

The Official Publication of the Power & Communication Contractors Association

PCCA J o u r n a l

4th Quarter 2010



Managing Subcontractors in the Midst of Economic Meltdown

Also Inside

- Stimulus Funding Offers Opportunity and Anxiety for Broadband Contractors
- 2011 PCCA Convention Preview



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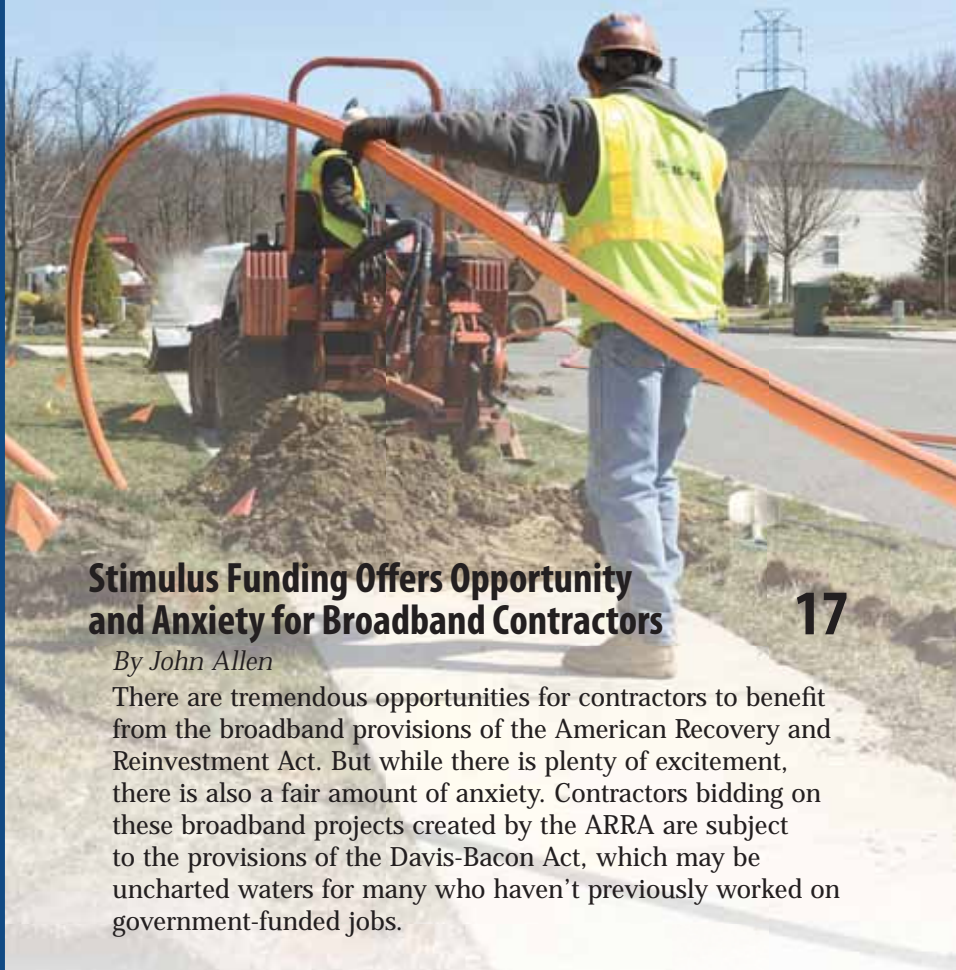
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Stimulus Funding Offers Opportunity and Anxiety for Broadband Contractors

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By John Allen

There are tremendous opportunities for contractors to benefit from the broadband provisions of the American Recovery and Reinvestment Act. But while there is plenty of excitement, there is also a fair amount of anxiety. Contractors bidding on these broadband projects created by the ARRA are subject to the provisions of the Davis-Bacon Act, which may be uncharted waters for many who haven't previously worked on government-funded jobs.

Managing Subcontractors in the Midst of Economic Meltdown

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By Gregory T. Spalj

The current economic decline has hit the stage when those who were just hanging on by their fingernails are starting to fail and fall. While contractors must always be attentive to ensure that subcontractors are passing along payments to lower-tier subcontractors, the impact of the current economy now requires that contractors be ever more vigilant in protecting themselves and their sureties from bond claims and mechanic's liens by reason of payments diverted by an upper-tier subcontractor that should have been passed on to a lower-tier subcontractor.

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USDA Announces 43 New Recovery Act Broadband Projects

On September 13 Agriculture Secretary Tom Vilsack announced the funding of 43 new broadband infrastructure projects that will create jobs and provide rural residents in 27 states and Native American tribal areas access to improved internet service. Funding is provided through the American Recovery and Reinvestment Act (Recovery Act).

“The broadband projects announced today will give rural Americans access to the tools they need to create jobs and access improved health care and educational opportunities,” Vilsack said. “These projects will not only create jobs for the people who will build these networks, the completed systems will provide a platform for rural economic growth for years to come.”

One example is in Louisiana, where Pride Network, Inc. will receive an \$18.4 million loan and a \$17.7 million grant to deploy a fiber-to-the-premises network to bring broadband service to St. Helena, Washington, and Tangipahoa Parishes. The project will benefit approximately 25,000 residents, 3,000 businesses, and about 200 community facilities. The company estimates the project will create 1,300 jobs.

In Washington state, EcliptixNet Broadband, Inc. will receive a \$6.1 million loan and a \$14.3 million grant to provide high-speed broadband service to rural portions of Ferry, Stevens, and Spokane counties. Upgraded service will be available to over 68,000 residents, 3,600 businesses and 300 community facilities. The company estimates the project

will create 230 jobs.

In all, \$518 million will be invested in the 43 broadband infrastructure projects with funding made available through the Recovery Act. An additional \$34.1 million in private investment will also be committed to the projects. By leveraging \$2.5 billion in Recovery Act funding authorized by Congress, USDA has been able to provide loans and grants of \$3.6 billion to construct

307 broadband projects in 46 states and one territory.

Funding is contingent upon the recipient meeting the terms of the loan, grant or loan/grant agreement. A complete list of projects receiving Recovery Act broadband grant awards today can be viewed in full at http://www.usda.gov/documents/ARRA_PDF_09-14-2010.pdf or by calling Mike Ancell at PCCA, (703) 212-7734.

Biden Announces Broadband Investments

Vice President Biden on August 18 announced 94 Recovery Act investments in broadband projects that will create jobs and expand economic opportunities within 37 states. These investments in high-speed internet infrastructure will help bridge the technological divide in communities that are being left in the 20th century economy and support improvements in education, healthcare, and public safety. The August announcement included an investment totaling \$1.8 billion.

The projects receiving funds are part of a program administered by the Department of Commerce’s National Telecommunications and Information Administration and the Department of Agriculture’s Rural Utilities Service to expand broadband access and adoption across the country.

The announcement includes 66 grants awarded by the Commerce Department for projects to deploy broadband infrastructure and connect community anchor institutions to broadband, create and upgrade public computer centers, and encourage the sustainable adoption of broadband service. It also includes 28 awards from USDA for broadband infrastructure and satellite projects that will provide rural residents in 16 states and Native American tribal areas access to improved service.

A complete list of projects in the August 18 announcement can be viewed in full at www.whitehouse.gov/sites/default/files/microsites/20100818_Broadband_Awards.pdf or by calling Mike Ancell at PCCA, (703) 212-7734.

USDA Announces Support for Rural Electric Infrastructure Improvements

On August 30, Agriculture Secretary Tom Vilsack announced that 37 rural utilities and cooperatives in 20 states have been selected to receive guaranteed loans that will benefit more than 60,000 rural electric cooperative consumers by financing the construction and repair of almost 7,000 miles of distribution and transmissions lines.

“USDA is investing in electric infrastructure improvements to provide reliable and affordable power to homes and business in rural America,” Vilsack said. “These guaranteed loans will enable cooperatives to deliver better service to rural customers.”

The \$1.2 billion in funding is being awarded through USDA Rural Development’s Electric Program. This program provides loans and guaranteed loans to electric utilities to upgrade, expand, maintain, and replace rural America’s electric infrastructure. The Electric Program also helps fund energy conservation and renewable energy system projects.

Funding of each recipient is contingent upon their meeting the conditions of the guaranteed loan agreement. The following is a list of rural utilities that were selected to receive funding.

Alabama

- Sand Mountain Electric Cooperative, a \$17,000,000 guaranteed loan build 215 miles of new distribution line and make improvements to 34 miles of distribution line.

Arkansas and Oklahoma

- Arkansas Valley Electric Cooperative Corporation, a \$60,000,000 guaranteed loan to build 365 miles of new distribution line and four miles of transmission line and make improvements to 118 miles of distribution line.
- Rich Mountain Electric Cooperative, a \$12,500,000 guaranteed loan to build 69 miles of new distribution line and one mile of transmission line and make improvements to 51 miles of distribution line.

Arkansas, Louisiana, Missouri, Oklahoma, and Texas

- Arkansas Electric Cooperative Corporation, a \$620,960,000 guaranteed loan for system improvements and emission control projects to its existing generation facilities.

Colorado

- Mountain View Electric Association, Inc., a \$58,688,000 guaranteed loan to build 257 miles of new distribution line and make improvements to 147 miles of distribution line.
- K.C. Electric Association, Inc., a \$3,823,000 guaranteed

loan to build 26 miles of new distribution line and make improvements to 23 miles of distribution line.

- Grand Valley Rural Power Lines, Inc., a \$15,707,000 guaranteed loan to serve 449 existing consumers and build 40 miles of new distribution line.

Georgia

- Habersham Electric Membership Corporation, a \$22,338,000 guaranteed loan to build 213 miles of new distribution line and make improvements to 31 miles of distribution line.

