While the nickname the “Free State” arose in Maryland due to its rich tradition of political freedom and religious tolerance, this certainly does not apply to land development in Maryland. Complex rules and regulations establish a daunting and arduous process that must be adhered to for all land development projects. How the process is managed will make a substantial impact on a project’s timeline, budget, and actual implementation. By being proactive and cognizant of common pitfalls, we can plan and facilitate the process, increasing the likelihood of success.

Engage early and with the right people.

Prior to purchasing or moving ahead with plans on an existing parcel, it is wise to gain a strong understanding of the process that will be involved; given the particulars of the area, zoning and regulatory requirements, and how desired project goals might be impacted. Tuning in with local experts is a recommended method of navigating this investigative stage. Leaning on the experience of your broker, a local engineering/planning firm, and local county and/or municipal governmental departments can help provide a roadmap of the local process, uncover potential limitations of the proposed property, and anticipate the project’s impact on the local community.

Knowledge is power.

Having awareness of the areas where unforeseeable setbacks commonly occur throughout the land development process and learning how to avoid or anticipate can help mitigate loss of valuable financial and time resources. Taking the time to do homework and tapping the expertise of local professionals can identify possible setbacks prior to enacting a LOI (Letter of Intent). Gaining as much prior knowledge about the below components can help assess a project’s overall potential and help paint a realistic timeline and financial picture. It is imperative to have a strong understanding of the property, its surrounding area, and local community prior to project initiation.

- Become familiar with the zoning ordinances

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Meet & Greet

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COVID-19 Security Continuity Checklist

The World Health Organization’s declaration of COVID-19 as a global pandemic sent the nation into a spiral of uncertainty. Impromptu early closings quickly transitioned into statewide lockdowns and quarantines, leaving business owners scrambling to ensure the sanctity of their workflows, clients, and employees.

Was your business prepared?

In times like these, it is essential that businesses establish organized, safe, and swift shutdown protocols. The following checklist provides step-by-step guidance to help you make certain your office is secure while you are away:

Physical Security

- Health/Status Report – All security systems and devices are working properly.
- Schedules – All security schedules are set to reflect business operations.
- Credentials – All required users have proper credentials to security subsystems. All others are restricted or purged. Ready a method to provide credentials for people to enter your facility if needed (first responders, vendors, others).
- Username/Password – All administrators have access to security platforms.
- Assets Secured – All tangible and intellectual assets are properly secured.
- Camera Placements/Settings – All cameras are positioned and programmed to maximize security management.
- Video Surveillance Storage – Recorder/Server has been confirmed for proper recording and the amount of recorded data capacity is sufficient for the business operations as well as remotely accessible.
- Analytics – Available analytics are programmed to enhance security management.

Organized Security

- Physical Maintenance/Security Audits – Intermittent deployment of qualified personnel to conduct a building and infrastructure audit has been established.
- Remote Maintenance/Security Audits – Technology to audit your building and infrastructure (such as camera tours, sensors, analytics, and more) has been leveraged.
- Security Forum – An online forum or other media source that your employees can post security-related issues in real-time has been established.

Cyber Security

- Managed Detection & Response – A system is in place (3rd party or in-house) for proper managed detection and response to cyberattacks.
- VPN/remote Access – A system is in place to securely access your network remotely.
- Critical Machines – All critical machines are currently protected by proper cyber software.
- Remote Devices – All remote devices used by employees during a “work from home” status have the proper deployed cyber software for protection.
- Redundant Data Storage – All data, especially from remote devices, are stored securely with redundant backup.
- Education – All employees have been provided education on cyber risk mitigation.

Policies & Procedures

- Emergency Response Plan – All effective policies & procedures that have been enacted under your Emergency Response Plan have been clearly communicated to all stakeholders via multiple methods and mediums.
- Notices and Updates – All stakeholders are aware of how to learn of any notices and updates as they arise in real time.
- Expectations and Responsibilities – All expectations and responsibilities as the

Continued on Page 21
5 Tips For Growing Your Construction Business

Most small to mid-size contractors have a lot on their plate. Not only are you still involved in much of the day-to-day operations at your company, but you probably also wear the hat of accountant, marketer, recruiter and more. This shifting list of priorities can make it tough to focus on building and growing your construction business.

To help, we compiled some of the top tips for growing a business from the guests on Gross Mendelsohn’s new video series, Next Level.

1. Don’t panic when it’s taking a while to hire for an important role.

It’s no secret that finding and retaining good construction employees has gotten more difficult. Remember though, the best candidate isn’t always going to be the first, tenth or thirtieth person who applies for a job. Patience is key. “Recruiting can be expensive, and a bad hire can be really expensive. So be discerning!” said Linda Pietras, the human resources director at Gross Mendelsohn.

Make sure you’re giving a realistic preview of what the job is when hiring. Interviewing is a two-way street. You want to ensure the candidate has the same goals in mind so you end up hiring someone who is a good fit for the role and your company’s culture.

That means, just because you’ve been short a controller for two months, don’t panic and hire someone who you know is a bad long-term fit. Wait until you find the right candidate, and if things get dire, you might need to outsource until you find the right person to take over.

2. Tax planning can save your business a lot of money.

There’s more to taxes than just plugging numbers into a tax return. Tax planning can save your business money by creating strategies based on your goals and reducing your overall tax liability.

David Goldner, CPA, CFP®, CVA, said it best, “Nobody likes to pay taxes, but you have to make choices.”

For example, let’s say you have some excess cash in the bank. Your CPA might recommend that instead of paying taxes on all that cash, you use some of the money to upgrade your equipment. With less tax liability after the upgrade, you pay less in taxes and the money you would have paid in taxes goes toward your business instead.

3. Your company’s website legitimizes your business.

If you haven’t invested in a website that clearly communicates who your business is and what it does, now’s the time. Websites are increasingly becoming places of legitimacy. People are turning to their phones and computers more and more to find information. If your business doesn’t have an online presence, you’ll be non-existent to a growing majority of your potential customers.

