the construction industry. At the heart of Blois is the quality and character of its people, and the equal respect that is given to everyone, regardless of their position in the company.

To learn more, visit www.bloisconstruction.com.

Jerry Dean Bruyneel
Emeritus AGC of CA Member Dies

AGC has lost a longtime friend and supporter with the passing of Jerry Dean Bruyneel last month. Bruyneel was a long time member of AGC of California and served the Riverside/San Bernardino District as an active Board member and past 1999/2000 District Chair. He participated on numerous statewide committees including serving on the Associates Council from 1993 to 2005, as Chair of that Council from 2003/2004 and on the Awards Committee from 2002-2009 among other things. Bryneel was the recipient of the Associate of the Year Award in 2000 as well as being honored with an emeritus membership in 2005.

Due to his strong membership recruitment efforts, Bruyneel was a lifetime member of the AGC of California President’s Club. He won recognition as top recruiter in AGC’s Membership Contest in Southern California and also later for a statewide competition. He worked for many years in the ready-mix concrete business in Southern California.

Bruyneel is survived by his mother, Vera; wife, Catherine; twin brother, John; sisters, Donna Kraemer and Shirley Childs; and his children, son, Joseph and wife, Kelly; daughter, Jacquie Taborda; sons, Justin, Jared and wife Brittney; daughter in law Angela Moya; six grandchildren and many nieces and nephews.

Services were held on October 8 in San Bernardino. In lieu of flowers, the family requested donations to be made in his honor to Civitan Little League, 5675 Belvedere Ave., Highland CA 92346.

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How To “Win” A Mediation: Get the Settlement You Want

By Richard A. Holderness

“Winning” a mediation is getting the settlement you want. But what do you want? Other than every dime you are claiming plus a letter of apology? If that is what you really want, then the mediation will be a lengthy, wrenching, and wasteful effort. But if you take a reality pill and harshly calculate what you want for a settlement rather than what you would like to win big at trial or arbitration, then you might get a settlement that is as good as or better than a big win at trial or arbitration.

1. What do you want?

The famous mediation consultants, the Rolling Stones, said it best: “You can’t always get what you want… But if you try sometimes, well you might find, You get what you need.”

To get the settlement you want, you first have to decide what you need. What you need is a settlement that is the same as you could realistically expect to get at trial or arbitration. The “same” does not mean the same dollar amount but means the same net value if you got the settlement today instead of a big win two years from now after massive expenses and taking huge risks. (If you think your claim is bulletproof and has no risk, then you are about to join a very long list of hugely surprised and bitterly disappointed contractors.)

2. What do you need?

Simple: take a reality pill, rather than smoke whatever most contractors smoke before mediation that causes them to hallucinate about what they want for a settlement. That reality pill will show that what you need is a settlement that is the equivalent of what you realistically could expect to get at trial or arbitration after deducting the buckets of money you will dump into the bottomless pit of attorney fees and other costs. (That’s assuming you win, which is never a safe assumption, as many bitterly disappointed contractors have painfully discovered.)

a. What will you get if you win?

If you win big, the reality is that you will be lucky to get 75% of your claim, and probably much less. Why? Because construction claims are complex, both factually and financially. The facts will not support your claim as 100% correct and not every dollar in your claim will be 100% recoverable. Beware: the greater your belief that your claim is bulletproof, the greater your chance of severe disappointment.

To determine what you need, you should start by discounting the face amount of your claim by at least 25%, probably more. For instance, if your claim is $1,000,000, discount it to $750,000 or less, and less is probably more realistic.

b. What will it cost?

What will it cost to get whatever disappointing amount you get at trial or arbitration? That cost is comprised of three components: attorney fees, your internal costs, and your lost production.

How much will the attorney fees be? (Other than the gross domestic product of a small developing nation.) Attorney fees through trial or arbitration easily will be in excess of 25% of the face amount of the claim, with a more realistic percentage being 50%. So now discount your $1,000,000 claim by another 25%, or more, to bring it down to $500,000, or less.