Iowa

- Maquoketa Valley Rural Electric Cooperative, a \$3,000,000 guaranteed loan to build 34 miles of new distribution line and make improvements to 55 miles of distribution line.

Kentucky

- Jackson Energy Cooperative Corporation, a \$20,000,000 guaranteed loan to build 152 miles of new distribution line and make improvements to 116 miles of distribution line.
- Meade County Rural Electric Cooperative Corporation, an \$18,560,000 guaranteed loan to build 60 miles of new distribution line and make improvements to 309 miles of distribution line.
- Clark Energy Cooperative, Inc., a \$14,000,000 guaranteed loan to build 104 miles of new distribution line and make improvements to 54 miles of distribution line.

Minnesota and Iowa

- Tri-County Electric Cooperative, a \$25,000,000 guaranteed loan to build 70 miles of new distribution line and make improvements to 79 miles of distribution line.

Minnesota

- Minnesota Valley Cooperative Light & Power Association, a \$16,000,000 guaranteed loan to build 40 miles of new distribution line and 27 miles of transmission line and make improvements to 36 miles of distribution line.
- Red River Valley Cooperative Power Association, an \$8,000,000 guaranteed loan to build 46 miles of new distribution line and make improvements to 41 miles of distribution line.
- Lake Country Power, a \$72,000,000 guaranteed loan to build 210 miles of new distribution line and make improvements to 231 miles of distribution line.
- Lake Region Electric Cooperative, a \$13,400,000 guaranteed loan to build 152 miles of new distribution line and make improvements to 25 miles of distribution line.

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RDUP News

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- Arrowhead Electric Cooperative, a \$4,620,000 guaranteed loan to build 8 miles of new distribution line and make improvements to 16 miles of distribution line.

Missouri

- Crawford Electric Cooperative, Inc., a \$16,000,000 guaranteed loan to build 82 miles of new distribution line and make improvements to 51 miles of distribution line.
- Barry Electric Cooperative, a \$3,370,000 guaranteed loan to build 34 miles of new distribution line

Montana

- Big Flat Electric Co-Op., Inc., a \$2,177,000 guaranteed loan to build 13 miles of new distribution line and make improvements to 88 miles of distribution line.

North Carolina

- Pee Dee Electric Membership Corporation, an \$11,000,000 guaranteed loan to build 125 miles of new distribution line and make improvements to 42 miles of distribution line.
- Brunswick Electric Membership Corporation, a \$16,000,000 guaranteed loan to build 113 miles of new distribution line.
- Randolph Electric Membership Corporation, a \$25,000,000 guaranteed loan to build 113 miles of new distribution line and nine miles of transmission lines.

New Mexico

- Roosevelt County Electric Cooperative, Inc., a \$16,412,000 guaranteed loan to build 67 miles of new distribution line and make improvements to 33 miles of distribution line.
- The Socorro Electric Cooperative, Inc., a \$23,074,000 guaranteed loan to build 344 miles of new distribution line and 16 miles of transmission line and make improvements to 75 miles of distribution line.

Ohio

- Holmes-Wayne Electric Cooperative, Inc., an \$11,000,000 guaranteed loan to build 44 miles of new distribution line and make improvements to 147 miles of distribution line.

Oklahoma

- Red River Valley Rural Electric Association, a \$4,420,000 guaranteed loan to build 30 miles of new distribution line
- Cotton Electric Cooperative, Inc., an \$8,851,000 guaranteed loan to build one mile of new distribution line.

Oklahoma and Texas

- Southwest Rural Electric Association, Inc., a \$4,494,000 guaranteed loan to build 58 miles of new distribution line.

South Dakota

- Whetstone Valley Electric Cooperative, Inc., a \$3,974,000 to build 19 miles of new distribution line and make improvements to 53 miles of distribution line.
- FEM Electric Association, Inc., a \$7,354,000 guaranteed loan to build 27 miles of new distribution line and make improvements to 285 miles of distribution line.
- Douglas Electric Cooperative, Inc., a \$1,200,000 guaranteed loan to build seven miles of new distribution line and make improvements to 46 miles of distribution line.

Tennessee and Virginia

- Powell Valley Electric Cooperative, a \$12,000,000 guaranteed loan to build 186 miles of new distribution line and make improvements to 52 miles of distribution line.

Texas

- Heart of Texas Electric Cooperative, Inc., a \$17,000,000 guaranteed loan to build 221 miles of new distribution line and make improvements to 395 miles of distribution line.

Virginia

- Southside Electric Cooperative, an \$18,533,000 guaranteed loan to build 264 miles of new distribution line and one mile of new transmission line and make improvements to 164 miles of distribution line.

Wisconsin

- Oconto Electric Cooperative, a \$9,000,000 guaranteed loan to build 30 miles of new distribution line and 15 miles of transmission line and make improvements to 94 miles of distribution line. ■

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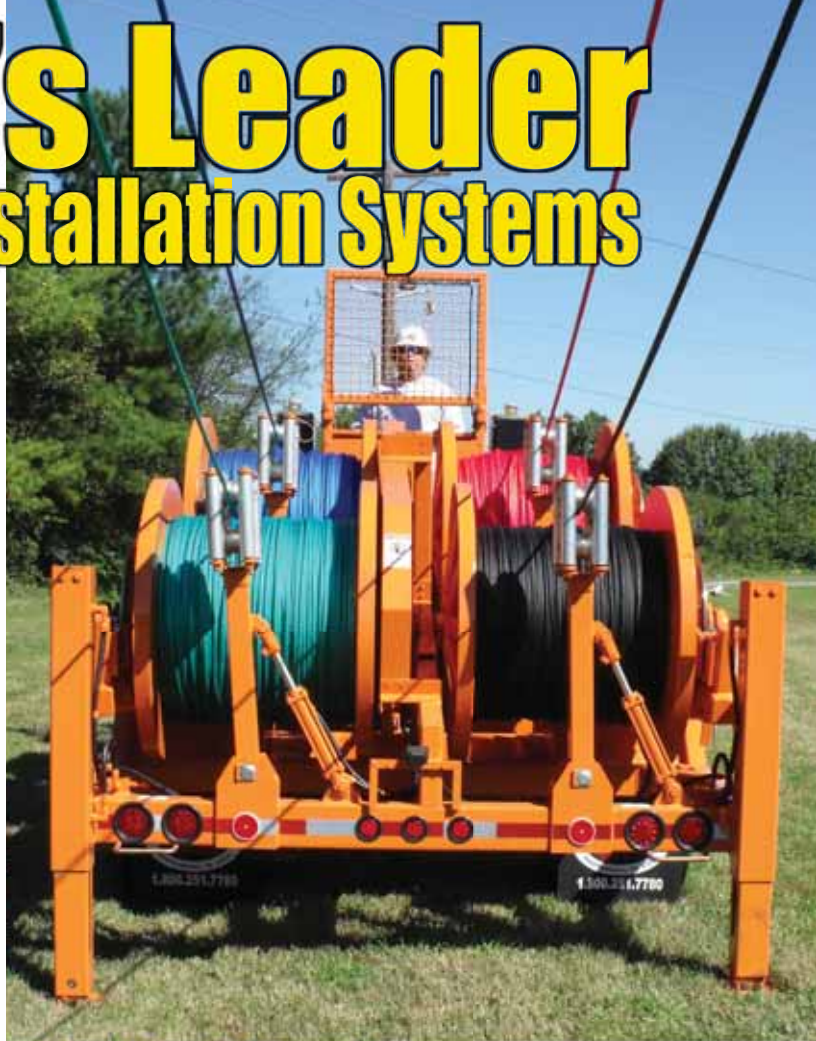
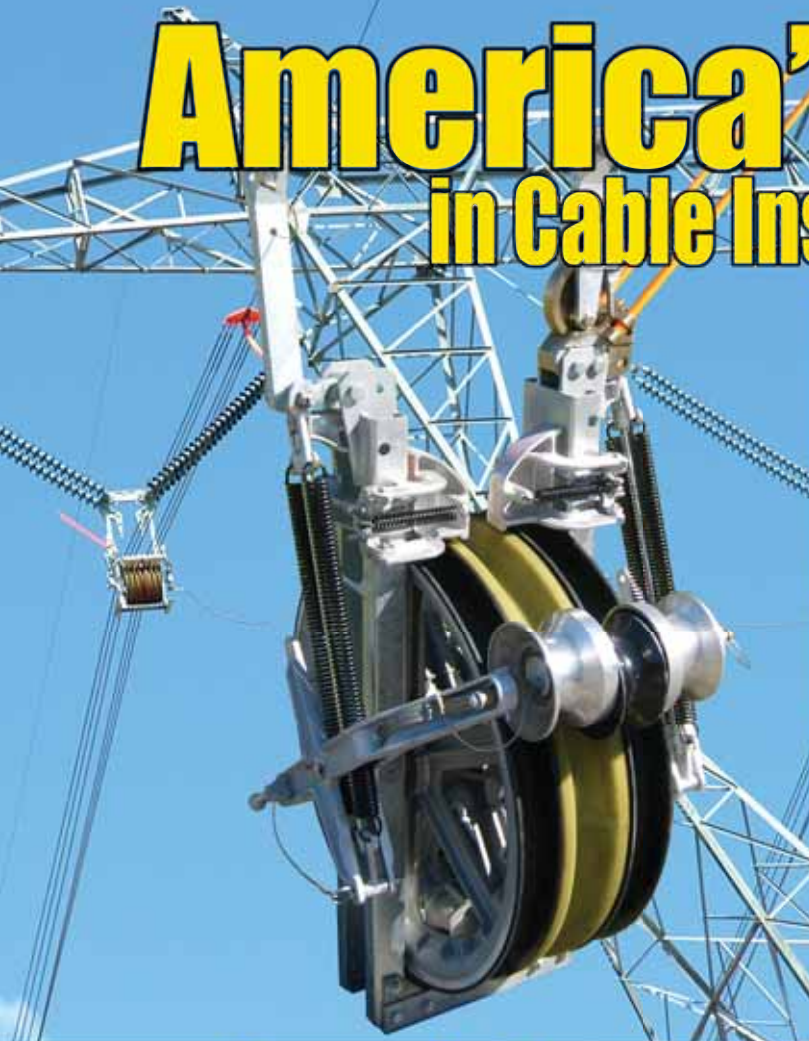
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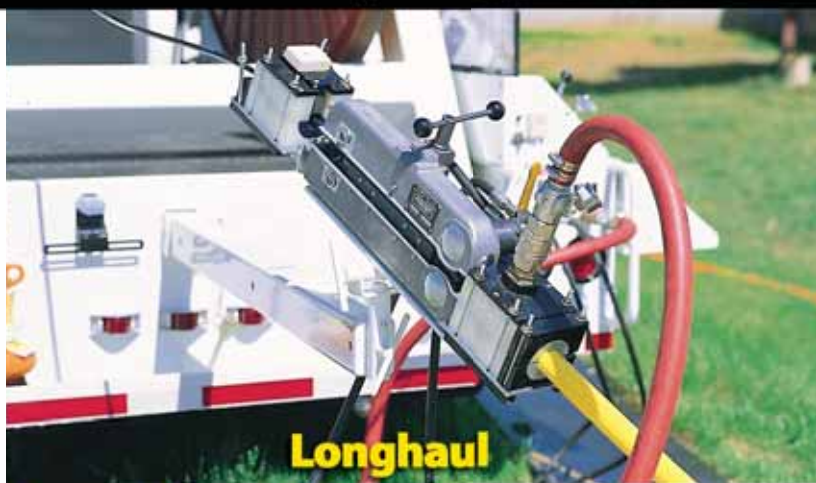