Does word of mouth still matter? Sure. However, if one of your customers tells their friend about your business, there’s a good likelihood that the first thing that friend will do is look up your company online first. If your business isn’t there or your website is outdated, they probably will never end up contacting you.

“With all the free tools out there, there’s no reason for a business not to have a website,” said Dan Schepleng from the creative agency, Kapowza. Business owners can use easy online tools like Squarespace to build a website for their business. “Squarespace is super easy,” Dan said. “Our first agency website was in Squarespace, and I built it over Christmas break.”

Just like websites, online reviews are important too! Here are some strategies on how to manage your construction company’s online reviews.


Small businesses often fall into the trap of hiring the wrong person to manage the accounting side of their business. This can lead to some big issues down the road, like visits from the IRS, paying hefty fees to get the books back in order, etc.

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The entire world is in upheaval due to the COVID-19 Virus. The COVID-19 Virus has certainly created significant challenges in the construction industry, particularly for subcontractors. Pursuant to Governor Hogan’s Order, in Maryland, Construction is considered an essential business during this Pandemic, which is a blessing, but in many respects is causing subcontractors significant exposure, hardship, and problems which they have never previously encountered. Unfortunately, most general contractors’ sole concern is for the subcontractor to perform its work in accordance with the construction schedule even on projects that were started and scheduled before the COVID-19 Virus, which certainly is not reasonable or realistic. Subcontractors genuinely care about the health and well-being of their employees and are concerned that the general contractor provide a safe work environment, which unfortunately is not often the case. Subcontractors’ employees are rightfully concerned about their own health and safety, and due to the COVID-19 Virus, many subcontractors’ employees have told their employer that they are not going to work as they do not desire to endanger their own health or the health of their families. As the subcontractors’ employees’ health and wellbeing is critical, it has caused significant challenges when working with general contractors.

Last week, I received a call from a subcontractor in dismay. He was working on a project in North Jersey with a new general contractor, and several of his key employees advised him that they would not continue to work in North Jersey due to the extensive outbreak of the COVID-19 Virus. My client understood their position and contacted the general contractor to advise the general contractor of the need to suspend its work for a period of time. In this case, the general contractor was authorized to work on the project, and they expected my client to be there performing its work, which is not an uncommon response from a general contractor. Moreover, the general contractor made it emphatically clear that in the event that my client was not on site the following day, it would get someone else to perform the work and backcharge my client. I requested a copy of my client’s subcontract for review and, unfortunately, it contained a specific provision which provided that if there was any stoppage of work for any reason, the general contractor, upon twenty-four (24) hours notice to the subcontractor, can terminate the contract. Which is exactly what the general contractor stated that he would do. At that time my client was owed the sum of one hundred fifty thousand dollars so he had to essentially beg these particular key employees to go back and complete the work. Fortunately, the job took only an additional week, and his employees did not encounter any health issues. But that is the kind of situation that no one had experienced prior to the COVID-19 Virus. These problems are being repeated now on a regular basis.

In another recent occurrence, there was a more positive outcome for a different client of mine. In that case, one of my client’s best superintendents on a project was informed that one of the other subcontractor’s employees on the current project, while working on a prior project, had come in contact with two other subcontractor’s employees who were infected with the COVID-19 Virus. My client’s employees obviously did not want to be on this project when that employee could have been infected and they refused to do so.

In that case, I immediately wrote a letter advising the general contractor that my client’s employees’ safety

Examine your contract for potential remedies.
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Should I Tell My Children Why I Made The Estate Planning Choices That I Made

Should I give my estate planning documents to my children? Do you think my son will be upset when he finds out that I chose his sister as my healthcare agent? These and many other questions are common.

Choosing how much to disclose is both a personal decision and, at least at times, an impactful decision. Many families have the “go to” child or family member that everyone designates to take care of everything. For example, the sibling without children that is designated as guardian for all of the nieces and nephews; the nurse or doctor that everyone wants as healthcare agent; the accountant or lawyer who will hold power of attorney. Sometimes parents want to treat everyone the same and create a committee to make all decisions. Whatever you choose, the next question becomes how it should be communicated.

It is important for everyone to know who the decision makers are. Secrecy rarely produces happy results. Additionally, in most families, the children know who is more likely to be chosen for what. That does not mean that they will agree but it does mean that disclosing the information is not going to surprise anyone. Additionally, everyone needs to know who has authority to act in the event of an emergency. That person also needs to know where to find the documents.

A slightly more difficult question is whether the plan for the distribution of assets should be shared. When the assets are divided equally among children, it is less of a question. However, when there are factors that create a distribution plan that is different, family members may decide to challenge the Will or Trust and such a challenge can deplete most of the funds of many estates. You know your family members best. If sharing will just create constant drama with family members constantly hassling you to change the plan, it is probably not a good idea to share. It may, however, be worthwhile to document why you made the decisions that you made so that those thoughts can be shared after your death.

It is not uncommon for a parent to provide financial assistance to a child during the parent’s lifetime. When there is a clause in a document equalizing the distributions based on advances paid to a child during lifetime, the failure to communicate that to the child whose share will be charged can have costly results. With documentation of the competency of the parents and of the gifts, challenges can be successfully defeated. But is it worth the litigation and emotional costs?

A child who has a financially comfortable lifestyle may not need to get assistance with paying a large medical bill, while one who struggles may. Sometimes, the parents choose to view what happened during life as having nothing to do with how the assets will be divided at his or her death. Other parents, however, do want to equalize the support out of their estate. Neither way is always right or always wrong. What is frequently a problem, however, is when there is an equalization provision and the child expecting a large inheritance is caught unaware of the fact that he or she will receive a smaller portion of the estate. Ideally, this should be discussed by parent and child. When it is not, the child for whom the advances were made can become angry and question the adjustments being made to the inheritance. In addition to the discussion, there should be written records of the advances. When there are not, there is much more of a chance that there will be a challenge. If, on the other hand, you choose not to make an adjustment, it may be helpful to explain that, at least in writing, to your other children.