How much will your internal costs be? Those costs are the wages and benefits paid to your employees while they are working on the claim through trial or arbitration and the general overhead allocated to those employees (the lights and heat stay on while the employees are working on the claim). Contractors who have kept track – including an allocation of general overhead – have found that their internal costs equal or exceed the attorney fees. How? Because their employees spent countless hours collecting and analyzing facts, reviewing documents, working with attorneys, answering interrogatories, preparing for depositions, having their depositions taken, preparing to testify, and testifying at the trial or arbitration. So now discount the $1,000,000 by another 25% to bring it down to $250,000, which optimistically might be your net recovery at trial or arbitration after deducting what you spent to get there.

But wait! (Like TV marketing.) One more thing. What is your lost production? Simple: while your employees are working countless hours on the claim, they are not doing the productive work you pay them to do. Although this loss may be impossible to quantify, it is real and includes everybody from you to your officers, managers,
superintendents, foremen, and field workers. That real but intangible cost must be factored into any settlement decision.

3. Doom and gloom

Through the prism of harsh reality, the outlook for your claim is gloomy: your $1,000,000 claim is worth only $250,000 in settlement, and probably less because a 75% recovery may too optimistic, the $250,000 in attorney fees too low, and your $250,000 in internal costs too low.

But now you are in a position to negotiate. You have taken the reality pill. You know your downside; you know your risks. You know that a settlement for only 25% of your claim may be the same as a big win at trial or arbitration. You know that a 25% settlement would be painful but acceptable. It may be an insult; it may be infuriating; but it is acceptable. You will not make the mistake of emotionally rejecting it as an insult because you know it is actually the same as a big win at trial or arbitration.

You might eventually accept 25%, but that is not where you start. That might be where you end, but it is not where you begin. You start negotiating with an optimistic amount that will show resolve and determination but will keep the mediator and your opponent interested in making a diligent effort to settle.

You do not walk into a mediation, say your claim is worth less than 25% and beg for mercy. Instead, you negotiate for the best deal you can get. You might get it by noon; you might get it much later; but you know that anything more than a 25% settlement is a good deal. The more, the better, but at least you won’t blindly walk away from an offer that superficially appears too low but is actually a good deal.

4. Reality pill for your opponent

Your opponent should have taken its own reality pill but if it has not, the mediator will cram one down its throat. That reality pill will force your opponent to view settlement through the same prism of harsh reality, but from the other end of the telescope. For instance, harsh reality will tell your opponent that your claim is worth at least 25% of its face amount and that it will cost your opponent $250,000 in attorney fees and $250,000 in internal costs to get through trial or arbitration. Add those numbers together and settlement becomes a distinct possibility – at an amount that is tolerable to both you and your opponent.

Richard Holderness is an arbitrator/mediator with Seyfarth Shaw LLP, San Francisco.

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Calendar of Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 11</td>
<td>Fall Protection Competent Person Level I in San Bernardino</td>
</tr>
<tr>
<td>November 13</td>
<td>Trench, Shoring and Excavation - Competent Person training at Trench Shoring office</td>
</tr>
<tr>
<td>November 16-17</td>
<td>CESSWI - Certified Erosion, Sediment, &amp; Storm Water Inspector Training at the AGC Headquarters in West Sacramento</td>
</tr>
<tr>
<td>November 19</td>
<td>CPR/First Aid/AED Certification Training in Anaheim</td>
</tr>
<tr>
<td>November 20</td>
<td>Tri-Counties District Installation Awards Dinner &amp; Show at the Hotel Mar Monte, Santa Barbara</td>
</tr>
<tr>
<td>November 22-24</td>
<td>OSHA 30-Hour Construction Safety Course in Santa Ana</td>
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<tr>
<td>November 23</td>
<td>Confined Space Entry Training in Santa Ana</td>
</tr>
<tr>
<td></td>
<td>OSHA 10-Hour Construction Safety Course in San Bernardino</td>
</tr>
<tr>
<td>December 1</td>
<td>Trench, Shoring and Excavation - Competent Person in Anaheim</td>
</tr>
<tr>
<td>December 3</td>
<td>HAZWOPER Annual Refresher Training in Anaheim</td>
</tr>
<tr>
<td>December 6</td>
<td>Inefficiency &amp; Differing Site Conditions Claims seminar at National University in Costa Mesa</td>
</tr>
<tr>
<td>December 7</td>
<td>Aerial Lift/Fall Protection Awareness in Sacramento</td>
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<tr>
<td></td>
<td>San Francisco Bay Area District Annual Holiday Dinner at Campo Di Bocce in Livermore</td>
</tr>
</tbody>
</table>
AGC Supports Successful 2010 Construction Career Day in Vallejo