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Pew Research Center: Home Broadband 2010

The adoption of broadband internet access slowed dramatically over the last year, according to research from the Pew Research Center's Internet & American Life Project. Two-thirds of American adults (66 percent) now have a broadband internet connection at home, a figure that is little changed from the 63 percent with a high-speed home connection at a similar point in 2009.

Most demographic groups experienced flat-to-modest broadband adoption growth over the last year. The notable exception to this trend came among African-Americans, who experienced 22 percent year-over-year broadband adoption growth.

By a 53-41 percent margin, Americans say they do not believe that the spread of affordable broadband should be a major government priority.

Asked in a national phone survey about expanding affordable high-speed internet access to everyone in the country, respondents answered as follows:

- 26 percent of Americans said that expansion of affordable broadband access should not be attempted by government,
- 27 percent said it was "not too important" a priority,
- 30 percent said it was an important priority, and
- 11 percent said it should be a top priority.

While younger users (those under 30) and African-Americans are the most likely to favor expanded government efforts, those who are not currently online are especially resistant to government involvement in broadband promotion. Fully 45 percent of non-users said government should not attempt to make affordable broadband available to everyone, while just 5 percent of those who don't use the internet said broadband ac-

cess should be a top federal government priority.

In addition to their skepticism towards government efforts to promote widespread broadband adoption, the 21 percent of American adults who do not use the internet are not tied in any obvious way to online life and express little interest in going online.

- They do not find online content relevant to their lives. Half (48 percent) of non-users cited issues relating to the relevance of online content as the main reason they do not go online.
- They are largely not interested in going online. Just one in ten non-users said would like to start using the internet in the future.
- They are not comfortable using computers or the internet on their own. Six in ten non-users would need assistance getting online. Just one in five know enough about computers and technology to start using the internet on their own.

"As broadband technologies have been adopted in the majority of American homes, a debate has arisen about the role of government in stepping in to ensure availability to high-speed internet access for all Americans," said Senior Research Specialist Aaron Smith, author of the new report. "The majority think not, and the surprise is that non-users are the least inclined to think government has a role in the spread of broadband. It could be that the recession is causing Americans to prioritize other issues, or it could be general anti-government wariness. It could also stem from the fact that not many non-users are anxious to see government promoting technologies that they view as difficult to use and offering uncertain benefits."

Report: 13% of Americans Likely to 'Cord Cut' from Pay TV in the Next Year

Thirteen percent of current pay TV subscribers in the U.S. say they are "somewhat" or "very" likely to cancel their current subscription in the next twelve months and not sign up with another provider, according to a survey of 2,000 U.S. households recently conducted by Strategy Analytics.

The firm said that "cord cutting," the practice of dropping traditional paid television service in favor of free broadcast or internet-delivered

"over the top" content is a growing trend.

"While it may represent only a relatively small percentage today, we anticipate the number of cord cutters to increase going forward," said Ben Piper, director in the Strategy Analytics Digital Consumer Practice. "Service providers mustn't overlook the next generation of TV subscribers; today's teenagers are tomorrow's customers."

Younger Americans consume and

value content in a way far different from their parents' generation and have little regard for how content is delivered, according to the report.

Earlier this summer Apple relaunched its Apple TV product, hoping to revitalize the product and make it a real contender in an increasingly crowded OTT television market.

Jia Wu, analyst in the Strategy Analytics Digital Consumer Practice,

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News Briefs

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says that Apple TV hopes to capitalize on its loyal and enthusiastic customer base to fill a void that currently exists in the market. “Like the music industry prior to iTunes and the iPod, the online premium video market still lacks a perfect provider that can connect a service with a device to create a great user experience,” Wu said. “With its new and improved TV product, Apple is now preparing itself to repeat the success it has had in the music business in the rapidly growing online premium video market.”

NLRB Sides with Unions in Two Key Decisions

The Coalition for a Democratic Workplace (CDW) reported that over the Labor Day weekend the National Labor Relations Board (NLRB) was qui-

etly moving to circumvent the right of workers to secret ballot elections. CDW said its review of critical pending cases has revealed concrete examples of the NLRB’s efforts to implement card-check and curb worker free speech.

“The board’s latest actions validate what CDW has said all along: Craig Becker’s recess appointment means that the board can move autonomously to promote card check without the need to pass the unpopular Employee Free Choice Act,” CDW Chairman Brian Worth said.

Decisions in two key cases, announced in early September by the board, underscore the effort to undermine workplace democracy:

- In Rite Aid Store #6473, the NLRB announced that it will revisit the 2007 Dana Corp. decision, which provided important protections to

employees facing so called “voluntary” card-check agreements.

- In the second decision, Independence Residences, Inc., the board refused to set aside a union representation election where New York state had unlawfully limited the employers’—but not the unions’—ability to communicate with employees about the advantages or disadvantages of unionization.

In both cases, Republican board members Peter Schaumber and Brian Hayes filed vigorous dissents.

“It’s critical that Big Labor’s back-door attempt to advance the principles of EFCA through NLRB decisions be exposed,” Worth said. “These cases are just a few examples of how union bosses will push an agenda that sacrifices the rights of employees and job creators at the altar of forced unionization by any means possible.”

FCC Releases New Data on Internet Access Services

Reflecting the evolution of performance standards and goals for broadband, the Federal Communications Commission (FCC) has updated and released its latest report on internet access service subscribership to better monitor these trends.

Titled “Internet Access Services: Status as of June 2009,” the new report includes for the first time detailed data on the number of internet connections at speeds that approximate the national broadband availability target recommended by the National Broadband Plan. The report also focuses on multiple and higher speed tiers, rather than on the commission’s historical categories of “high speed” (any internet connection with speeds over 200 kilobits per second downstream) or “advanced services.”

Report highlights include the following, as of June 2009:

- Out of a total of 71 million fixed—as opposed to mobile—connections to households, only 44

percent met or exceeded the speed tier that most closely approximates the universal availability target set in the National Broadband Plan of 4 megabits per second (Mbps) downstream and 1 Mbps upstream,

- The number of mobile wireless service subscribers with data plans for full internet access increased by 40 percent over the first six months of 2009, to 35 million,
- Cable modem connections increased by 3 percent to 41 million and DSL by 1 percent to 31 million in the first six months of 2009,
- A 23 percent increase in fiber connections, to 4 million, was the largest rate of increase among fixed-location technologies, and
- Satellite internet connections increased by 6 percent to 1 million.

The data are based on information submitted to the FCC every six months by providers on FCC Form 477. The full report can be downloaded at www.fcc.gov/wcb/stats.

FCC Releases New Local Telephone Competition Data

The FCC in September released the second Local Telephone Competition report to be based on comprehensive information about subscribership to interconnected Voice over Internet Protocol (VoIP) service as well as more traditional telephone lines. The report summarizes data collected by FCC Form 477 as of June 30, 2009.

Interconnected VoIP service represents an important and rapidly growing part of the U.S. voice service market, the FCC said. It found that in June 2009, there were 133 million traditional switched access lines in service and 23 million interconnected VoIP subscriptions in the United States. Of these, 93 million were residential connections and 64 million were business connections.

Interconnected VoIP subscriptions increased by 10 percent during the first six months of 2009 and switched access lines decreased by 5 percent for a combined decrease of 3 percent.

Verizon Releases Statement on FCC Net Neutrality Notice

The FCC on September 1 issued a public notice seeking comment on net neutrality/reclassification. The following is a statement by Tom Tauke, Verizon executive vice president of public affairs, policy and communications:

"Verizon continues to work with policymakers and other interested parties to develop a responsible policy that puts consumers in charge of their Internet experience. As the Federal Communications Commission gathers more information, the evidence will demonstrate that consumers are best served by a policy that promotes innovation and

encourages investment, while ensuring that open Internet principles for wireline broadband are enforced on a case-by-case basis. That is the foundation for the policy recommendations recently made by Google and Verizon.