Second marriages can create financial uncertainty for everyone. A “second spouse” of thirty years is certainly entitled to share in the largess created by the couple or to continue to live the same lifestyle he or she lived while married. That does not mean, however, that the children from the first marriage will agree. Additionally, when each spouse brings children to the marriage, understanding what will happen with the assets at the death of the survivor, and what changes the surviving spouse can make, is important. Spouses are not always on the same page where this is concerned which makes communication even more important. There are many

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Let’s start with the contractual relationships and one general contractor who has committed to integrating mental health and suicide prevention into their culture. As part of its required minimum safety requirements for down chain contractors mandates, the contractor offers an Employee Assistance Program, provides a general awareness of mental health issues to employees and suppliers, and establishes an employee on the project who is certified and trained in mental health first aid. This level of commitment sets a bar to which we all should aspire.

But contract terminology and safety policies must flow down chain and be implemented into field crews, which is where suicide prevention must take hold for the workforce to change the statistical data. Opportunities abound for starting the dialogue in the field. Contractors and their subcontractors (as well as suppliers in certain instances) typically have structured points of contact for safety programming on their projects.

Communication

As subcontractors and suppliers come on site, many contractors require participation in an onboarding process to present policies, procedures and job specifics relevant to safety on the job. This communication provides an initial contact point to promote the integration of mental wellness into the safety protocols. As the project progresses, there will be efforts including safety tailgate meetings, toolbox talks, Monday morning huddles and safety stand downs, which offer the chance to talk about suicide prevention and offer resources to the crews. For example, a contractor can invite a subcontractor’s safety professional to facilitate a large group toolbox talk on suicide prevention during the general contractor’s annual industry-wide safety week celebration. The event would draw subcontractors and general contractors.

As another example, a subcontractor group in Arizona was anxious to go visible on their jobsites regarding addressing this issue with their workers, and suggested inviting fellow subcontractors and general contractor

Contracts

Recent Center for Disease Control (CDC) findings have placed construction/extraction as the industry with the workforce at highest risk for suicide deaths. There are many industry dynamics that impact construction workers and place them at risk. And with suicide deaths at four times the national average, industry stakeholders need to explore how the industry can come together and reduce the industry risk factors that impact the workforce.

There are many elements of the construction industry that are unique. In the quest to eliminate suicide among the workforce, two of these elements play to the industry’s favor.

1. Contractors have a built-in structure to address safety that can easily be expanded to incorporate mental wellness and suicide prevention. The industry culture embraces: “Zero Accidents” and “getting our workers home safely.” The expansion would promote: ”Zero Suicides” and “bringing our workers back to the project mentally equipped to do the job.”

2. There is a well-defined structure among the construction performance chain, including supplier, subcontractor and general contractor. It is incumbent on the industry to integrate suicide prevention not only at the general contractor level, but down-chain into the workforces of the subcontractors and suppliers. Using the already-established safety structure that links the general contractor to their subcontractors and suppliers provides opportunities to educate the combined workforce.

There were several approaches and ideas to consider related to this topic. It will be important to buy into the concept that safety is not a proprietary issue, meaning that all things safety should generally be shared among companies, including mental health and suicide prevention. “We are in this together” is a concept that the entire contracting chain needs to embrace.
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Contractors And Subcontractors’ Heightened Obligations For Safe Work Sites In The COVID-19 Era

Most contracts require contractors and subcontractors to comply with all laws, to keep the work sites safe and to not expose workers to hazards. What does that mean during a pandemic?

Did you know that many construction workers are at-risk individuals and have a higher chance of contracting the virus? Yes, because they are transient, generally do not take care of their health and work in crowded spaces. Here is what employers can do to lessen exposure risk.

Protecting employees and workers

1. Follow the CDC’s recommended protocols should you decide to continue to work;

2. Educate your employees:
   - Continue to give toolbox talks and safety stand downs on the issues.
   - Post any toolbox talks on job boards or disseminate them to each worker.
   - Ensure that management is candid and honest with the workers. For example, if a worker has been exposed to someone that has tested positive, if a worker has tested positive, or if there is an outbreak on site, tell the workers immediately. According to OSHA, “workers have the right to know what hazards are present in the workplace and how to protect themselves.”

3. Keep OSHA/MOSH in mind as you continue to work. COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. Employers, however, are only responsible for recording cases of COVID-19 if all of the following are met:
   - The case is a confirmed case of COVID-19;
   - The case is work-related, as defined by 29 CFR § 1904.5; and
   - The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7 (e.g., death, medical treatment beyond first aid, days away from work, or a restricted work schedule).

4. Allow your employees to determine whether they feel safe at the jobsite, and if not, allow them to stay home;

5. Closely monitor the health of workers and immediately remove anyone from the site that shows sign of the virus or has been in contact with someone who has it, or has been in a hospital recently for any reason;

6. Remember, you not only have a moral obligation to keep your workers safe but a legal one under OSHA/MOSH which “requires employers to provide their employees with working conditions that are free of known dangers.”

7. Examples of things you can do to protect workers:
   - Avoid working in pairs on tasks that can be done alone.
   - Limit hours per day, cut out weekend work, and consider a split shift schedule.
   - Stagger break times, arrival times, lunch times, and quitting times. Loss of production should be secondary to preventing the spread of this disease.
   - Spread out break areas to maintain six feet of personal space between workers.
   - Encourage workers to take breaks outside if the weather is nice.
   - Avoid shuttle buses and elevators that have multiple people in close proximity.
   - Do not put two people into one aerial lift even if rated to do so.
   - Encourage phone or Skype meetings versus meeting in person. If meetings must be in person, break meetings into two or three different sessions.

Keeping the Site Clean

Construction sites are notoriously unsanitary. Here is what you can do to help prevent the spread of COVID-19:

1. Beef up the number of port-a-johns and wash
What You Don’t Know Can Hurt Your Productivity When Managing Emails This Way

You know how much time it takes to manage email—and try to stay on top of it—but you may not realize the enormous amounts of time and energy that are wasted if you’re using one, two or all three of the most common practices for dealing with email.

