

**ALL EVENTS SUBJECT
TO CHANGE OR
CANCELLATION.**

JUNE 2021

JUNE

June 25
Friday Night Lights
Awards Gala
The Four Seasons

JULY

July 21
Monthly DINNER Meeting
Syberg's on Dorsett

AUGUST

August 18
Monthly DINNER Meeting
Syberg's on Dorsett

SEPTEMBER

September 15
Monthly LUNCH Meeting
Syberg's on Dorsett

SAVE THE DATES

Oct 4th | Golf Tournament
Dec 8th | Casino Night

In my opinion, our ASA Midwest Council members experienced a watershed moment this past month relative to the great pandemic of 2020. It was our annual “Meet the GCs” event which featured thirty General Contractor participant booths, drinks, hors oeuvres, and abundant vibrant networking. Over 700 attendees partook in the event located in the expansive lower level of the St. Charles Convention Center. Some partakers sported face coverings, while others practiced continual eating and drinking to remain in compliance with the requirements enforced by the venue. The larger space in the lower level really enabled folks to spread out compared to typical “sardine mode” arrangement encountered for many industry events of this type. No doubt, the mood of the event was extra special this time around. Not that I found anyone breaking down crying overcome with emotion, but everyone seemed to be experiencing feelings of joy, happiness, gladness, and relief. I encountered not even one crabby individual. Many of us hadn’t seen each other for more than 15 months, and we all realized the goodness of fellowship that we have sometimes taken for granted. For making this event happen, I thank the GC participants, eager attendees, the management and staff at St Charles Convention Center, Pfizer, and Moderna. Mostly, we all owe special gratitude to the GC’s Expo Committee, Tim Thomas and Walter Bazan (the Committee Co-Chairs), and Susan Winkelmann (Executive Director) for their hard work to make this materialize in fine ASA fashion.

This month, Friday, June 25th we present “Friday Night Lights”, the *ASA Midwest Awards Gala at the Four Seasons Hotel* in downtown, where we will enjoy cocktail hour, a superb dinner, and will honor outstanding safety performance by our member companies, and recognize the crème de la crème (that is, best of the best, for those who do not parlez francais) general contractors and exceptional GC personnel. If you haven’t yet registered, please go to the website (www.asamidwest.com), and secure your seats, or a whole table for your company. I’m looking forward to seeing you all there!

As my term as ASA Midwest President is culminating this month, I would like to offer a shout out and huge thank you to Susan Winkelmann (Executive Director) for her hard work, innovativeness, flexibility, and calmness as we navigated uncharted territory this past year. She has done so much behind the scenes, making the whole thing run seamlessly year after year – and she has made it look so easy (and I can assure that it is anything but easy). Thanks to all of our Committee Chairs, Board of Directors, and Past Presidents. They also put in lots of hours, often surreptitiously. This year, they had to change directions from the norm, and extraordinarily think outside the box, which they did an incredible job of. These people all offered great guidance, counseling and support which made my term as president so dang easy. Lastly, I offer a sincere thanks to our members. You have not wavered in staying active and engaged with ASA throughout this past year, keeping our Midwest Council strong and vivacious, as always.

I’m still cautious but very confident that we are now emerging from the throws of the pandemic, and am looking forward to a great year ahead!

Richard A. Russell, Sachs Electric
President, ASA Midwest Council
rrussell@sachscsco.com | 314.681.9849

For a full list of all
ASA Midwest Council events
visit www.asamidwest.com

Syberg's on Dorsett

2430 Old Dorsett Rd
Maryland Heights, MO

Directions: Exit HWY 270 at the Dorsett Exit.
Go east on Dorsett, and a left onto Old Dorsett
Road to Syberg's.

IT IS DUES RENEWAL TIME!

**Membership Dues Renewal invoices were sent
from our national organization in mid May via email**

**IF YOU DID NOT RECEIVE YOUR INVOICE
PLEASE CONTACT susan@asamidwest.com**

ASA Midwest Council membership is only \$845 per year or \$72 per month

**Did you know ASA membership is a company membership &
includes all employees of your company for one rate?**

**RENEW YOUR MEMBERSHIP TO RETAIN ACCESS TO ALL THE
MEMBER ONLY BENEFITS OF ASA MEMBERSHIP!**

**Questions or need a copy of your invoice?
susan@asamidwest.com or 314.845.0855**

JULY 2021
Monthly DINNER Meeting

Syberg's on Dorsett
Wednesday, July 21 2021
5:30 to 8:00 p.m.

Mark your calendar, and register to join us for the July monthly **DINNER** meeting on Wednesday, July 21st at 5:30 p.m. at Syberg's on Dorsett.

Our speakers for the evening will be our **3 GC of the Year Award Winners**, who will be announced at our Friday Night Lights Awards Gala on Friday, June 25th 2021.