By Erin M. Volk
Director, Construction Education Foundation

The 2nd annual Vallejo Construction Career Awareness Day (CCAD) took place on October 7 at the Kiewit Infrastructure West Co. Maintenance Yard in Vallejo, CA. Hosted by Kiewit Infrastructure West Co. and supported by AGC’s Construction Education Foundation as well as many local area contractors, suppliers, labor unions and educational institutions, the event drew over 750 students from 16 area high schools.

This annual event in Vallejo is part of a larger effort by the AGC Construction Education Foundation, which sponsors and supports similar events each year in locations across the state. Although the events vary from city to city, the overall goal of Construction Career Awareness Days remain the same: to outreach and educate the next generation about career opportunities available to them in the construction industry.

The 2010 Vallejo Career Day included over 30 exhibitors. This year’s event also included educational workshops and speakers, which allowed students to hear directly from industry and education professionals about the different opportunities, construction careers and educational paths available to them. Exhibitor booths included twice the number of hands-on activities from last year, giving students the first-hand experience with various equipment and operations used within the industry. The students were given time to participate in the exhibits, while industry and education professionals overseeing the activities required them to complete a series of questions on a “time card” which was signed off on by the exhibitors and turned in for a grand prize drawing.

Current AGC Education Foundation and AGC Delta-Sierra District Scholarship recipient, Jose Buenrostro, addressed the students at lunch and encouraged them to consider the construction industry as an option for their future. Buenrostro is a student in the Construction Management program at CSU, Sacramento and a project engineer at Tony Moayed Construction Services, Inc. He shared with the students his background as a first generation American and described his journey from picking strawberries in Salinas, CA to realizing his goals of pursing a college education in construction management and a career in construction.

Thirty-eight companies and organizations participated in the event by providing displays, presentations, volunteering, and/or financial support.

Tony Grasso, Vice-Chair of the AGC Construction Education Foundation Board of Directors, commented, “The overall mission of the AGC Construction Education Foundation is to establish construction as a viable career option and to promote the development of construction careers. One of the ways we realize that mission is through...
the execution of events like Construction Career Awareness Days. These events provide the construction industry with a unique opportunity to engage students in diverse career options they’ve never considered before and it also provides a very exciting experience for those students who are already interested in doing so. The companies participating in the ‘Construction Career Awareness Day’ are aware of the workforce gap the construction industry is facing in the next several years and have taken a leadership role in volunteering their time and money to show the students the advantages that awaits them in this industry. These companies participate because they understand that we, as industry leaders, have a responsibility to help develop and mentor the next generation of work force. On behalf of the AGC Construction Education Foundation, I thank the companies who have participated in this event.”

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### 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>Project City</th>
<th>Reported Low Bid Amount</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Folsom Dam Control Structure</td>
<td>Folsom</td>
<td>$127,628,867</td>
<td>Granite Constr. (Sacra.)</td>
</tr>
<tr>
<td>Puente Hills Intermodal Facility and Railroad Improvements</td>
<td>City of Industry</td>
<td>$79,330,000</td>
<td>USS Cal Builder</td>
</tr>
<tr>
<td>CA/DOT Rehabilitate Concrete And Asphalt Concrete Pavement</td>
<td>Pasadena</td>
<td>$52,499,602</td>
<td>Flatiron</td>
</tr>
<tr>
<td>North Stockton Railroad Grade Separations/</td>
<td>Stockton</td>
<td>$38,747,806</td>
<td>RGW Construction</td>
</tr>
<tr>
<td>Bridge Replacement PW0517</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CA/DOT Highway Widening</td>
<td>Antoch</td>
<td>$35,727,083</td>
<td>R &amp; L Brosamer, Inc.</td>
</tr>
<tr>
<td>CA/DOT Asphalt Concrete Resurfacing</td>
<td>Lakehead</td>
<td>$30,051,593</td>
<td>Mercer-Fraser Company</td>
</tr>
<tr>
<td>CA/DOT New 4-lane With Hma &amp; Crcp 11167894</td>
<td>Brawley</td>
<td>$29,508,262</td>
<td>Granite Construction</td>
</tr>
<tr>
<td>Arts Building at Pasadena City College 871</td>
<td>Pasadena</td>
<td>$28,240,007</td>
<td>EDGE Development Inc</td>
</tr>
<tr>
<td>Tulare Domestic Wastewater Treatment Plant</td>
<td>Tulare</td>
<td>$26,000,000</td>
<td>American Incorporated</td>
</tr>
<tr>
<td>Ph I Improvements to the Terminal Area at Long Beach Airport R6815</td>
<td>Long Beach</td>
<td>$25,562,186</td>
<td>FTR International Inc</td>
</tr>
</tbody>
</table>