"We are encouraged that the FCC is seeking additional information

before acting on the net neutrality issue. At the same time, it remains clear that whatever action the FCC takes will be clouded by legal uncertainty until the Congress enacts legislation that spells out the authority of the FCC and establishes a broadband policy."

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ARRA Offers Opportunity and Anxiety for Broadband Contractors

By John Allen

There are tremendous opportunities for contractors to benefit from the broadband provisions of the American Recovery and Reinvestment Act (ARRA), commonly called the stimulus bill. But while there is plenty of excitement, there is also a fair amount of anxiety in the broadband community about how contractors can benefit from the various competitive broadband grant programs.

Specifically, the ARRA authorized \$7.2 billion for broadband programs, including \$4.5 billion designated for the National Telecommunications and Information Administration (NTIA) and \$2.5 billion for the Rural Utilities Service (RUS). Part of the purpose of this program is to provide broadband service (e.g., faster internet access) to consumers in unserved areas of the country and improved broadband service to consumers in underserved areas. Contractors bidding on these broadband projects created by the ARRA are subject to the provisions of the Davis-Bacon Act, which may be uncharted waters for many who haven't previously worked on government-funded jobs.

What Is the Davis-Bacon Act, and How Does It Apply to Me?

The Davis-Bacon Act is a federal law that applies to all projects funded by ARRA dollars. Passed in 1931, the law requires that any contract greater than \$2,000 "to which the Federal Government or District of Columbia is a party, for construction, alteration or repair, including painting and decorating of public buildings and public works...shall contain a provision stating the minimum wages to be paid to all mechanics and laborers employed directly upon the site of the work." In 2009, the Obama administration required that all projects funded by the ARRA, regardless of dollar amount, comply with the Davis-Bacon Act.

The Davis-Bacon Act requires payment of locally "prevailing wages," including the "anticipated cost of prevailing benefits." Generally this is expressed as a per-hour wage and per-hour cash equivalent value of benefits and is often based on a union scale. Prevailing wages are set by the Department of Labor (DOL) or the local contracting agency and are included in the bid specifications of covered contracts. Thirty-one states have enacted state prevailing wage legislation, which are commonly referred to as "Little Davis-Bacon" provisions. These provisions require payment of prevailing

wages and fringe benefits on state projects as well as federal projects.

Offering Benefits Can Make Bids More Competitive

When it comes to the prevailing wage provisions of the Davis-Bacon Act, contractors have choices as to how the fringe benefit portion is paid. Many contractors pay the fringe benefit portion of the prevailing wage as additional cash wages, believing it's the easiest way to comply with the law. But allocating this amount to a bona fide benefit plan or plans can work to a contractor's advantage on a number of levels. When contractors use the fringe portion of the prevailing wage to provide "bona fide" benefit plans for their workers, these dollars are taken off the payroll and are therefore exempt from payroll taxes such as FITA, FUTA, and

When contractors use the fringe portion of the prevailing wage to provide "bona fide" benefit plans for their workers, these dollars are taken off the payroll and are therefore exempt from payroll taxes such as FITA, FUTA, and SUTA as well as other expenses such as workers compensation and general liability. This represents considerable savings on job costs, which translates into lower bids and better chances of winning jobs.

SUTA as well as other expenses such as workers compensation and general liability. This represents considerable savings on job costs, which translates into lower bids and better chances of winning jobs. Benefits that might be included in a bona fide benefit plan offering are retirement, medical, dental, vision, and life insurance plans.

Here's an example of the savings that can be realized by putting the fringe toward benefits instead of in your employees' paychecks. Although there are variances in the rates for unemployment taxes and workers compensation, conservatively these taxes represent an additional 25 cents on each dollar paid as cash wages.

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ARRA and the Davis-Bacon Act

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Sample Calculation

Assume XYZ Broadband Company has 15 employees doing prevailing wage work. These employees work approximately 1,000 hours each per year. The fringe amount above the base rate is \$8/hour, and the average approximate additional payroll cost when paying fringe dollars as cash wages is 25 percent.

15 employees X 1,000 hours = 15,000 total hours
15,000 hours X \$8.00 = \$120,000 in additional payroll
\$120,000 X 25 percent = \$30,000 XYZ Broadband Company savings

Visit the interactive calculator at www.thecontractorsplan.com to calculate your company's potential savings.

Ready for an Audit?

The Obama administration has hired hundreds of new investigators to make sure that ARRA funds are being accounted for properly. It is very important for contractors to prepare themselves for an audit and understand the following:

- Certified payroll responsibilities,
- Hourly fringe benefit allocation(s), and

- Correct labor classifications for workers.

Contractors intending to bid on ARRA-funded projects should take steps now to ensure compliance with the Davis-Bacon Act and other federal and state regulations that apply. Look for a prevailing wage benefits partner with experience in this highly-regulated industry—the U.S. DOL and IRS have significantly upped their workforce and, as a result, their oversight of contractors receiving ARRA dollars. Using a firm that understands compliance from the Wage & Hour Division of the DOL, the various state prevailing wage laws, and the many requirements for employee benefits can give contractors the competitive edge to win bids, especially in a crowded market with so much opportunity. ■

John Allen, CRPS, is a regional vice president for Fringe Benefit Group, an industry leader in prevailing wage benefit plans for government contractors. Since 1979, Fringe Benefit Group has helped contractors be more competitive when bidding on government jobs by offering flexible benefit solutions that can significantly reduce a company's payroll burden. Allen can be reached at (512) 663-0709 or jallen@fibi.com.



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Managing Subcontractors in the Midst of Economic Meltdown

By Gregory T. Spalj

The current economic decline has hit the stage when those who were just hanging on by their fingernails are starting to fail and fall. While contractors must always be attentive to ensure that subcontractors are passing along payments to lower-tier subcontractors, the impact of the current economy now requires that contractors be ever more vigilant in protecting themselves and their sureties from bond claims and mechanic's liens by reason of payments diverted by an upper-tier subcontractor that should have been passed on to a lower-tier subcontractor. I have seen a disturbing trend of claims from sub-subcontractors and suppliers against the general contractor's bonding company or of mechanic's lien claims against the owner, based upon the fact that although the initial subcontractor was paid for the work performed, the subcontractor never paid its sub-subcontractors or suppliers. Few object to paying once, but everyone objects to paying twice for the same service.

The Problem: Paying Twice for Subcontract Work

On public works construction projects, under the Federal Miller Act

and the Little Miller Acts adopted by virtually every state in the United States, contractors are required to furnish payment and performance bonds. Subcontractors and suppliers, including lower-tier subcontractors that have no contract with the general contractor, who are not paid for their contribution of labor, equipment, supplies, and the like, have a claim against the contractor's payment bond. Even on large private projects, payment and performance bonds are routinely required to cover the same obligation; that is, to ensure that subcontractors, sub-subcontractors, and suppliers are paid for their contribution to the project. Additionally, on private projects, even if no bond is required, nearly every jurisdiction has a mechanic's lien statutory scheme under which unpaid sub-subcontractors and suppliers have claims against the project owner (who in turn will have indemnity claims against the general contractor) for unpaid labor, materials, and equipment on the project.

What this all means is that in most instances, and with a few procedural hurdles, the general contractor (and the indemnitors on the bonding line) are ultimately liable for a "busted" sub's failure to pay its subcontractors and suppliers. Read that last sentence again as it is the source of

a substantial amount of angst and frustration to a general contractor who has never considered the possibility of this type of liability.

True, there are many hoops through which mechanic's lien claimants and bond claimants have to jump in order to preserve and perfect their rights, but once they've been burned once, they tend to become skilled at complying with the bond claim and mechanic's lien statutes. Therefore general contractors need to be equally skilled at avoiding paying twice for the same service through proper management of subcontractors.

With increasing frequency, lower-tier subcontractors are not paying their bills. While there is a time during which the "robbing Peter to pay Paul" system works for the subcontractor who is slowly rolling down the economic hill, the scheme comes tumbling down when there is no future project to pay past debts. Similarly as jobs become more scarce, subcontractors lower their prices to garner work priced below cost. Many unpaid lower-tier subcontractors who face more demands on their construction funds than the funds will allow will frequently operate for many, many months before claims for unpaid work are turned into judgments, bond claims are filed, or mechanic's lien claims are asserted. The general contractor may be completely unaware that its subcontractor is failing because the work is getting done and because the subcontractor is assuring

Authors note: For simplicity, this article examines the problems caused by downstream subcontractors not paying their subcontractors from the perspective of the general contractor. The principles discussed, however, would be the same and the solutions posed would have applicability to a higher-tier subcontractor managing its lower-tier sub-subcontractors.

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Legal Watch

Continued from page 21

the general that there is nothing to worry about. Nevertheless, the results of the subcontractor not paying its workers, sub-subcontractors, and suppliers will be apparent eventually—at a time when it may well be too late to do anything about it.

Compounding the Problem: Perception Versus Reality

Many contractors who have never been involved in a bond claim or mechanic's lien action may be surprised to learn that a lower-tier subcontractor or supplier (or even an employee of a subcontractor) may have a claim against the project owner, the contractor, or the general contractor's bonding company for the unpaid value of the lower-tier subcontractor's labor, materials, and supplies, even though the contractor has paid its immediate subcontractor for the labor, equipment, and supplies. Yes, you read that right:

notwithstanding the fact that you may have paid your subcontractor, if your subcontractor did not pass those payments down to its lower-tier subcontractors and suppliers and to its employees, those claimants can, in effect, make you pay twice.