Join fellow ASA members and GC of the Year award winners for networking, cocktails, & dinner!

SYBERG'S ON DORSETT
2430 Old Dorsett Road
Maryland Heights, MO

MEETING AGENDA:
Networking & Cocktails 5:30 to 6:30 p.m.
Dinner & Announcements 6:30 to 7:00 p.m.
Program-3 GC of the Year Winners 7:00 to 8:00 p.m.

Registration includes hosted bar & dinner & Program

\$42 ASA Members
\$65 Non ASA Member

Register online-www.asamidwest.com
by Friday, July 16th to reserve your spot.

(Attendees not cancelled by 7.16.21. will be charged per ASA cancellation policy. No refund after 7.16.21., but you may always send someone in your place if you are unable to attend the meeting)



Dear ASA Midwest Council Members:

Thank you for your continued membership in the ASA. It is time once again to renew your membership and continue investing in your company's future by being part of an organization dedicated to the success of our members and the STL construction community! This year, more than most, your support means ASA Midwest Council remained one of the strongest and most successful chapters in the country, even during challenging times for many. We understand that the COVID 19 crisis likely affected everyone's workload and financial situations, we hope you feel as we do, that the work of this organization is important and worthy of continued support. We are happy to announce that we are in the process of returning to IN PERSON events, meetings, and programs as of April 2021! Notably our Meet the GC's Expo which took place on May 19th, with 30 GC Exhibitors, and over 700 attendees. Next up is the Friday Night Lights Awards Gala on June 25th which will offer in person networking and business development opportunities packed with important interactions with our top GCs in St. Louis.

ASA Midwest Council helps St. Louis subcontractors become more profitable and provides members with numerous benefits. ASA's goal is to make our members more efficient and effective at doing business. We are an organization that helps its members increase their business and make them better at what they do daily. ASA MWC provides extensive opportunities to Learn About and Network with Customers and Peers: ASA provides a safe place for construction business leaders to discuss their business challenges and opportunities. Being active in ASA-MWC is a great way to meet with and interact with all the members of the construction team, including customers and prospective customers.

Our events are "must attend" for everyone in the STL construction community. Our Meet the GC's Expo, Awards Gala, and Golf Tournament all set the standard for industry events. ASA Midwest Council events attract those from all aspects of the construction industry including General Contractors, Subcontractors, Suppliers, and the Service Providers to the construction industry.

I hope you continue taking full advantage of all that your membership entitles. ASA Midwest Council exists solely to serve our members. The monthly Business Practice Interchange covers the latest topics in business, delivered by leaders in our community. Our lobbyists nationwide and statewide stay on the pulse of legislation relevant to our industry and work diligently to make sure your best interests are represented. ASA's educational seminars and webinars provide an easy way to increase your business knowledge and grow your business.

I would like to personally thank you for the opportunity to serve as the ASA Midwest Council President this past year. When I undertook this position, my goal was to maintain and increase value to our members, both for their time and dollars, albeit during unprecedented times to say the least. I hope we have served our members well and look forward to increasing in person meetings and events thru the spring and summer into the fall of 2021.

As we look forward to another great year, the ASA Midwest Council is committed to offering our members the best education, government advocacy, industry liaison and networking available in the STL construction industry. I hope you will support our efforts through your continued membership in ASA and renew membership for the 2021-22 year! Thank you for your time, and I look forward to seeing you at an ASA event soon!

Sincerely,

Rich Russell
Sachs Electric Co.
ASA Midwest Council President 2020-21
rrussell@sachscsco.com



Barry Herring
CMIT Solutions

"Help! I think my email has been hacked again. Why does this keep happening to me, how can I make it stop."

To answer why this keeps happening is easy, hackers are getting smarter and have additional tools to help them break a password or collect additional data to help crack the passwords. It does not help that some people still use simple passwords, and use them across multiple accounts, email accounts, bank accounts, financial accounts, etc. The most common password today is "Password", so if this true for you, please stop reading this and go change it now!

We have been deploying MFA (or 2FA) for our clients. Here is the technician definition of what that means:

Multi-factor authentication (MFA; encompassing Two-factor authentication or 2FA, along with similar terms) is an electronic authentication method in which a device user is granted access to a website or application only after successfully presenting two or more pieces of evidence (or factors) to an authentication mechanism.

I know what you are thinking, "Wow! What did I just read?" Well, it is simple, an application or website before it will let you in, will send you a text, or a code from an additional source before logging you in. Once the code has been verifying you are allowed in. This is normally sent to an individual's cell phone, but there are some third-party applications that some websites or software may use. One of the ones we use at CMIT Solutions is Google Authenticator. The application / service generates a new random code every minute. If you are sent a code and you are not trying log in, it normally means someone is trying to get into your account, but without the code from the device you control, they are not allowed in. This may mean it is time to go change your password. Yes again.