These practices were born from the fact that many people leave emails in the Inbox after reading, replying to or forwarding, and if you do this too, you know those emails are accumulating and scrolling off the screen.

This can cause a lot of stress and lost time when you have to go back to find an email, an attachment, contact information or event information sitting somewhere in the Inbox. Other important things can be hard to find and manage, too—or they’re missed entirely—such as opportunities, introductions, conversations, ideas, reading and more.

But there’s ONE thing that’s ESSENTIAL to manage—and it’s extremely difficult to do—when emails are left in the Inbox to scroll off the screen, and that is the impossible task of managing TASKS.

Many emails bring things to do, follow-ups, reminders and responsibilities and these are NOT effectively managed in the Inbox. As a matter of fact, it's impossible to effectively plan, prioritize and accomplish tasks ONLY from their sources—like the Inbox—without missing, losing or forgetting something—or a LOT of things.

And how many sources are there in a typical workday? There are more than 10. And email is only one of them.

When it comes to tasks specifically from email, you’ll waste a LOT of time when using one, two or all three of the aforementioned email management practices, which are inefficient and ineffective…

1. Flagging emails
2. Marking emails as “unread” so they appear bold in the Inbox
3. Forwarding emails to yourself so they arrive at the TOP of your Inbox AGAIN, because they could scroll off the screen—or they already have

Which of these are you doing to stay on top of email?

When you engage in any of these practices, you’re re-visiting and re-reading emails you’ve already seen, but couldn’t do anything with, and valuable time is wasted with the process.

Each time you revisit the same emails, you ask…

1. What was this about?
2. Why did I flag this?
3. What do I need to do?
4. Can I do this now?
5. Who do I need to talk or email with before I can take action on this?
6. What step must I take before I can reply to this email?
7. When should I take action if I can’t take any action steps now?

If 10, 20, 30 or more emails are marked for revisiting, you’ll double the time spent reading the emails and asking the questions above. If you return to those emails 3, 4 or more times, you’ve now multiplied the amount of wasted time you’ll never get back.

And you may ask… “Why is this wasted time? How else would I stay on top of these emails?”

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Payroll & Certified Payroll

On federally funded prevailing wage projects contractors are required to pay their employees on a weekly basis, and certified payroll must also be reported weekly. For state funded projects in Maryland, you have 14 days to submit certified payroll after the close of the pay period. These can be submitted electronically through LCPTTracker.

Overtime Calculations

When calculating the rate of overtime pay, the base rate is paid at 1.5x, while the hourly fringe rate stays the same on overtime and non-overtime hours.

If you work in any neighboring states be sure to research their local and state prevailing wage regulations as they do vary from state to state. Hopefully this helps answer a few basic questions so you can more confidently bid on that next prevailing wage job in your area. Please feel free to reach out to Beneco if you have any additional questions.

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Jason Sperflslage is Director of Sales with Beneco; a unique employee benefits, compliance services, and HR solutions company. Beneco specializes in offering these services to contractors who work on prevailing wage projects. Jason has been in the industry for over five years and uses his experience to help contractors succeed in the Davis-Bacon market.

“The is no time for ease and comfort. It is time to dare and endure.”
~ Winston Churchill
How To Handle A Slowdown

1. DECIDE - DO - DON’T
   • Decide: Decide what your response and plan is.
   • Do - Do It: There are many options - So make a decision & live with it!
   • Don’t: Don’t change your mind or second guess your decisions.

2. Stay Positive!
   • Be an inspirational leader and a person of positive influence and hope.
   • Stop talking about the negatives.
   • Make a decision and act on it!
   • Keep people (staff & customers) informed of your position and response.
   • Acknowledge the current circumstances as well as your intention to keep moving forward with the proper precautions in mind.

3. Remember Your Core Values & What You Stand For!
   • Take a hard look at what’s going on around you.
   • People are looking to you to stay the course.
   • Be sure of your actions based on your principles.
   • Respond in the most productive way vs reacting?

4. Financial Planning 101
   • Always plan for the best and worst case.
   • Take a hard look at your cash flow & receivables.
   • What purchases can you eliminate or postpone?
   • What assets can you sell?
   • Call your banker to discuss your line of credit & capacity.

5. Business Focus - Moving Forward!
   • Remember to always build your working capital and reserves.
   • Develop more than 1 type of revenue / job type / customer base / service.
   • Market your services Vs. waiting for customers to request bids.

6. Work On Your Business & Team!
   • Offer alternative work opportunities Vs. layoffs.
   • Train & implement company improvement programs.
   • Clean out your warehouse and perform equipment maintenance.
   • Teach foreman and supervisors how to estimate.

Take time to build your systems.

• Review your job costs vs estimates and update your cost history library.
• Develop and update your job descriptions.
• Ask you customers if you can do some odd jobs for them.

Need Help or Ideas - Let’s Talk! - George Hedley

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Strategies To Increase Your Bonding Capacity
Starting With The Submission Process

What happens to your submission once your agent has viewed the documents? What surety companies will they choose to target for your bonding program? Is your agent knowledgeable in surety or only in commercial insurance? These are important questions for contractors to ask who want to grow their bonding beyond any “fast-track” credit-based surety program limits. For start-ups and contractors seeking a surety bond program up to $1.5 million, the underwriting process is not burdensome. For companies in business with a proven track record in project delivery who want to scale, the underwriting process can be complex.