The perception among many contractors is that if they get lien waivers from their subcontractors, they are protected. In fact, they are not. The lien waivers that a contractor needs for protection against double payment are lien waivers not only from its subcontractor, but from all subcontractors and suppliers of every tier. In many states, even the subcontractor's employees and their unions are protected, so that if the unpaid subcontractor does not make contributions to the union health and welfare benefit funds, those funds have a claim against the contractor's payment bond or they can file a mechanic's lien against the project. So, even though the

employees are being paid and are themselves unaware that their union benefits are not being funded, the contractor who paid union scale to its subcontractor may be required to pay twice for those benefits if the union perfects its claim. In fact, the first sign that things are going awry is frequently a garnishment summons from the union health and benefit fund garnishing the subcontractor's rights to payment to satisfy the obligation owed to the union for unpaid benefits. The unions are vigilant in prosecuting their rights, and that vigilance has the unintended benefit of often alerting the general contractor to a problem the general contractor did not know existed. Too often however, at that stage, it is too late to do anything to protect oneself.

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immunize a contractor from having to pay twice for its subcontractors' debts. The solution to the problem is only partial and involves a series of steps, the totality of which will cover most of the problem.

Intake

The first step involves subcontractor selection. Pay attention to the quotes you receive and the experience of those who are quoting. If one subcontractor quote is markedly lower than the rest, be suspicious and inquire. If the subcontractor is one not normally quoting that particular kind of work, be suspicious. Lean economic times often cause subcontractors (and general contractors) to venture off into areas of construction work for which they are ill equipped, and therefore they are ignorant of some of the most important price considerations. Additionally, even experienced subcontractors bid work cheaply in order

to keep their crews busy so as not to lose them to competitors. Unfortunately in the heat of bid preparation, there is not time for thoughtful reflection so your analysis must be immediate and quick. Common sense must be your guide here: if something looks too good to be true, it probably is not true.

Bond and Lien Waivers

Next, as a condition of periodic payments to your subcontractors, demand lien and bond claim waivers from subcontractors at any tier, and that means sub-sub-sub-subcontractors and suppliers. The problem is that many general contractors do not even know who their immediate subcontractors have used as sub-subcontractors, let alone who that subcontractor used as a subcontractor. Even if you obtain lien waivers from every entity of which you are aware, unless everyone in the chain has made full disclosure, there will

be those of whom you are not aware and therefore against whom you cannot protect yourself. Nevertheless, you could protect yourself from substantially most of the potential claimants by requiring two things: (1) require your subcontractors to disclose in writing the existence of any subcontractors and supply contracts they have entered into and (2) require lien waivers from your subcontractors and those sub-subcontractors and suppliers, and if the sub-subcontracts are large enough, from even the sub-sub-subcontractors themselves. The effectiveness of this portion of the cure depends on the truthfulness of your subcontractors. The waivers should contain an indemnity clause such that if a payment does not get passed downstream and the general contractor has to pay twice, the subcontractor agrees to assume the financial

Continued on page 24

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liability therefor. (This is usually a moral victory only inasmuch as, if the subcontractor was financially flush enough to cover the indemnity, it likely would have paid its subcontractor in the first place.)

Certified Payrolls

In addition, as a condition of payment to your subcontractors, your subcontracts should require your subcontractors to provide certified payrolls, which include a statement under oath that all taxes and fringe benefits have been paid. If the subcontractor is willing to lie under oath, you will get no protection from this, but it is at least a filter through which most subcontractors will not pass. In other words, most people will not out and out lie, but many would fail to volunteer the information if they are not asked. Remember though, once you obtain this information from the certified payrolls, you need to use it. Verify that the certified payrolls are current, and do not just stick them in a file drawer.

Direct Payment and Joint Checks

Next, if you have reason to believe that one of your subcontractors is not passing on payments to his lower-tier subcontractors, pay the sub-subcontractors directly or use joint payee checks for payment. The problem with direct payment to the lower-tier subcontractors is that it requires an agreement on what is owed among the lower-tier subcontractor and your subcontractor. If your subcontractor has claims against the lower-tier subcontractor or disagrees with the lower-tier subcontractor's payment request, you run the risk of overpayment. Therefore, unless you have an agreement with your subcontractor to make direct payments to its subcontractors and suppliers, this can be a risky strategy.

Joint payee checks avoid the problem of resolving any dispute between your subcontractor and its lower-tier subcontractors. If these

parties are unable to resolve the dispute over what is owed, neither gets paid because it will take the signature of both to negotiate the check. This method of payment does require you to know to whom the payments should be made in order to make each entity a joint payee.

If you decide to issue joint checks, notify both the subcontractor and the lower-tier subcontractor or supplier of your intention to issue a joint payee check. In order to avoid a false signature, if possible, personally deliver the joint payee check to representatives of both the subcontractor and the supplier or make a representative of each pick up the check from your office. On the check stub or voucher, type a directive that the proceeds of the check are to be applied solely and exclusively to debts arising from your project. (In some states in the absence of an express direction, creditors are free to apply payments to any debt owed. It is therefore a good practice to put the project to which the debt should be applied in the memo line.) Then, type on the back of the check an appropriately worded release of claims that becomes effective upon endorsement. This has the added benefit of wiping the slate clean as between the general contractor and the two joint payees upon the negotiation of the check.

Another option you might consider for a subcontractor who may be on the verge of bankruptcy is to enter into a formal Joint Payee Check Agreement to memorialize the parties' intentions. This agreement should expressly state (1) the purpose of the payment, (2) its allocation toward the project-specific debt, (3) the assent of the general contractor, subcontractor, and supplier, and (4) a partial waiver of the lien rights for the value conveyed in the agreement. That way, if the payment were subsequently scrutinized by a bankruptcy trustee, the Joint Payee Check Agreement will be evidence that the subcontractor was a joint payee for

the purpose of holding the funds in trust for the lower tier subcontractor. (Trust funds are usually not a part of the bankruptcy estate.)* This will provide some protection against the bankruptcy of your subcontractor and right of the bankruptcy trustee to recover payments made within 90 days of the bankruptcy petition being filed.

Conclusion

There is no complete answer to the problem discussed here, just as there is no complete answer to the question of what is the right subcontract, what is the right insurance policy for a contractor, what is the right price to bid, how to eliminate OSHA citations, how to reduce your workers' compensation modification, or a myriad of other questions contractors face daily. If there was a complete and definite answer, it would be known by now, given the fact that construction contracting is one of the oldest professions in the world. The truth is that you can implement processes to decrease many of these risks. The balance of the problems can be dealt with on a case-by-case basis as they arise. Contracting is all about risk brokering, shifting, avoidance, and balancing; it is not about risk elimination. Implementing the procedures noted above, however, will go a long way to place you "behind the fan" when the stuff hits. ■

*** Note:** This is a gross oversimplification of the trust fund theory in bankruptcy, the explanation of which would take many pages of text.

Greg Spalj is a member of the PCCA and represents many of its members. He has a national law practice representing construction contractors. He can be reached at (612) 359-7631 or gspalj@fwhtlaw.com.

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Sunday, March 13

- Annual Prayer Breakfast
- Construction Industry Roundtable
- Fun Lunch
- Auction Reception
- Auction & Dinner

Monday, March 14

- Annual Associates Exhibit & Breakfast
- Exhibit Wrap-up & Associates Meeting
- Exhibit Teardown
- Annual PCCA Golf Tournament
- Dine Around

Tuesday, March 15

- Continental Breakfast
- Spouse Breakfast
- How To Compete and Comply in a Davis-Bacon Market
- Education Session 2
- Optional Group Activities
- Board of Directors Wrap-up Meeting
- PCCA Beach Party

Wednesday, March 16

- Departures

For more information, go to www.pccaweb.org

The Florida Keys

Depending on which way you travel, Key Largo is the first or the last of the Florida Keys. Ocean Reef Club is located at the northern tip of the northernmost chain of islands that sweeps southwestward into the Caribbean. Traveling in that direction, Key West would be your last stop. Each of these small islands has its own personality, and vacationers visit them for remoteness, access to ocean fishing, and to unwind.

Key Largo. Just an hour's drive south of Miami lies Key Largo, home to two state parks, a national park, a national marine sanctuary and some of Florida's most fascinating botanical scenery.

Key Largo is sandwiched between the watery wilderness of the Everglades National Park to the west and the fish-covered coral formations of North America's only living coral barrier reef to the east. Locals consider Key Largo the Diving Capital of the World, but the island is nearly as famous as a sport-fishing destination.

Key Largo's proximity to the Everglades makes it a premier destination for kayakers, birders, and other eco-tourists. All this beauty, not to mention the island's rich history, has inspired a vibrant community of artists who show their work at several local galleries.

Islamorada. Islamorada is comprised of six islands: Plantation Key, Windley Key, Upper Matecumbe Key, Lower Matecumbe Key, and the offshore islands of Indian Key and Lignumvitae Key. This might be the only place on Earth where you can catch a sailfish in the morning and then venture into the backcountry to pursue bonefish, permit, tarpon, snook, and redfish in just inches of water.

Divers and snorkelers are fascinated by the History of Diving Museum that opened in 2006 to rave reviews. Music lovers enjoy warm tropical evenings on the lawn of the TIB Amphitheater at Founder's Park. Theater lovers routinely take in first-class productions at the Coral Shores Performing Arts Center.

Marathon. Located mainly on Vaca, Fat Deer, and



Grassy Key, Marathon is a 10-mile-long, family-oriented island community rooted in a heritage of fishing, and it reflects the old-Keys lifestyle. Marathon is ideal for sailing, fishing, diving, snorkeling, and scuba. Visitors enjoy the impeccably maintained Sombrero Beach and a host of eco-attractions and marine-based environmental programs.

Visitors to Pigeon Key venture back in time to a tiny island that played a tremendous role in the Florida Keys of today. Sombrero Reef, a federally protected section of the United States' only living coral barrier reef, lies just a few miles offshore.