Changing your passwords regularly will also help keep you from getting hacked. How many of us that work corporate or government jobs that require a password change every 60 days? Oh, and you cannot use the same password you have used for the last ten passwords. Do not forget you must use upper case, special characters and must be longer than 8 digits.

Being secure is not always easy but keeping your accounts safe has never been more important. Once MFA has been turned on, and you get use to using it, it becomes second nature. So, if you are using software or website that does not use MFA, contact the provider to see if it is available and if you can get it turned on. It is your data, and your safety we are talking about. Additionally, may as well do it now, because we are seeing more insurance companies asking our clients if it is turned on.

Most programs, like Microsoft 365, Bank Accounts and Financial Websites have it, and MFA is built into the program, but often must be turned on. Most of these systems have easy to follow instructions to turn this on.

If you need additional information about MFA, and what it means or how to use it inside of your organization please contact Barry at CMIT Solutions at 636.489.3669 or email him at bherring@cmitsolutions.com.



ASA Midwest Council's FRIDAY NIGHT LIGHTS 28th Annual Awards Gala Friday, June 25th, 2021



6:00 - 7:30 pm – President's Cocktail Reception | 7:45 - 9:00 pm – Dinner Served | 9:00 - 10:00 pm – Awards Presentation | 10:00 - 11:00 pm – Celebration!

TO REGISTER VISIT ASAMIDWEST.COM BY JUNE 16TH 2021
\$175 PER PERSON | VALET PARKING INCLUDED | BLACK TIE OPTIONAL

Contact the Four Seasons at 314.881.5757 before JUNE 10th to RESERVE room at ASA Rate of \$215
Four Seasons Hotel | 999 North Second St. | St. Louis, MO



ASA Midwest Council's FRIDAY NIGHT LIGHTS 28th Annual Awards Gala



2021 NOMINEES

General Contractor 2021

CATEGORY A

Alberici Constructors
ARCO Construction
BSI Constructors
Kadean Construction
L. Keeley Construction
Tarlton Corporation

CATEGORY B

Interface Construction Corp
Kozeny-Wagner
McGrath & Associates
Rhodey Construction

CATEGORY C

BEX Construction Services
Eagan Building Group
G. S. & S. Construction
SITELINES

MEP Subcontractor 2021

CATEGORY A

CE Jarrell Mechanical Contractors
Corrigan Co.
Guarantee Electrical Co.
Murphy Company
PayneCrest Electric, Inc.
Rock Hill Mechanical
Sachs Electric

CATEGORY B

Aschinger Electric
Bell Electrical Contractors, Inc.
Bi-State Fire Protection
Boyer Fire Protection
Haberberger, Inc.
O.J. Laughlin Plumbing Co.
Pipe and Duct Systems LLC
RF Meeh Co.

Specialty Subcontractor 2021

CATEGORY A

Affton Fabricating & Welding
BAZAN Painting Co.
Budrovich
Drilling Service Co.
Flooring Systems, Inc.
Niehaus Building Services
T.J. Wies Contracting, Inc.
Vee-Jay Cement Contracting Co., Inc.
Wies Drywall

CATEGORY B

Acoustical Ceilings, Inc.
AME Constructors
George McDonnell & Sons
Golterman & Sabo
Grant Masonry Contracting
Leach Painting Company
Meyer Painting Company
Swanson Masonry, Inc.

Service Provider/Supplier 2021

Enterprise Bank & Trust
JD Kutter
Negwer Door Systems

NuWay
Seal The Deal Too

Upcoming ASA Midwest Council Meetings & Events



- | | |
|-------------------|---|
| June 25 | 28th Annual Awards Gala-Friday Night Lights
<i>The Four Seasons Hotel</i> |
| July 21 | ASA Monthly DINNER Member Meeting
<i>Syberg's on Dorsett-GC of the Year Award Winners</i> |
| August 18 | ASA Monthly DINNER Member Meeting
<i>Syberg's on Dorsett</i> |
| October 4 | ASA's 34th Annual Golf Tournament-<i>SAVE THE DATE!</i>
<i>Whitmoor Country Club</i> |
| December 8 | ASA Member Holiday Party Casino Night-<i>SAVE THE DATE!</i>
<i>Syberg's on Dorsett</i> |

VISIT WWW.ASAMIDWEST.COM TO REGISTER FOR ANY OF THE ABOVE EVENTS!
Event registration requires member login, contact susan@asamidwest.com with questions!

ASA Midwest Council is on Facebook, Twitter & LinkedIn
Follow ASA Midwest Council
for the latest news and information!