Agents in this situation will need to canvass every aspect of the contractor’s operations. Their letter to the surety may include the following topics:

- Company and Owner(s) Personal Credit and Payment History with Creditors
- Banking Relationships and Bank Line Borrowing Capacity, if any.
- Company History & Largest Projects Completed (Sureties tend to extend two-times largest job completed for bonded jobs and two-times largest backlog completed for aggregate limits. Typically, backlog is defined as your total cost to complete at any one point in time.)
- Ownership and Experience of Owners and Key Staff
- Subsequent Events (if any)
- Financial Statement Analysis (Three to maybe five years of history to discuss changes in working capital, net worth, key ratios, intercompany accounts, stockholder borrowing, and equipment spending habits, for example.)
- Personal Financial Trends
- Affiliated Companies
- Work in Progress History (This section discusses any Profit Fade, Key Projects and pending change orders.)
- Insurance Coverages
- Legal Issues (if any)
- Indemnity Package

The more information supplied under such headers, the more the underwriter will enjoy receiving the submission and negotiating favorable surety credit terms.

A contractor has every right to ask their agent what surety companies will be targeted for their account. It is always best if a mass marketing approach is NOT used. Sending out submissions to multiple surety companies at one time is typically used only to block access by competing agents. (Once an agent submits an account to a surety company, no other agent can access that surety unless the contractor provides them with a broker of record letter. This letter will essentially “fire” the incumbent agent from that surety company and allow the new agent access.) Since the surety underwriter may uncover some issues not known to the agent to the contractor, it is best to find out what they are and address them before sending the submission to another surety. Keep in mind that your surety broker makes credit worthy statements on your behalf to the surety. If a contractor fails to fully disclose any and all issues to their broker, it can damage you and your broker’s reputation with the surety company.

Just as we can outgrow or make major renovations to our home, contractors need to rethink the presentation of their financial statement and possibly the CPA firm they have engaged. Surety companies enjoy working with certain CPA firms. Ask your CPA what surety companies they speak to on a routine basis. If your CPA does not network with surety companies or is not known to them, this may cause some pause for the surety underwriter. As an aside, if seeking a bond program of $50 million or more, an audited financial statement may likely be required. If you are receiving bonding support under the SBA Office of Surety Guarantees, the SBA requires CPA Audits to support projects $6.5 million and higher.

A sophisticated cost accounting system that can update jobs weekly is necessary to grow your bonding capacity. This will most likely be the surety’s first line...
We Need To Help This Program Succeed!

I’ve been a certified public accountant for a long time...lived through 9/11, “the great recessions” and now it appears possibly a depression. The government is doing everything it can to head this off. They have moved swiftly to implement the CARES Act providing rebate checks to individuals and forgivable loans to help small companies stay in business until the end of this pandemic. These forgivable loans, the Payroll Protection Program (PPP), are being delivered not by the government itself, but our banks and financial institutions.

As we have seen this week, there are few problems with this process. Other than the largest banks (Bank of America, etc.), the banks are not comfortable loaning money to business customers in the way this program requires. No credit checks, no financial history, just three questions according to the law:

Are you a qualifying entity? Small business, 501(c)(3) not for profit, religious organization (including churches), 501(c)(19) veterans organization, or a Tribal business concern

Do you have less than 500 employees? But there are exceptions to that for the restaurant, franchise and hospitality industries

Were you in operation on February 15, 2020 and had either employees or paid independent contractors?

That doesn’t mean that your bank won’t ask for more information. That’s what they do. However, the typical things like financial statements and income tax returns may not be on that list. This all makes bankers uncomfortable, and I’ve seen banks show this in the week leading up to April 3 with their stated and unstated approach to delivering these loans. Here is what I’ve heard in the last seven days from different banks.

We are only providing these loans to customers that have existing loans with our bank.

We are only providing these loans to current customers. If you are not a current customer, we cannot help you.

We have not provided SBA (Small Business Administration) loans in the past, and we are not taking part in this program.

Here is the problem with this. That will leave a huge number of small business without access to this forgivable loan program. This needs to be addressed sooner rather than later.

We need to take the following actions just as soon as possible:

We need Congress to publicly support what the president said on Saturday. That if the program runs out of money they will appropriate more. This will help quell the fears of having to be first in line and lets everyone take a breath.

The SBA needs to stop changing the terms in their regulations that they issue so the financial institutions can get comfortable with the requirements, and most of all...

We need to get more institutions taking part in this program! Credit unions, farm credit system and smaller banks.

We need everyone’s help to make this work. It is unprecedented times…it calls for unprecedented action.

Harold L. Mohn, Jr. is a Partner with UHY LLP, one of the largest public accounting and advisory firms in the U.S. with offices in Columbia, Md. Harold has over 25 years of experience providing audit, tax and financial consulting expertise to a wide range of clients. He consults with clients on various managerial accounting and complex tax issues. Harold can be reached at 410.423.4840 or hmohn@uhy-us.com.
Gone are the days of collecting measurements with a handheld tape measure and pen and paper. Laser scanning is a tool that can enable a high level of coordination in construction with a high level of accuracy and detail. Importing a 3D point cloud into Building Information Modeling (BIM) software has become easier to accomplish and more manageable for architects, engineers and construction professionals in the field, as laser-scanners save you time and money.

A scan captures a site’s shapes and possibly its appearance which are converted into point cloud that can be uploaded into a 3D model. Richmond, Virginia–based Mason & Hanger, a Day & Zimmermann Company, uses a Leica RTC360 3D laser scanner. Including hardware, software and onsite training, the bill came in around $80,000, a far cry from the six-figure cost of older scanners but still an investment. (The entry level Leica BLK360 costs about $20,000.) This might sound steep for a smaller company, but it can pay for itself rather quickly.

Mason & Hanger was introduced to the world of 3D laser scanning through a casual conversation with RPG’s Vice President of Sales, Dean Southee – they were hooked! Having used traditional data capture methods in the past, they were skeptical that laser scanning could deliver everything it promised but were eager to test the scanners in the field. Mason & Hanger opted to use the Leica RTC360, Leica BLK360 and RPG’s Professional Services team for a project that involved measuring a pipe within a fires suppression system which was located inside a particle accelerator loop. The purpose of this project was to collect accurate measurements that would allow them to model a new pipe for replacement.