The Lower Keys. If you've had enough of an overcrowded and weary world, the islands of the Lower Keys are the place for you. You can snorkel or dive over the Looe Key coral reef, ride a bicycle through Key Deer country, or take a fishing adventure in the back country or troll the deep blue waters beyond the reef.

The Lower Keys begin where the Florida Keys island chain takes a graceful westerly turn toward the sunset, shortly after the famous Seven Mile Bridge. It is a quiet region of small resorts, down-home restaurants, untrammelled wildernesses, and rich history.

Key West. In Key West, you can discover a city where real estate titles date back to the Kings of Spain. Stroll the palm-lined streets and discover gingerbread mansions, tin-roofed conch houses, and Ernest Hemingway's home. Walk in the footsteps of Thomas Edison, Lou Gehrig, and Tennessee Williams.

With its balmy weather and crystal blue skies, the island is famous among the outdoors set for its diving, fishing, water sports, and golf.

But in Key West the sun shines the brightest when it sets. Everyone gathers for the never planned, always varied Sunset Celebration on the Mallory Dock. Once the sun is safely tucked away by jugglers, mimes, musicians, and street artists, the city moves to a different beat. A night beat. The streets, filled with sidewalk cafes, open-air bars, legendary pubs, and world-class restaurants, come alive.



Ocean Reef Club

Secluded at the north end of Key Largo, Ocean Reef is a refuge from the clamor and demands of the world beyond its boundaries, the place where people go to relax and be themselves. They go to experience the glory of the sunrise, the magic of the azure sea, and a place that is different from all other places. They go to enjoy an exceptional respite in the Florida Keys.

The 2011 PCCA Convention is your chance to discover true tranquility at a place that is exclusive, remote, and gorgeous in all directions.

The history of Ocean Reef Club is the thoughtful creation of an ideal, exclusive community of like-minded people. From the modest fishing camp and lodge established in 1945, the resort's facilities have slowly grown to world-class status. The original 9-hole course, laid out in the 1950s, evolved into two 18-hole championship courses, a clubhouse, and a pro shop. A tidal swimming lagoon was created during the fifties along with a swimming pool. Shops began to appear. Moorings became a marina. It was a good place to be.

Folks at the resort say their unique lifestyle sets Ocean Reef Club apart from other private clubs and resorts. "We're exclusive, yes, yet warmhearted," they say. "We're secure, yet carefree. We're comfortable, yet concerned for others. We never forget that we share an incomparable location in a wondrous natural environment that is the glory of our lifestyle. Ocean Reef Club is a place where we come to be ourselves, a haven where we enjoy our traditions as well as the innovations that continue to enrich our lives."

The PCCA room block is in the Inn, where distinctive Marlin, Pompano, Dolphin, and Amberjack accommodations provide an elegant haven during your stay. You can choose an elegantly appointed room, suite, or junior suite with water, ocean, or tropical views. Enjoy this convenient location and all the services and amenities of a luxurious hotel.

Golf. Golf traditions at Ocean Reef go back more than half a century, when the club's first 9-hole course opened. Today the club boasts two championship 18-



hole courses, a rarity in the Florida Keys. Although the Hammock and Dolphin courses offer distinctly different tests of golf, both feature scenic vistas and an enjoyable challenge for players of all levels.

Both courses, designed originally by Bob Von Hagge and Bruce Devlin in 1969, are in excellent condition. The Dolphin Course underwent a \$3 million redesign and renovation in 2000-2001 under the direction of renowned golf course architect Chip Powell.

Host of the PCCA Tourney, the Hammock Course is partially situated in a mangrove and tropical hardwood hammock and contains many rare and endangered species of plants. It is considered the more scenic of the courses and is a true test of target golf. With fairways meandering through the natural hammock and water hazards on 14 holes, concentration is paramount. This par-71 course is 6,200 yards in length and offers a magnificent collection of memorable holes.

The Dolphin Course features fairways winding past tamarind, coconut palms, and mahogany trees as well as other exotic landscaping. Glittering water hazards delight the eye and call for accuracy. Generous fairways allow a margin for error off the tee, but the real test on this 6,500-yard par-71 course arrives when you get to the greens. The large, undulating greens require careful reads to avoid the dreaded three-putt.

Marina. It's possible that Ocean Reef marina is the finest in the United States. That wasn't the intention, merely the result. The club is adjacent to the only living coral reef in American waters, an amazing place to dive.

Key Largo is surrounded by exceptional fishing opportunities—flat, deep-sea, and reef—making Ocean Reef a sport fisherman's paradise. You can charter a boat and go after the big ones and then hire a guide to take you out in the warm water of the flats to try and outsmart a wily bonefish. Five miles or so offshore, you'll almost surely encounter sailfish, and the waters are full of blue and white marlin, dolphin, shark, wahoo, blackfin tuna, and amberjack, depending on the season. The Gulf Stream is only half an hour to the southwest.

Snorkelers love to explore the shallow offshore reefs,



and scuba diving is available for certified divers. Water clarity and temperature at Ocean Reef are as close to perfect as you'll find in American waters.

You can rent sailboats on Buccaneer Island and smaller craft at the Marina, and lessons in handling watercraft and water safety are available. Charters are available, and cruises on well-appointed yachts—morning, afternoon, and at sunset—are a wonderful way to enjoy the water and leave the piloting to someone else.

Shopping. Reminiscent of an old-fashioned town center, the Ocean Reef Fishing Village is the place to peruse a selection of shops, stop for a delicious meal, or chat over coffee with friends. Surrounded by the marina, this charming gathering spot offers quick, convenient access—or a leisurely day of browsing—for everything from marine products to the club's exclusive logo items, plus electronics, jewelry, clothing, shoes, home décor, art, books, flowers, wine and spirits, gourmet groceries, and much more. Whatever your heart desires, you'll enjoy Ocean Reef's colorful collection of boutiques and shops.

Salon & Spa. Indulge in the ultimate journey of relaxation and renewal. The Ocean Reef Salon & Spa invites you to experience a sanctuary of soothing aromas, calming sounds, and nature's most healing resources. An array of professional face and body spa care therapies will enhance your appearance and encourage you to feel your very best.

Let the Salon & Spa transport you to an oasis of peace and tranquility while your skin takes in ample vitamins, minerals, essential oils, and moisturizers. Services include massage, body treatments, skin care services, waxing and sugaring, hair cutting and styling, manicures, pedicures, nail enhancements, and make-up application and consultation.

Fitness Center. Exercise your options at the Ocean Reef Club's Marina Fitness Center, where you'll find an excellent array of equipment, including treadmills, stair machines, bicycles, free weights, and LifeFitness Equipment. The fitness center is located adjacent to the Marina and is open 24 hours a day.

Beach & Pools. Ocean Reef Club's Buccaneer Island is a premium destination for fun in the sun. The island's saltwater swimming lagoon and sandy beach overlooking



the ocean are the main attractions, and this is a perfect spot to enjoy a refreshing libation while soaking up some Florida Keys sunshine. Chaise lounges and umbrellas are plentiful, and cabana rentals are available through the pool desk.

Buccaneer Island is also the club's hub for aquatic sports activities. Get out on the lagoon or ocean in a rental watercraft—sailboats, kayaks, windsurfers, stand-up paddleboards, and more.

Nature Center. A visit to the Nature Center is an inspiring experience that will help you understand the rich and diverse environment of Ocean Reef Club. You'll find a touch tank with an array of sea critters—tropical fish, sea anemones, sea urchins, starfish, and more. You can also visit with the resident box turtles, a 75-pound desert tortoise, iguana, and hermit crabs.

Nature Programs at the center include kayak tours (beginner and advanced), bicycle tours through three distinct eco-systems (mangroves, lush vegetation, and hardwood hammock), bird scavenger hunts, and various field trips.

Waterfront Activities. Surrounded by water on three sides, the Ocean Reef Club boasts tremendous waterfront and shoreline. The "classic" waterfront activities are concentrated in the Fishing Village, the Marina, and Buccaneer Island: sailing, kayaking amongst the mangroves, fly-fishing on the flats, cruising on myriad watercraft, snorkeling, browsing the shops, swimming, fishing, dining and otherwise eating, strolling, sunning, arranging a boat rental or a charter, and riding a bike.

Lawn & Tennis Center. Nine Har-Tru tennis courts are available, with six lighted for evening play. The center also offers a full-size grass croquet court for recreational or highly competitive matches.

Ocean Reef also boasts a 9-hole miniature golf course that is lit for night play as well as a basketball court next to the playground.

Movie Theater. The Ocean Reef Cultural Center, located in the heart of the community, offers first-run and recent releases three nights a week in a comfortable, state-of-the-art, 300-seat theater. Just drive over in your electric road cart and enjoy the show.



Safety News



OSHA Reports on State-Run OSH Programs, Calls for Corrective Actions

The U.S. Department of Labor's Occupational Safety and Health Administration recently announced that it has concluded an evaluation of state-run occupational safety and health programs under its jurisdiction. Enhanced Federal Annual Monitoring and Evaluation (EFAME) reports provide detailed findings and recommendations on the operations of state-run OSHA programs in 25 states and territories. The enhanced review was initiated after a 2009 special OSHA report on Nevada's program, prompted by numerous construction-related fatalities in Las Vegas, identified serious operational deficiencies.

"Our goal is to identify problems in state-run programs before they result in serious injuries or fatalities," OSHA boss Dr. David Michaels said. "While we found many positives in the state programs, we also found deficiencies including concerns about identification of hazards, proper classification of violations, proposed penalty levels, and failure to follow up on violations to ensure that workplace safety and health problems are corrected."

The EFAME report and appendices for each of the 25 states, as well as each state's comment and fiscal year 2009 self-evaluation report, are available on OSHA's website. States will have 30 days to provide a formal response, including a detailed corrective action plan for addressing findings and recommendations.