*The **Tom Owens Memorial Scholarship** is a 501(c)(3) non-profit organization that provides financial assistance to qualified candidates who are part-time or full-time students who attend or will be attending accredited junior college, college, university or post-graduate institutions.*



Please consider making a tax deductible donation to the **Tom Owens Memorial Scholarship Fund** to further our cause and support deserving students advance their educational goals!

*For additional information about the Scholarship Fund contact **Chris O'Hagan, J D Kutter** chris@jdkutter.com*

THANK YOU

THANK YOU to the MEMBER COMPANIES that attended our last monthly meeting!

Affton Fabricating & Welding
American Steel Fabrication,
Aschinger Electric
Bazan Painting Co.
Bell Electrical
Bi-State Fire Protection
Boyer Fire Protection

BluSky
CarsonAllaria
Wealth Management
CSA Advisors
ELCO Chevrolet Cadillac
Foundation Supportworks
by Woods

Frost Supply
Golterman & Sabo
Grant Contracting
Hanenkamp Electric
Irwin Products, Inc.
J.D. Kutter
Jarrell Contracting

Knapheide Truck Equipment
MC Service
Meyer Painting Co.
RubinBrown LLP
Sachs Electric
The Stockenberg Law Firm
T J Wies Contracting
Vee-Jay Cement Contracting

ASA Midwest Council needs your time and talent!



**Are you a new member looking to get more involved with the ASA?
Or perhaps you are a long time member, and have never joined a committee!**

**We are always looking for committee members to assist with our
quarterly events, as well as the ongoing committees,
that help run the organization & further ASA's goals!**

**If you are interested in joining a committee, contact executive director,
Susan Winkelmann 314.845.0855 or susan@asamidwest.com
*ASA Midwest Council has been Building. Community. Since 1967!***



DID YOU KNOW?

Check out the **Info Hub** on the ASA National Website for extra member benefits included in your membership!

www.asaonline.com, then member login to access the **Info Hub**

A few Areas to visit in the Info Hub Include:

- ✓ **Resources section.** There are hundreds of documents in the Resources section of the **Info Hub** that include critical COVID-19 information, sample contract language, negotiating tips, archived webinars, and so much more.
- ✓ **ASAdvantage.** In the Info Hub, there is a link to our ASAdvantage program. Members should spend time looking through what is available. Includes programs to save money with Office Max, UPS, Lenovo, Verizon Wireless, as well as discounts on software, and many other cost savings discounts.

You must login to the ASA National website to access the **Info Hub, and your login is different than your local ASA Midwest Council login information.**

If you need assistance logging in, please contact: Loni Warholic: lwarholic@asa-hq.com

The 2021 legislative session came to an end on Friday, May 14 at 6:00 pm as mandated by the state constitution. The last few days of session were interesting, especially the final day, as the Senate adjourned four hours early. The abrupt shutdown was a result of what Democrats perceived as unkept promises by Republican leadership. This led to Democratic leadership holding the floor on the last day and making the unprecedented move to adjourn early.

The end result was failure to pass a key piece of legislation that would extend the sunset on a program that provides a significant amount of funding to the Medicaid program called the Federal Reimbursement Allowance or "FRA". The FRA provides Medicaid funding to hospitals, nursing homes, ambulance services and pharmacies thereby helping the state pay for these services and allowing them to spend state general revenue dollars in other areas of the budget. Without the FRA, most of the health care providers that benefit from this funding mechanism would be unable to continue operations. It is anticipated that Governor Mike Parson will call a special session to address the issue before the current program expires in September.

Highlights of the session include the passage of SB262, which will increase the state fuel tax by an additional 12.5 cent per gallon, to be phased in over a five-year period. The bill would raise up to \$514 million annually by 2027 for road and bridge repairs by MODOT and local governments. Included in the legislation is a provision that allows taxpayers to receive a rebate of the additional taxes paid if they provide receipts and certain documentation to the Department of Revenue. However, not everyone was pleased with the new revenue stream for roads and bridges. Jeremy Cady, President of the conservative, anti-tax group, Americans for Prosperity, has filed a petition with the Secretary of State to put the gas tax increase to a public vote. The group must now begin the process of gathering the required signatures in order to place the vote on a statewide ballot.

Other legislation that has made it to the Governor's desk includes HB69, which places new regulations on the selling and purchasing of scrap copper, precious metals, and catalytic converters. Additionally, the bill creates the new offense of stealing a catalytic converter and classifies the crime as a Class E felony.

COVID Liability finally made it across the finish line as the last bill to pass. After a bumpy road to the finish line, SB51 is now waiting for the Governor's signature. The bill offers protections from liability in certain civil actions related to the COVID-19 pandemic and passed on the last day of session. The measure was a priority for the Governor as well as House and Senate leadership.

Also passing this legislative session was the Wayfair tax, which allows for the collection of sales taxes from out-of-state online retailers. The proposal is part of SB153, which is a wide-ranging tax bill covering numerous topics including, Tax Increment Financing projects, Community Improvement District projects, and a reduction in the individual income tax rate.