A major obstacle of this project was the restricted access to the tunnel and limited time to collect measurements. Data needed to be obtained quickly and accurately. Wanting to be as efficient as possible, Mason & Hanger opted to have RPG’s Professional Services team assist with onsite scanning and training. RPG’s team spent one day in the office training the operators on technical components of the hardware and software and best practices. On the second day it was time to scan. RPG and Mason & Hanger’s team spent a day underground scanning the tunnel. It was decided in advance to use the Leica RTC360 for open spaces and the Leica BLK360 for smaller, compact spaces knowing that the data could be merged during post-processing.

Mason & Hanger completed their initial tunnel project well ahead of schedule. This allowed their team to use the Leica RTC360 on an additional project. They were already experiencing how laser scanning saved time. RPG continued to assist Mason & Hanger with post-processing and addressing additional software questions they had once returning to the office. Mason & Hanger was able to execute the desired deliverable ahead of schedule and under budget. They were convinced that laser scanning was a tool they needed to streamline their operations. They purchased a Leica RTC360 and accessories, Cyclone REGISTER 360, Cyclone CloudWorx Ultimate and Cyclone PUBLISHER Pro, and they’ve been scanning ever since.

For more information contact RPG Squarefoot Solutions.
Using protective lighting is a practical, cost-effective way to add a layer of security to your overall security strategy. Protective lighting delivers increased visibility for risk scenarios as well as the optimal visibility for security functions like video surveillance and guard duties.

This article covers the basics of protective lighting: do's, don'ts and industry definitions. Plus, we'll cover several additional security strategies you can use to create the best facility security plan in your power.

**The Basics of Protective Lighting**

Protective lighting, or security lighting systems, generally go by the same name. Certain types, like emergency lighting and moveable lighting, may be used in very specific cases. But they all have a common goal of keeping your facility secure.

When you are choosing protective lighting for your facility, realize that lighting is highly dependent on the scenario. It's true that the protective lighting strategy you choose will depend on your operations, location, and unique threats. However, there are some basic principles of protective lighting to keep in mind.

**Key Principles of Protective Lighting**

- Make it easier for security to observe the site
- Make it difficult for security to be seen
- Protective lighting requires less intensity than working light
- Consider whether the background you need to illuminate is dark or light
- Use contrast to make intruders stand out
- Light perimeters and boundaries
- Light structures and internal areas
- Combine lighting strategies with alarm systems and protective services
- Ensure the failure of one light won't result in system failure

**Types of Protective Lighting Strategies**

There are seven main types of protective lighting.

You should be familiar with most of them, if not all. Combine some of these styles depending on the area to be protected.

1. **Standby lighting**

Standby lighting uses stationary lights arranged to flood light on an area. But rather than constantly illuminating the area, the lights are set to turn on and off using a built-in timer system or motion-activated sensor controls.

2. **Continuous lighting**

Continuous lighting is the most common type of protective lighting. This involves arranging lights to illuminate an area from dusk to dawn. Rather than using motion sensors or other controls, the lights stay on continuously, preventing the area from ever being partly or fully dark. This is especially used in outdoor security lighting.

3. **Emergency lighting**

Emergency lighting is generally used as a backup in case of standard lighting failure. Emergency lighting systems may be the same as any of the above. They simply operate as duplicates of other systems during times of emergency such as power failure. These mainly rely on alternative power sources like backup generators or batteries.

4. **Moveable lighting**

This type of lighting can be stationary or portable. Moveable lighting is most commonly used as searchlights. Moveable lighting systems may be manual or computer-operated and are mostly used to supplement continuous or standby lighting situations.

5. **Controlled lighting**

Controlled lighting is one strategy of continuous lighting. This type of protective lighting limits the projection of light to illuminate a limited area outside a perimeter.

Continued on Page 26
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Here’s some advice from accounting veteran, Ernie Paszkiewicz, CPA, when hiring a bookkeeper: “They don't have to be a CPA, but you have to have somebody with at least a reasonable background and experience, who is able to keep a set of books and a general ledger in reasonably good shape.”

That means, don't just give the bookkeeping job to the least busy person at your business because they have extra time to spare. Hire a professional, even if you have to spend a little more than you'd like. You might also want to consider outsourcing your company's accounting function all together.

5. Give your people opportunities to succeed.

You know what can ruin a good day? Hearing that one of your top performers is leaving. No one will argue that salary isn't important when it comes to employee retention. However, making your employees feel cared about can be just as big of a deal.

“Companies need to build relationships with their employees,” said Linda Pietras, “Employees need to know that they are cared about and understand their value at your company as well as the impact of the jobs that they do. They need to know that they make a difference.”

Give your people opportunities to grow at your business. That can mean something as small as giving them the lead on a low-level project. If you give people the opportunity to grow, you're demonstrating that you care enough to help grow their skillset. That can help you retain employees. Bonus: you’ll be better equipped for internal advancement down the line. Get more tips for retaining construction employees here.

Need Help?

If you have questions about growing your construction business, talk with Steve Ball, CPA, CYA, CCFIP, director of Gross Mendelsohn's Construction and Real Estate Group. He is passionate about helping contractors succeed in all facets of business. Steve provides audit, accounting, tax, business valuation, succession planning and consulting services for contractors. Contact Steve at 410.685.5512 or sball@gma-cpa.com.

Podcasts are available on the Home page of MCN’s Website - www.mdconstructionnet.net and under the Podcast Archives tab.
• Is the property within its zoning rights or does it need a special exception or variance?
• What is the stance on waivers or variances per the county or municipality?
• What kind of buffering or building offsets are required?

Utilities and access
• Are there existing utilities?
• APFO (Adequate Public Facilities Ordinance) is there sufficient capacity if there are utilities?
• Is there existing road access and what type of improvements will be required to bring the access to current standards?
• What entity owns the road SHA, County, Town, etc.?
• What traffic impact will be felt as a result of the projected development?