Each state's formal response will be public information and available online as soon as it is received. The EFAME review also identified areas where states have adopted standards and procedures exceeding federal OSHA's requirements, such as injury and illness prevention programs in several states; the adoption of a cranes and derricks rule prior to

OSHA's in North Carolina, Washington, and Maryland; and Oregon's requirement that employers abate serious workplace violations during the contest period, a legal tool under consideration in Congress but still lacking in federal OSHA.

OSHA said the review of the Hawaii program highlights significant performance problems resulting from staffing and funding cutbacks. OSHA is addressing these problems directly with the governor's office and has offered to provide supplemental federal enforcement assistance until the state can address its problems. If Hawaii is unable to present a reasonable strategy for expeditiously improving its worker safety and health oversight, consideration will be given to the state's current authority to operate its own program independently and could result in a federal takeover.

"We recognize that some of the problems we identified could stem from significant budget constraints in many of the states and may also be the result of less intensive federal oversight in recent years," Michaels said. "OSHA, through its regional offices, intends to provide assistance in the implementation of corrective actions and will work closely with state officials to review progress. We are confident that by working together to address identified problems, we can improve state operations and provide more consistent protection to all of America's workers."

The 25 states and territories evaluated are Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, U.S. Virgin Islands, Virginia, Washington, and

Wyoming. No reports are being issued on the Nevada and Illinois state plans; a special study was issued on the Nevada state plan in October 2009, and the Illinois state plan was not approved until September 2009. The status of each state's efforts to improve its plans will be reflected in the fiscal year 2010 Federal Annual Monitoring and Evaluation report expected in 2011, OSHA said.

When Congress enacted the Occupational Safety and Health Act of 1970, it created an opportunity for federal-state partnerships to promote safety and health. Section 18 of the law allows states to develop and enforce occupational safety and health standards in the context of an OSHA-approved state plan. Twenty-seven states and territories have sought and obtained approval. Twenty-one states and Puerto Rico have complete programs covering both the private sector and state and local governments. Four states and the U.S. Virgin Islands have programs limited in coverage to public sector employees. Currently, state plans deliver the OSHA program to 40 percent of the nation's workplaces, with federal OSHA responsible for the other 60 percent.

State plan standards and enforcement must be at least as effective as federal OSHA in providing safe and healthful employment to workers. In addition, state plans operate under authority of state law, not delegated federal authority. Thus, in order to operate its own plan, a state must enact an equivalent of the federal OSH Act and must use administrative and regulatory procedures to adopt its own standards, regulations and operating procedures, all of which must be updated within six months of any change in the federal program.

OSHA Launches Initiative to Discourage Texting While Driving on the Job

Because motor vehicle crashes are a leading cause of worker fatalities, Secretary of Labor Hilda L. Solis in September announced a partnership between the Occupational Safety and Health Administration and the U.S. Department of Transportation to combat distracted driving.

"It is imperative that employers eliminate financial and other incentives that encourage workers to text while driving," Solis said. "It is well recognized that texting while driving dramatically increases the risk of a motor vehicle injury or fatality."

Prohibiting texting while driving is the subject of an executive order signed by President Obama last year for federal employees and the subject of rulemaking by the Depart-

ment of Transportation. OSHA is launching a multi-pronged initiative that includes:

- An education campaign for employers, launched during "Drive Safely Work Week" in early October, will call on employers to prevent occupationally related distracted driving, with a special focus on prohibiting texting while driving.
- An open letter to employers to be posted on OSHA's website during "Drive Safely Work Week." The website also will showcase model employer policies and encourage employer and labor associations to communicate OSHA's message.
- Alliances with the National Safety Council and other key organizations as outreach to employers,

especially small employers, aimed at combating distracted driving and prohibit texting while driving.

- Special emphasis on reaching younger workers by coordinating with other Labor Department agencies as well as alliance partners and stakeholders.
- Investigate and issue citations and penalties where necessary to end the practice when OSHA receives a credible complaint that an employer requires texting while driving.

"We call upon all employers to prohibit any work policy or practice that requires or encourages workers to text while driving," said OSHA's Dr. David Michaels. "The Occupational Safety and Health Act is clear; employers must provide a workplace free of recognized hazards." ■

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- ▶ Complies with D.O.T. Standards
- ▶ Robust steel chassis



Member News

Vermeer CEO Appointed to President's Export Council

Vermeer Corporation recently announced the appointment of CEO Mary Andringa to the President's Export Council (PEC), as announced by President Barack Obama. Andringa was selected by the President to serve on the council as a private-sector representative for business, industry, agriculture, and labor.

"It's both an honor and a pleasure to serve the family business and our country through this appointment to the President's Export Council," Andringa said. "I look forward to representing Vermeer and the manufacturing industry in an effort to expand export trade and further support a successful business environment globally."

Andringa currently serves as the president and CEO of Vermeer Corporation, a family-owned manufacturing company located in Pella, Iowa. Vermeer was founded by Andringa's father, Gary Vermeer, in 1948 and currently manufactures a wide range of agricultural and industrial products. Andringa has worked for Vermeer since 1982, holding positions in market research and serving as the chief operating officer from 1989 until 2003. Andringa is active on a number of boards, including her current role as vice chair of the National Association of Manufacturers.

The PEC, through the Secretary of Commerce, advises the President on matters relating to and expanding U.S. export trade. The PEC is the principal national advisory committee on international trade. It advises the President on government policies and programs that affect U.S. trade performance, promotes export expansion, and provides a forum for discussing and resolving trade-related problems among the business, industrial, agricultural, labor, and government sectors. Andringa was one of 20 private-sector members appointed for 2010.

TVC Communications' MaxCell Chosen for Iraq Trade Mission

TVC Communications announced that its MaxCell Group has been selected to participate in the Department of Commerce's first trade mission since the end of the combat mission in Iraq. Under Secretary of Commerce for International Trade Fran-

cisco Sánchez will lead the trade mission to Baghdad in October. The mission is aimed at assisting U.S. companies to position themselves to enter or expand their presence in Iraq, focusing on oil and gas, construction, and information and communication technologies sectors.

MaxCell joins fourteen other companies selected to participate, including Bell Helicopter Textron, General Electric, and the Boeing Corporation.

"TVC Communications is honored to have its MaxCell Group and their products chosen as one of only fifteen companies to participate in this mission," TVC Executive Vice President Paul Joong said. "The vetting process was rigorous. We are pleased that our MaxCell fabric innerduct, which has deployed over 250 million feet worldwide, will be positioned to help rebuild the communication infrastructure within Iraq."

Elliott's 30105R Checks in for Salt Mine Duty

Scott Powerline Equipment recently delivered a customized Elliott Equipment Company 30105R BoomTruck to the North American Salt Mine Company. This truck-mounted crane was purchased to perform salt mining operations 1,550 feet underground within the mine.

North American Salt chose Elliott's product because of its solid construction and the company's reputation as a leader in custom engineered solutions.

Elliott Equipment's engineers worked closely with North American Salt's user group and modified this 30105R crane by adding a specialized 1,000-pound hydraulic drill attached to an 800-pound capacity, remote-controlled steel work platform. The customized system lets two miners move close to the mine face and drill from within the work platform, saving time and money.

Taking full advantage of Elliott's ease of installation



and minimal number of fittings, the entire boom truck was completely disassembled above ground and reassembled deep within the mine.

The Elliott Equipment 30105R is a fully customizable product that can be modified to meet a variety of worksite needs. With options like removable work platforms, special outriggers, auger drill systems, radio remotes, and more, it's why demanding users consistently look to Elliott Equipment Company for cost-effective solutions for their personnel and material handling needs.

Emissions Rules Drive Solution from John Deere

New Jersey contracting firm J.H. Reid wanted a wheel loader that would allow it to work in Brooklyn, N.Y., under current and future emissions rules. John Deere responded and offered the firm a solution: the new 304-hp 744K 4WD loader, the construction industry's first IT4-certified iron over 175 hp. Reid took delivery in late August and immediately



put the loader to work on a \$125 million pre-cast bridge job for the New Jersey DOT in Highlands.

"The bridge job is just a dress rehearsal," said Eric Reid, president of J.H. Reid. "The loader is supporting us right now by working around the crusher with a bucket and carrying construction materials around the site with forks."

It won't be there long. The 744K will soon head to Brooklyn, New York's Hamilton Avenue waste transfer station, where New York City Best Available Control Technology emissions rules are in effect.

"Everybody knows IT4 is the future," Reid said. "For us it's all about the ability to work in New York City, and I didn't want to invest in something that would be obsolete in six months. Deere's IT4 unit availability allowed us to think long-term."

The 744K IT4-certified engine is Deere's response to customers who need the highest emission tier available for bid emissions specifications and green construction

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KSM81641

Member News

Continued from page 33

sites, or who work in non-attainment areas.

The John Deere PowerTech 9.0-L IT4 diesel engine for the 744K was certified by the EPA in March. It uses cooled exhaust gas recirculation (EGR) technology to meet emissions regulations while producing the same 304 hp and torque as a 744K equipped with a Tier 3 engine.

Deere's chosen technology path for meeting IT4 emissions is cooled EGR with an exhaust filter. This simple solution uses a single fluid (diesel) to eliminate storage and temperature concerns. EGR has been field-proven in a variety of customer applications and is now on the job for the long haul in the Big Apple.

Scott Powerline Adds First Tadano Mantis 15010 Crane

Tadano Mantis Corporation's first 77-ton, heavy-duty tele-boom crawler crane has joined Scott Powerline & Utility Equipment's fleet at its McDonough, Ga., facility, and it has already been dispatched to a job in Florida.