Legislation dealing with utility locates unfortunately did not advance this year. SB573 and HB1164 both dealt with the establishment of the Underground Damage Prevention Review Board and also put into place certain penalties for improper and untimely locates. Both bills were met with opposition from many utilities, including AT&T, Missouri Association of Municipal Utilities, Spire, Metro St. Louis Sewer District, and Missouri One Call.

The General Assembly also failed to pass funding for Medicaid Expansion. As you will recall, Medicaid Expansion was passed by a vote of the people in August 2020. The position of the Republican super majority is that the initiative passed in August 2020 does not provide a funding stream to fund Medicaid expansion; therefore, the General Assembly was not obligated to appropriate the funds to expand Medicaid. A suit was filed on May 20 and the courts will now decide whether or not the state will have to fund Medicaid Expansion.

The Governor must decide by July 14 whether to sign or veto bills that have reached his desk. He must also make a decision on any budget actions he will take by June 30 as the state fiscal year begins July 1. Legislators may attempt to override any vetoes at the annual veto session on September 15.

If you did not receive the in-depth ASA End of Session Report via e-mail, please contact Susan Winkelmann. We will continue to keep you updated on political happenings in Jefferson City and around the state.
Nikki Strong, Strong Consulting Group.

ASA Midwest Council Members

24/7 OnSite Cameras
Acoustical Ceilings, Inc.
Acropolis Technology Group
Affton Fabricating & Welding
A.L.L. Masonry Construction Co.
All American Painting Co.
AME Constructors
American Burglary & Fire, Inc.
American Steel Fabrication, Inc.
Anders CPAs + Advisors
Aqueduct Plumbing LLC
Archview Metal Systems Co.
Archview Services
Aschinger Electric
Aspen Waste Systems
Auto Trim Restyling
Bazan Painting Company
Bell Electrical Contractors
Benson Electric Company
Bick Group
Big Boy's Steel Erection
Bi-State Fire Protection Corp.
Bi-State Utilities Company
BluSky Restoration
Boyer Fire Protection
Brown Smith Wallace LLP
Budrovich
BuildPro STL Construction
Building Point Mid-America
C.E. Bollmeier Company, Inc.
C. E. Jarrell Contracting
CK Power
CMIT Solutions
CNA Surety
CSA Advisors LLC
Cardinal Environmental Operations
CarsonAllaria Wealth Management
Cee Kay Supply
Century Fire Sprinklers, Inc.
Common Sense Solutions
Cooperworks Industries
Corrigan Company
Drilling Service Company
Dynamic Controls, Inc.
ELCO Chevrolet Cadillac
Empire Fence & Custom Iron Works
Enterprise Bank & Trust
Equipment Share
Fabick CAT
FastTrac Rentals LLC

Fenix Construction Co. of STL
The Fletcher Company
Flooring Systems, Inc.
Focal Pointe Outdoor Solutions, Inc.
Foreman Fabricators
Foundation Supportworks by Woods
Frost Supply
Galloway, Johnson, Tompkins,
Burr & Smith
George McDonnell & Sons
Golterman & Sabo
Grant Contracting
Grasser Electric
Guarantee Electrical
H & G /Schultz Door Inc.
HM Risk
Haberberger, Inc.
Hager Companies
Hanenkamp Electric
Hansen's Tree, Lawn & Landscaping
Hawkins Construction & Flatwork
Hayden Wrecking
Heitkamp Masonry
Hoette Concrete
Ideas4Promos
Imperial Metal Company
Integrated Facility Services
Irwin Products
JD Kutter
J.F. Electric
J.W. Terrill
John J. Smith Masonry
Johnson Controls
K & K Supply, Inc.
Kaemmerlen Electric
Kaiser Electric
KAM's Mechanical LLC
Kay Bee Electric
Kent Companies
Kirberg Company
Kirby-Smith Machinery, Inc.
Knapheide Truck Equipment
Landesign LLC
Lawrence Fabric & Metal Structures
Leach Painting Company
Liberty Mutual Surety
Lindberg Waterproofing
Linek Plumbing Co.
Luby Equipment Services
Marketeer, Inc.