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**The Voice of the Construction Industry**

Associated General Contractors of California
Upcoming I2P2 Offers Another Reason For Employers to Strengthen Their Safety Programs

By Steve Phetteplace

What is I2P2 and why should we care? No, it’s not R2D2’s brother. It is not a new Star War’s character. I2P2 is the new acronym coined by the Federal Occupational Safety and Health Administration (OSHA’s) director, Dr. David Michaels, to designate OSHA’s push to create a nationwide Illness, Injury Prevention Program. Federal OSHA now seeks to have the specificity of a written IIPP requirement in order to be more aggressive in writing citations and enforcing safety regulations.

Secretary of Labor, Hilda Solis has indicated that there is a new sheriff in town. She intends to do more inspections and issue larger fines. According to Jordan Borab, Deputy Assistant Secretary of Labor, completion of the I2P2 standard will be the most important project for the agency under the Obama administration. This is in spite of the fact that injuries, illnesses and deaths are down nationwide. News-grabbing incidents like the Gulf oil spill, the mine disasters in West Virginia and Utah as well as refinery explosions in Texas makes worker safety a high priority for this new administration.

California’s IIPP

California has had an Illness, Injury Prevention Program (IIPP) requirement since the passing of SB 198 in 1991. Only 12 OSHA state plans have IIPP program mandates. Federal OSHA administered programs lack a written IIPP requirement and rely on citations under the General Duty Clause also called “5 (a)(1) citations.” California’s IIPP is spelled out in General Industry Section 3203 and Construction Section 1509. Citations under §3203 are the most frequent Cal-OSHA citations. Citations under §1509 are the third most cited standard behind heat illness prevention ($3395).

Rule §3203 is being used increasingly as a General Duty Clause where an employer can be cited for an infraction, say for machine guarding ($3577), then also cited under §3203 (a) for failure to maintain a written IIPP and §3203(a)(7)(B): failure to train new hire. Such double citations can also create the basis for future repeat, serious or willful citations.

OSHA is undertaking a rule making effort directed toward requiring employers to establish injury and illness prevention programs. The goal is to monitor and more effectively implement practices to mitigate workplace hazards, thereby reducing the incidence of employee injuries and illnesses.

The goal for I2P2 is to have a written standard in place by 2011. Since June, there have been five stakeholder meetings in different parts of the country to gauge support for the proposed standard. The meeting in Sacramento on August 3rd gave California stakeholders an opportunity to speak out on California’s IIPP. Approximately 100 representatives from management, labor, trade associations, and safety professionals as well as the public attended the session. They expressed overwhelming support for California’s program.

With such a fast paced agenda, expect Federal OSHA to move ahead with surveys, interviews and job site analysis. Once a draft program is penned, there will be hearings and requests for public comment. California companies, associations, unions and other stakeholders will have an excellent opportunity to influence the final form of this proposed standard.

What Should You Do Now?

For companies located solely in California, strengthening your injury, illness protection program will make your company less vulnerable to injuries and illnesses. It will protect you from citations and it will give your company a defense to a citation based on the independent employee action defense (IEAD).

For companies that have work sites and offices in states outside of California, adopting California’s guidelines will prepare your company for the federal changes ahead with I2P2. A final I2P2 regulation will not differ radically from California’s gold standard.

Document all elements of your program. Keep your program up to date. Keep current copies of your program at all work sites. Don’t let your program gather dust on a shelf. This is a living document.