Know the local culture and demographics and restrictions or perceived neighboring restrictions. While legal or zoning regulations may not directly impact the project, community backlash can potentially delay a project and/or jeopardize the budget as a result of legal fees. Don't be tone deaf to neighboring owners!
• Take time to learn your neighboring audience. What developments will be well received? What might present resistance? Do neighboring owners have the means to legally fight the project and if so, what implications might that have on the project?
• Be mindful of sensitive and unspoken restrictions such as, Section 8 housing and long-standing rural and/or wooded areas, even if located within the development envelope.

Understand the environmental impact
• Will reforestation be required?
• What impact might there be to wetlands?
• Is the property in a floodplain?
• Are there impacts that will require special MDE permits?

All these items above can impact the amount of “developable land” and/or the project cost.

Have a realistic and well-defined proforma and use it as a tool in the process.

Having a sound financial base and clearly defined goals is a best practice for any business venture. Outlining such and sharing with trusted advisors (broker, design team, attorneys, etc.) helps fine-tune realistic expectations. After engaging with a design team familiar with the proposed project area, reviewing design and construction assumptions impacting the project proforma with the team ensures all members are on the same page as the design progresses. Collaborating with the design team helps to determine realistic expectations, adjust the proforma and/or project goals accordingly, and helps better define overall project understanding. Owners should price projects such that they factor in costs noted by the design team and other trusted advisors to address potential impacts related to environmental issues, legal complexities, community aversion, etc.

Understand and respect the timeline.

Development projects take time and require patience. Depending on the jurisdiction, it can take anywhere from nine months to a year, at minimum, to go from the initial design stage to having approved permits in-hand. When developing the proforma, a realistic consideration of the project timeline should be factored in accordingly. Time should also be allotted for a planning charrette with professionals to help define project milestones and create a detailed roadmap of the project’s overall goals and expenditures.

Unexpected delays in the timeline can still occur through bureaucratic interpretations and perceived political impact. It is prudent to anticipate these roadblocks, as they are an inevitable part of the process. Expect the unforeseen but don’t be discouraged by it! With the guidance of knowledgeable local engineering/planning expertise, a better understanding of problem areas in the process can be gained to help assess the success of a potential project.

Tom Miner, PE
Project Manager
Frederick Ward Associates
As Employee Owners, we’re working our hearts out, being just as productive and efficient and safe as we know how in order to better our bottom line, and grow the value in our ESOPs. But think about it. Your business is the one that profits with safe projects that are on (or under) time and budget. See how that works? We call that a win-win.

**Structural Security**

- Power – All power sources are backed up and set for energy savings.
- Network – Network performance is established given an extended “work from home” policy.
- Lighting – All lights required for safety and security are intact and all other lights are turned off.
- Heating/Cooling – All HVAC systems are set for energy savings and short/longterm vacancy.
- Signage – All signage has been posted on premises that clearly communicates the current state of operations.
- Perishable Items – All perishables have been removed from the building or protected for long-term storage.
- Locked Doors – All mechanical doors have been locked/secured.

**Vendor List**

- Emergency Response Team – A list of all team members contact information and responsibilities as they pertain to the state of emergency has been created.
- Utilities – A list of contacts for all utilities has been created.
- First Responders – A list of contacts for fire, police, law enforcement, and/or other related services has been created.
- Restoration – A list of contacts for restoration services has been created.
- Legal – A list of contacts for all legal matters has been created.
- Financial – A list of contacts for all financial matters has been created.
- Insurance – A list of contacts for all insurance matters has been created.
- IT – A list of contacts for all IT-related matters has been created.
- Security – A list of contacts for all security matters has been created.
- Marketing/Website – A list of contacts for all marketing and website matters has been created.
- Business Consultants/Advisors – A list of contacts for consultants/advisors to make strategic business decisions has been created.
- Health – A list of contacts for all health-related matters has been created.

Secom, LLC is here to help during this time of need when everyone is longing to feel more secure. Please don’t hesitate to call us with any questions - 410-309-9911.

**David Dorman is a Senior Security & Technology Consultant that started to work for Secom in 2018.** Previously Dave worked in the commercial and residential security industry since 2012, he covered the MD, DC, VA and surrounding areas during that time. Dave has experience in a variety of manufacturers of Security, Access Control, Video, and Intercom Systems, as well as the operating software available for them.
peers to attend and participate. A creative approach was identified when a general contractor applied a “horse trade” offer to a large project subcontractor. The general contractor’s safety professional led a suicide prevention roundtable in trade for the host company’s safety team, presenting a training topic where the host company had greater experience and expertise. Both companies described this as a win-win.

The variety of simple/available tools to communicate mental wellness and suicide prevention among project crews is as broad as the problem itself. Wallet cards can be issued to all project workers containing warning signs and resource phone numbers such as the National Suicide Prevention Lifeline (1-800-273-825) and crisis support groups specific to the local community. Posters in the jobsite trailer can be a visible message to subcontractors and suppliers that this project cares about all workers who share the workspace. Project lunch and learns have been used effectively to draw subcontractors and suppliers together to discuss suicide prevention on their jobsites.

For example, a general contractor took this concept into the office environment, offering a “lunch and learn” to subcontractor partners. After this lunch and learn, the general contractor received a call the following day from a subcontractor requesting assistance with a suicidal employee. The lunch and learn had given subcontractors the resources to reach out in a crisis situation to aid their employee.

Contractors have used speakers from their EAP’s to facilitate these lunch and learns. Many subcontractors, vendors and general contractors publish newsletters distributed to their peers and industry partners. Incorporating materials on mental wellness and suicide prevention is a perfect fit for this means of communication among all levels of the construction chain.

The Construction Industry Alliance for Suicide Prevention provides many of the suggested tools noted in this article, as well as resource articles, contacts, planning tools, newsletters and event schedules.

David James, CPA/CCIFP, is former CFO (now retired) of FNF Construction, Inc., a heavy civil contractor working the Southwest market from California to Texas. David has nearly 40 years in the construction industry, and has been a member of the Construction Industry Alliance for Suicide Prevention and the National Action Alliance for Suicide Prevention since 2016.