Meyer Painting Co.
MC Mechanical Services
MJ Products
Midwest Elevator
Mold Solutions
Montgomery Bank
Murphy Company
Negwer Door Systems
Niehaus Building Services
NuWay
O.J. Laughlin Plumbing Co.
On Site Companies, Inc.
P & A Drywall Supply
Parkway Construction Services
PayneCrest Electric
Pirtek Overland
Pipe and Duct Systems
Precision Analysis, Inc.
Professional Metal Works, LLC
R.F. Meeh Co.
RJP Electric
Ravensberg, Inc.
Rock Hill Mechanical Corp.
RubinBrown LLP
Sachs Electric Company
Sandberg Phoenix
Schmersahl Treloar & Co.
Seal the Deal Too
Seiler Instruments
SFW Partners, LLC
The Sherwin-Williams Co.
Show Me Industrial Services, Inc.
Signature Craft
Sikich LLP
St. Louis-KC Carpenters Reg Council
The Stockenberg Law Firm
Stylemaster Apparel, Inc.
Sunbelt Rentals
Swanson Masonry, Inc.
Titan Carpentry LLC
T.J. Wies Contracting
Taylor Excavating
TROCO Custom Fabrication
UHY LLP
United Rentals
Vee-Jay Cement Contracting
Wies Drywall and Construction
Woodard Cleaning and Restoration
Worksafe Technologies
Zurich Surety

Each month you will receive an update on the committees within ASA, to keep you informed on current happenings at the committee level. Below are this month's committee reports. Interested in joining a committee? Contact Susan Winkelmann, ASA Executive Director- susan@asamidwest.com or 314.845.0855



SAFETY

The ASA Midwest Council Safety Awards will be announced at our Friday Night Lights Awards Gala on Friday, June 25th 2021. Join us there!

Lets be **Always Safety Aware!** For additional information regarding the ASA Safety Committee, or to join the committee, contact our Safety Committee

Co-Chairs: Rose Kastrup with CSA Advisors at (417) 761-4194 or

Steve Williams with

Bell Electrical at

(314) 447-9071.



MEMBERSHIP

We are excited to welcome **SEVEN** new members this month! Help ASA Midwest Council continue to grow by introducing someone to all the benefits that ASA Midwest Council has to offer to the STL Construction Community. If you know a subcontractor who would benefit from the resources that ASA brings to its members, let us know. The benefits of ASA membership are many and our committee is very focused on adding quality new members. For Additional information contact our Membership Committee Chairperson, Chris O'Hagan, JD Kutter. (314) 444-4949 or chris@jdkutter.com.

CONTRACT REVIEW

Reading onerous proprietary subcontracts tendered by general contractors can be, and often is, frustrating, painful, upsetting, and frightful. If that happens to you, turn on some background music as you are reminded of what Plato said about it: "Music is a moral law. It gives a soul to the Universe, wings to the mind, flight to the imagination, a charm to sadness, gaiety and life to everything. It is the essence of order, and leads to all that is good and just and beautiful." Granted, the music won't change the onerous contract terms, but it may make you a little less upset. You could also check to see if your Committee has already reviewed the contract.

If you have questions regarding the contract review service, contact committee chair, Dick Stockenberg, The Stockenberg Law Firm; richard@stockenberglawfirm.com

PROGRAMS

We have returned to in person meetings and events this spring, and are enjoying reconnecting with our friends & colleagues! Do you have suggestions for future ASA MWC program topics, please contact our Programs Committee Chair: Chris O'Hagan, chris@jdkutter.com or executive director, Susan Winkelmann; susan@asamidwest.com

Protect Yourself in the Subcontract Against Escalating Materials Prices & Supply Chain Delays

The good news for subcontractors is that the economy is beginning to take off following the Covid shutdown. The bad news, however, is that interruptions in the global supply chain and shortages in construction materials are causing delays and driving prices to all-time highs. *The Wall Street Journal* recently reported that lumber prices have soared to new records, and many economists believe that the skyrocketing materials prices will continue to remain at record highs for an extended duration. Associated General Contractors recently issued a Construction Inflation Alert indicating that prices of construction materials have risen nearly 13 percent since the Covid pandemic began. When prices of materials increase sharply or there are supply chain shortages, subcontractors often seek legal advice on whether they can obtain change orders for the additional costs or time extensions for the delays. Unfortunately, the law is not very accommodating for those seeking relief and it is difficult to obtain relief unless a contract provision specifically permits recovery of the additional costs or entitles you to additional time. Absent a contract provision, the general rule is that in a lump-sum or a fixed-price contract, the subcontractor bears the risk of price increases.

If you are experiencing price escalation or supply chain delays on a project on which you have already signed a subcontract, the first step is to check the subcontract to see whether it affords any relief in these situations. In many cases, the subcontract will not contain specific language giving you the right to recover additional costs or to obtain a time extension. However, the subcontract might incorporate the contract between the general contractor and its customer, referred to as the prime contract. If it does, check to see whether it includes the American Institute of Architects A201 General Conditions. Article 8.3.1 of the General Conditions may give you the right to a time extension, as it provides as follows:

If the Contractor is delayed at any time in the commencement or progress of the Work by ... unusual delay in deliveries ... then the Contract Time shall be extended for such reasonable time as the Architect may determine.