Purpose-designed from the ground up as a tele-boom crawler crane, the Tadano Mantis 15010 is highly versatile and ideal for both pure lift applications as well as

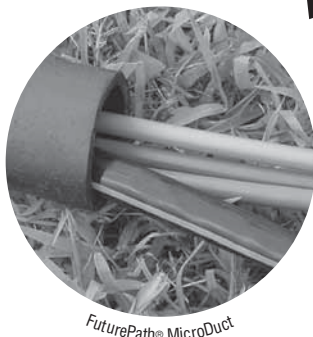


rugged duty-cycle work. It employs much less counterweight than other cranes to avoid rearward stability problems on sloping ground. This feature together with its 260-hp Cummins engine and high-pressure hydraulics allow the 15010 extraordinary gradeability of up to 68 percent.

The machine's lift capabilities are achieved by its wide stance telescopic crawler base instead of massive counterweights. With this stability, the 15010 can pick and carry its full 77-ton load chart with its tracks extended. It can also pick and carry 50 tons through a

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full 360 degrees with its tracks retracted to an overall width of only 12.5 feet.

The new Tadano Mantis can pull through deep mud without bogging down and telescope or lift the boom with a full load on the hook. It also saves time and money on the job with its low clearance height, retract-on-the-fly tracks, and telescopic boom. The unit's independent hydrostatic track drives allow pivot turns and counter rotation.

New Rope Connectors Make Connections Fast And Secure

General Machine Products recently introduced a new line of rope connectors to its extensive line of aerial and underground tools and equipment. Rope connectors make the attachment of rope to rope or rope to swivels easier. All three of GMP's rope connectors are made from durable stainless steel and offer a safety factor per load of 3:1 (horizontal pulley only).

The Rope-to-Rope Connector can be used to join any two ropes with diameters of .875 inches or less. They are designed to handle up to a 15,000 pounds maximum load.

The Rope-to-Swivel Connectors allow for rope and swivels to be attached to one another. The .5-inch connector can handle a maximum load of 7,000 pounds, while the .66-inch connector can handle a maximum load of 15,000 pounds.

"Our Rope-to-Swivel Connectors are a great item because they do the job of two products in one," GMP Director of Sales Ted Clemens said. "By allowing rope to directly connect to swivels, we save on the amount of products contractors need to use."



Oldcastle Precast Enclosure Solutions Launches New Website

Oldcastle Precast Enclosure Solutions (OPES) recently introduced its website specifically designed for the enclosure solutions segment of products and services offered by Oldcastle Precast. The site is now live and available for public viewing at www.oldcastleprecast.com/enclosuresolutions.

"It is a great pleasure to announce the long-anticipat-

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Member News

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ed debut of our website,” OPES Director of Marketing Britt Sweet said. “We continue to make improvements to the site so our customers can easily access the information they need regarding our enclosure products.”

The legacy company websites will remain active for several months before they are redirected to the new OPES home page.

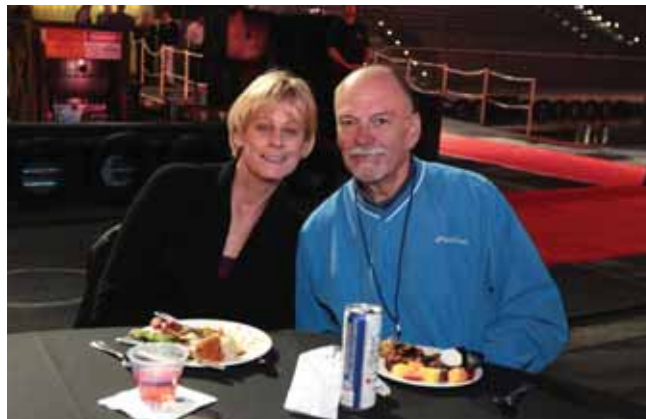
Oldcastle Precast Enclosure Solutions (OPES) combines the power of three distinguished brands—Carson, Christy, and Synertech—to provide strong, durable plastic, polymer, and concrete enclosure products available worldwide.

Martin John “Marty” Kobs, Sr.

We are saddened to report that longtime PCCA member Martin John “Marty” Kobs, Sr., of Haines City, Fla., passed away August 11 after a courageous battle with pancreatic cancer. He was 59.

A native of Dundee, Fla., born August 9, 1951, to John and Margaret Waite Kobs, Marty lived in several areas of the United States before returning to the Haines City area in 1998. He was a 1969 graduate of Haines City High School and a 1972 graduate of Polk Community College.

Marty held several certificates and licenses related to



Marty Kobs at the 2010 PCCA Convention in Disney with his companion Jo Reese.

utilities construction as a result of his 38-year career in the telecommunications industry, most recently as Division Vice President of Mastec North America, Inc. He was an avid outdoorsman, hunter, and fisherman. He enjoyed traveling with family and friends. Never one to sit idle, Marty was always planning and preparing for his next “project.”

Memorial donations may be made to Good Shepherd Hospice, 105 Arneson Ave., Auburndale, FL 33823. Condolences may be sent via www.oakridgefuneral-care.com.

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PCCA Industry Calendar

Utility Construction EXPO '11	January 18 - 21, 2011
El Conquistador Resort	Los Croabas, Puerto Rico
UCT 2011	January 25 - 27, 2011
George R. Brown Convention Center	Houston, Texas
DCA Annual Convention	March 1 - 6, 2011
El Conquistador Resort	Los Croabas, Puerto Rico
PCCA 66 th Annual Convention	March 11 - 15, 2011
Ocean Reef Club	Key Largo, Florida
CONEXPO - CON/AGG 2011	March 22 - 26, 2011
Las Vegas Convention Center	Las Vegas, Nevada
WINDPOWER 2011	May 22 - 25, 2011
Anaheim Convention Center	Anaheim, California
2011 DCA Mid Year Meeting	July 20 - 24, 2011
Woodstock Inn & Resort	Woodstock, Vermont
2011 PCCA Mid-Year Meeting	August 3 - 6, 2011
The Greenbrier	White Sulfer Springs, West Virginia
ICUEE 2011	October 4 - 6, 2011
Kentucky Exposition Center	Louisville, Kentucky
WINDPOWER 2012	June 3 - 6, 2012
	Atlanta, Georgia

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NEW

Underground Utility Protection Policy

PART 1 – SCOPE

- A.** This section pertains to the protection of all existing underground utilities that exist within and adjacent to work areas. “Paint Marks” or “Flags” as provided by Local One Call (811) or other utility locate services shall NOT be accepted as exact or definitive.
- B.** It shall be the responsibility of the Contractor to physically locate any and all existing utilities within and adjacent to the work zone prior to initializing work.

PART 2 – GENERAL

- A.** All utilities within 10 feet of a work zone MUST be found and seen prior to the start of any excavation operations.
- B.** Potholing shall be performed to verify the location and depth of the existing utilities.
- C.** Backhoes, trenchers or other types of mechanical equipment shall not be used to find underground utilities within 10 feet of a work zone.
- D.** At no time shall picks, round, pointed shovels, or any other type of sharp tool be used for locating utilities.
- E.** Only square, blunt, non-sharp tools may be used for hand digging.
- F.** Vacuum Excavation shall be allowed with the use of high-pressure water (up to 4,000 psi) with an approved non-cutting nozzle. Zero degree nozzles are not allowed.
- G.** Vacuum Excavation may also be allowed utilizing high-pressure air (with dust containment system) or dry vacuum.
- H.** For more information regarding the use of Vacuum Excavation go to: www.vacuumexcavation.com

PART 3 – EXECUTION

- A.** Contractor shall contact One Call (811) utility locate service (in writing) at least 48 hours in advance to order locates within and adjacent to the work zone.
- B.** Contractor shall notify all other known utility companies (those not affiliated with One Call) at least 48 hours in advance to order locates within and adjacent to the work zone.
- C.** All utility crossings are to be exposed (using methods described in Part 2 above) prior to any excavation.
- D.** All existing utilities running parallel and within 10 feet of either side of the intended work shall be physically located.

E. Contractor shall not assume that utilities found will continue on the same line and grade.

F. Underground utility pothole spacing and frequency shall be as follows:

- 1.** Gas & Electric lines within 25 feet of the work zone shall be potholed and marked every 25 feet to verify the line has not changed directions.
- 2.** Gas & Electric lines greater than 25 feet from the work zone shall be potholed at least once on each end of the limits of excavation.
- 3.** Fiber Optic lines shall be potholed every 25 feet within the work zone.
- 4.** Telephone & Cable Television lines shall be potholed every 50 feet within the work zone.
- 5.** Water, Sewer & Reuse Utilities (less than 8” in diameter) shall be potholed every 25 feet within the work zone.
- 6.** Water, Sewer & Reuse Utilities (8” through 24” in diameter) shall be potholed every 50 feet within the work zone.
- 7.** Water, Sewer & Reuse Utilities (greater than 24” in diameter) shall be potholed every 100 feet within the work zone.
- 8.** At least two (2) potholes shall be obtained for each utility within the work zone regardless of the size of the work zone.

G. Material returned to the inspection hole shall be the original soil compacted back in place.

H. All inspection holes shall be returned to original surface condition.

PART 4 – PERMITTING & SAFETY

- A.** It shall be the responsibility of the Contractor to ensure that all applicable permits for underground work have been obtained prior to commencement of work.
- B.** All work shall be performed by licensed underground contractors.
- C.** Contractor shall prepare and follow a written safety plan. This safety plan shall be provided to the permitting agency and shall be made available onsite.
- D.** Safety plan shall include a site map and show all known existing utilities and shut-off valves.
- E.** Shut-off valve handles (for all existing water, sewer, reuse, gas & electric utilities) are to be in place through the duration of the work for immediate operation if needed.

Go to www.undergroundutilityprotectionpolicy.com to download and print the entire section.