I2P2 Program Elements:

OSHA is considering all input in drafting the proposed rule but has stated that an I2P2 rule would include the following elements:

- Management duties: Establish a company policy setting goals; planning and allocating resources; assigning and communicating roles and responsibilities.
- Employee participation: Involving employees in establishing, maintaining and evaluating the program.
- Hazard identification and assessment.
- Hazard prevention and control: Hazards must be controlled; hazard control priorities established and the effectiveness of the controls evaluated.
- Education and training: This includes items such as content of training, relationship to other OSHA training requirements, and periodic training and retraining.
- Program evaluation and improvement: This includes items such as monitoring performance, correcting program deficiencies, and improving program performance.

I2P2: The Opportunity and Challenge

The new Federal I2P2 should be seen as an opportunity to upgrade your safety program and create a safer workplace. The challenge is to see this as an opportunity, not a burden. Whether your company is only in California or in multiple states, adopting California’s IIPP will give you a head start with the new I2P2. 🎓
Over the last 18 years, the California Department of Transportation (Caltrans) has recognized the many benefits of partnering on our transportation projects, including reduced costs, reduced claims and improved safety.

What is Partnering

Many times we hear people talk about how they partner (lower case p) with each other to coordinate an activity or an event. While this is appropriate in some instances, it is not the type of partnering we are referring to. The established process of Partnering (uppercase P) at Caltrans involves the project stakeholders communicating and documenting their commitments to common values, achieving mutual project goals, and resolving issues timely through the use of a dispute resolution ladder. By documenting their commitments and communication channels, the team can move forward knowing how to quickly resolve challenges and disputes during the construction phase.

An equally important component of Partnering is developing trust and understanding among the team members. It is important that team members adopt partnering values such as openness, trust, fairness, and respect. It is from values that our attitudes emerge and our behaviors evolve.

Understanding partnering elements is integral to creating the right atmosphere in which partnering can succeed. Elements of a partnered project include a partnering charter that defines the project goals, a dispute resolution plan that defines the process and schedule for elevating issues, and a partnering maintenance plan to ensure continuous communication and development of the relationship. Also included are professionally-facilitated partnering meetings and training on a regular basis, which provides a framework for the teams.

The Caltrans Construction Partnering Steering Committee

In 2006, Caltrans and the construction industry took a significant step forward by re-establishing the Caltrans Construction Partnering Steering Committee (CCPSC) whose members consist of both industry and Caltrans executives and managers. The CCPSC looks at opportunities to improve the process in which transportation projects are constructed using partnering techniques.

The four areas that the CCPSC is currently focusing on are:
- Strategic Partnering with Small Business
- Design through Construction Strategic Partnering
- Partnering Outreach
- Storm Water Pollution and Prevention Direction and Implementation

The CCPSC identified improvements to the program. For example, the first was requiring professionally-facilitated partnering on projects over $10 million. In addition, even though Partnering is not required on all Caltrans projects, it is considered a best practice that is encouraged. Also, the “Field Guide to Partnering on Caltrans Projects” was updated. Following these was the development and delivery of the Fundamentals of Partnering training. This one-day course educates both owners (Caltrans, local transportation agencies) and the construction industry on the partnering process and tools outlined in the Field Guide. Over the last two years, 2,500 Caltrans and construction industry workers have received this training and are putting their partnering skills to good use.

While this course is offered by Caltrans, it is open to a wide range of construction industry personnel free of charge.

Caltrans is leading the way by making partnering on transportation projects in California our way of doing business. For our accomplishments, Caltrans recently received the International Partnering Institute’s “Partnering Champion” award in recognition of making Partnering Our Way of Doing Business.

Future of Partnering

Mark Leja, Caltrans Division Chief of Construction and Chairman of the CCPSC, envisions sustainability of the program as one of the highest priorities. Therefore, we will be focusing on ways to ensure partnering continues to be our way of doing business. We will also be developing performance measures to validate the effectiveness of partnering. In addition, we will be exploring more ways to broaden the positive effects of partnering.

If Partnering is new to you or you would like more information about the Caltrans Partnering Program and training, please visit www.caltranspartnering.com.

Ken Solak P.E. is Caltrans Construction Partnering Coordinator.
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