If the prime contract is incorporated by reference into the subcontract and if there is language in the subcontract providing that the subcontractor is entitled to all the benefits and rights that the contractor has against the owner under the contract documents (referred to as a flow-down or flow-through provision), then you have a good argument for entitlement to additional time. This provision only addresses additional time and does not authorize recovery of additional costs. Be sure to strictly comply with the contract provisions regarding notice of the claim and substantiating the delay. With respect to additional compensation for the price escalation, unless a contract provision provides otherwise, the general rule unfortunately is that in a lump-sum or fixed-price subcontract, the subcontractor must absorb additional costs caused by materials price increases. The same rationale holds that a subcontractor is not ordinarily required to provide a credit to the customer in the event the price of a material goes down. Do not be surprised, therefore, if your customer (or the architect, engineer or owner) denies your change order request claiming that the risk of materials price increases is on you.

Without a contract provision addressing materials price increases or time extensions for material delivery delays, subcontractors have two primary arguments to support requests for additional compensation and time, which are based on the legal doctrines of *commercial impracticability* and *frustration of purpose*. Commercial impracticability is similar to force majeure. Unless the subcontract provides otherwise, the doctrine does not, generally, apply to fluctuations in materials prices. Many contracts include a force majeure clause, but they do not typically address materials price increases or shortages. They usually only provide relief in the event of a disaster, war, terrorism, strikes or fire. It is difficult to make out a case in court for relief based on either of these doctrines because the subcontractor must ordinarily prove that the price increases were so severe that the subcontractor would be put out of business due to the increases if it had to complete the project without additional compensation. Even then, the right to relief is not guaranteed.

While severe price increases can be devastating to the bottom line, they are not usually fatal to the company's mere existence and, as a result, courts often deny relief. Still, some courts have found that severe unforeseen price increases can, in some cases, justify an equitable adjustment to the contract price or contract time.

Therefore, even if the subcontract does not expressly entitle you to relief, submit a change order request anyway and be sure to provide detailed backup for the additional costs and/or additional time requested. Some owners are sympathetic to the predicament that contractors and subcontractors are confronted through no fault of their own with an extremely volatile pricing environment. They may agree to provide you with financial and schedule relief even if the contract documents do not specifically authorize it.

One thing is for sure – if you do not request relief, you certainly will not receive it. To summarize, the most effective way to address price increases is to include a provision in the subcontract specifically addressing it and clearly giving you the right to relief in the event of price escalation or delays to material deliveries. If the subcontract gives you the express right to additional compensation for materials price increases, there is no need to resort to the two doctrines described above. To that end, you may elect to insist on inclusion of the following clause in the subcontract:

In the event of a significant delay or price increase of material, equipment or energy occurring during the performance of the Subcontract through no fault of the Subcontractor, the Subcontract sum, time of completion or Subcontract requirements shall be adjusted in accordance with the procedures of the Contract Documents. A change in price of an item of material, equipment or energy will be considered significant when the price of an item increases ten percent (10%) between the date of this Subcontract and the date of installation.

Under the above clause, if the cost of a material increases more than 10 percent, the contractor is entitled to a change order for the amount that exceeds 10 percent. The subcontractor would absorb the first 10 percent of price increases, but after that, the customer would be responsible. The percentage can be negotiated up or down – it does not have to be 10 percent. If you want the ability to get a change order for a smaller increase, simply reduce the percentage which triggers the equitable adjustment to, say, 5 percent. The lower the percentage triggering the equitable adjustment, the less the risk to you. If the customer is still resistant, consider offering to increase the percentage to 20 or 25 percent or to include a clause that requires you to pass on any savings in materials prices to the customer. You might also inform the customer that if an escalation clause is not included in the subcontract, you will have no choice but to increase your proposal cost to cover the risk of materials' price increases.

ConsensusDocs has a standardized amendment addressing materials price increases that can be customized and attached to the subcontract. It provides a baseline price and calculation method for potential adjustments due to materials price increases. The amendment contains a schedule in which the parties can elect to identify materials and if the price of the designated material goes up or down, the subcontract price is adjusted accordingly. The amendment also addresses time extensions in the event of a delay caused by delivery delay.

Another tool to limit the risk of sharp increases is to impose a limit on the time within which your bid or proposal can be accepted. The pandemic has made many projects slow to get underway and the subcontractor should therefore specifically limit the length of time that the proposal pricing remains valid (e.g. 15 days, 30 days, etc.). Also, the proposal should contain an escalation clause (such as that suggested above) and should state that it is expressly conditioned upon the escalation clause being included in the subcontract. Change order pricing should be expressly limited in similar fashion and the change order proposal should expressly state that it is valid only for a specific period of time, such as 30 days. Another tool to consider is ordering as many materials as possible in advance and storing them if it is feasible to do so. Negotiate early for a provision permitting payment for stored materials. Avoid waiting until the middle of the project to address this issue because many contracts permit the owner to decide, in its sole discretion, whether to pay for stored materials. Be proactive and address this important issue up front so there is no dispute regarding your entitlement to payment for stored materials.

Subcontractors should also be aware that it may be possible to recover the cost of price increases that occurred as a result of a delay during the construction period. If a subcontractor can establish that the price increases occurred during a delay caused by the customer or the owner, an element of the delay cost may be escalated material costs. The theory is that as a result of the delays to the construction, the subcontractor had to postpone ordering materials and that by the time the project was ready to receive the materials, the price increased. However, the subcontract may contain no pay for delay or no damages for delay provisions which could prevent recovery of these additional costs. Subcontractors should always resist such provisions particularly now in the current environment where prices are escalating rapidly.

In summary, check the subcontract to see if an argument in favor of additional costs or time can be made based on its provisions. If not, there are a few legal arguments that can be made based on commercial impracticability and/or frustration of purpose, but courts have not been overly cordial to arguments based on those doctrines. For future projects, make sure an escalation clause is included and limit the duration of quotations and change order proposals. As always, consult with counsel on all of the above issues. *Timothy Woolford, Woolford Law, P.C.*

Preparing for OSHA Conducting Internal Inspections and Audits



OSHA is at the door unannounced – to start a random inspection, investigate a safety complaint, to begin an investigation – and everyone starts to sweat. Phones are ringing, radio chatter escalates, the entire site is ablaze with scurrying activity to sweep, clean, hide, find, review, warn, and inform employees to “do it right, the OSHA inspector is here.”

If that describes you and your site, what do you think are your odds of coming out of this “clean?”

What if you had the written plans, the training records, PPE, the guards in place, LOTO procedures for your specific equipment, an accountability program, and employees who could intelligently describe their roles and tasks, already in place? What if the inspector arrived on “just another day” where people were doing what they were supposed to be doing and doing it right? You might ask, “How does that happen and how would I know?”

If you are prepared for an OSHA visit, you likely also have a better safety program and culture. You likely have trained employees, plans in place, emergency drills up to date, and records ready for review. The title of this article is a bit misleading because if you are ready for an OSHA visit, you likely already have a good safety record and program. You likely have engaged employees who help you find and correct hazards to ensure you have a safe workplace.

To be ready, you should at least conduct and track your own internal inspections and audits. These tasks will identify shortfalls while also identifying what is good.

An inspection is a snapshot of what is happening right now with your employees – to evaluate what is good and what may need to be addressed. An inspection looks for hazards as unsafe conditions and unsafe practices, observing tasks for correctness, ensuring first aid kit contents are not expired, checking that PPE is being worn and used properly. In other words, an inspection shows what is currently being done by employees.

An audit determines what regulatory requirements apply to you, and, for starters, whether you have them. It is a checklist to review required programs, ensure they exist, and then determine if what you are doing matches what the programs require.

Examples include locating and ensuring you have all of the written plans in place, noting when you conducted your last emergency drill, checking if you have a response team to meet the 5-minute time requirement, checking to see if you have first aid kits and where they are located, ensuring you are conducting forklift pre-inspections. In other words, an audit shows you what should be done and if you are on track.

Conducting inspections and audits

Who can conduct an internal inspection? Anyone or any team, at any level of the organization can do an inspection if that person or team has knowledge (training) on what to look for. Participants can inspect their own work areas or schedule a walk through other work areas as a fresh set of eyes. They should know that a hazard can be an unsafe action or practice as much as (if not more than) an unsafe condition. Conditions generally don’t exist unless a practice or action creates it. So, teams look for both conditions and practices to make their workplace safer.

An audit is an administrative checklist of required/regulated programs – anyone can conduct an audit because all the person is doing is completing the checklist. Generally, it should be conducted by someone outside of the department being audited. The auditor does not have to know how to do the tasks; the auditor just needs to identify that the programs exist, where they are kept, and that they are current. For example, does the location have emergency evacuation drills? Is there a procedure and employee training on evacuating the premises? When was the last training conducted? When was the last drill conducted (should be at least annually or when the plan changes)?

Documentation

Inspection and audit findings should be documented so if something needs addressing, it gets assigned, followed up, and completed. The document can be a tracker, a spreadsheet, an e-file and should become part of a daily cadence until the items are complete.

Conclusion

Conducting your own inspections and audits will help prepare you for that OSHA visit and increase your employee engagement, which will enhance your safety culture. The inspection eliminates hazards and engages your employees, the audit aids in compliance. Having both in place and in practice will reduce your hazards and improve your readiness.

For additional information regarding the ASA Safety Committee, or to join the committee, contact our Safety Committee Co-Chairs: Rose Kastrup with CSA Advisors at (417) 761-4194 or Steve Williams with Bell Electrical at (314) 447-9071.

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