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“I wouldn’t ever say if you’re having tough times then there must be something wrong with you or your attitude. Life’s a fight. It’s a good fight of faith. I encourage people to stay up, stay hopeful, stay faith-filled.”

~ Joel Osteen
stations and the times per week they get cleaned.

2. Hire an industrial cleaning team or labors dedicated only to sanitation efforts during the day or between shifts. Have them clean tools, equipment, trailer offices, and break areas.

3. Construction sites share a lot of items amongst many different people on site. Some items include: fork lifts, aerial lifts, hand and power tools, laptops, and personal fall arrest systems. Have these items cleaned before passing them to the next worker or have these items assigned to particular individuals so that they are not shared.

4. Avoid repeated touching of common items on the job site such as doorknobs (remove doors and gates that are repeatedly used) and materials. Shut down fingerprint scanners that record the time an employee signs in and signs out of the jobsite. Give workers their own ink pens to use on the job site.

5. For larger projects, employers should have a hot water heater. For smaller projects, however, instead of a full hot water heater, there are economical 2-7 gallon electric hot water heaters that plug directly into existing sink systems.

6. Employers should try their best to provide antibacterial soap and hand sanitizer. If unavailable, try finding antibacterial dish soap.

7. If work sites have N95 dust masks and latex gloves, encourage use of these types of PPE. Ensure that masks are form fitting and do not leak oxygen in through the sides of the mask. If latex gloves are not available, encourage the use of work gloves at all times while on the site.

Bonus: Protecting Your Rights To Additional Costs And Time For COVID 19 Impacts

The construction industry is suffering from labor shortages, supply chain disruptions, and project shutdowns or “pauses”. Your employees choose to stay at home under the “shelter at home” order, or you have to lay them off because of the downturn. Your bottom line will be impacted by the pandemic. Let your project team know immediately by sending a notice of cost and time impacts explaining how the pandemic is affecting your performance. Feel free to call me for specifics.

Feel free to contact Tracy at 410.986.0822 or tsteedman@adelberg.com to schedule a free 15-minute consultation. Here is a link to her bio.

Tracy L. Steedman, a partner at Adelberg Rudow, specializes in construction, design and contract law. She partners with small and large construction and design firms in preparing risk mitigation strategies, claims avoidance and counseling, and pre-litigation alternative dispute resolution processes. A large part of her practice is contract drafting and review, and as a litigator, she is familiar with how the courts interpret contracts.
Time was wasted because when you discovered what was necessary the FIRST time you read it, you didn't move the email—or the information it contained—OUT of the Inbox and into the next place where you could best store it for reference or manage it for action.

This happens because even when decisions are made about exactly why an email is so important, many professionals don't have a place to put the information it holds, or if a place DOES exist, they're not in a routine for getting it there.

This is exactly the case when tasks or follow-ups are identified, but there's NO centralized system in which to manage them. As a result, a lot of time, energy and effort are wasted trying to remember AND manage tasks, follow-ups and information that get stuck in the Inbox.

Instead, you can manage email with ease and alleviate the worry and stress of missing something in the Inbox by taking two essential steps.

1. Create Reliable Systems to Store Your Important Reference Information

You must be able to find important reference information when you need it—and FAST—which means you must be able to quickly move information OUT of an email and into systems designed to store that specific kind of information. Examples include…

- A digital Calendar for appointments, calls and other commitments of time
- A digital Contact system for all contact information
- A physical file system for physical papers and files
- An e-document library for e-documents and attachments from emails
- An email folders list—just a short one!—for storing necessary emails

2. Use a Centralized, Digital Task Management System to Manage Tasks

Using a centralized, digital task list, where ALL tasks can be documented, is a smart move for your efficiency and productivity. All tasks from all sources—including those from email—can be visible in one comprehensive system, but NOT planned for action all in one day.

Tasks are stated as small action steps (not projects!) with plenty of detail and targeted dates of action. Then you can effectively compare tasks and prioritize.

This creates a plan of action that includes WHAT you're going to do and WHEN, which is impossible to do on paper—not only because of the 10+ sources of tasks in your workday that would have to be added to a single list—but when priorities shift in your day, you have to be able to reprioritize quickly and turn on a dime. Again… impossible to do on paper.

When you have a workday strategy that includes how to manage tasks, email, time and information, you can not only manage tasks more efficiently and effectively, but you can save time that's being lost in the email Inbox—again, from reading and re-reading emails you've already seen, but couldn't do anything with.

Then you can use the time saved for accomplishing tasks a lot faster and easier, and moving projects forward more quickly. And you can do it all without missing, losing or forgetting anything that arrives in the Inbox—or anywhere else—which means a LOT less stress for you.

Leslie Shreve
Founder and CEO
Productive Day®

Leslie Shreve is a workload management and productivity expert, and the Founder and CEO of Productive Day®. Leslie is also the creator of Taskology® The Science of Getting Things Done, a simple, logical and easy-to-use system that shows professionals how to increase efficiency and productivity by up to 300% in as little as 4 weeks, while reducing stress by up to 90%. Clients previously frustrated or overwhelmed with too much to do, too many emails and too little time now claim to have a secret—a strategy they can use to get things done faster and easier, and make more meaningful progress on the projects and initiatives that matter the most to them and to the future of their company.
of questioning. The surety may require quarterly work in progress schedules or monthly ones if support for a large spike in your program is requested.

Increasing and maintaining your surety program can be costly. Producing a CPA Reviewed or Audited statement and implementing a cost accounting software program can increase your overhead substantially. Such costs can be considered indirect job costs and allocated to your project costs. In this manner, you will be better able to absorb the impact to your bottom line.

When growing bonding capacity, it may be a good time to ask about any indemnity concessions and the financial benchmarks your surety requires for such consideration. For example, if a contractor can demonstrate that their company is not their “personal bank,” i.e., no large stockholder or owner receivables or unnecessary large distributions, are able to forecast sales to show modest growth, not exponential growth, and amassed retained earnings in the company that are at or in excess of $1 million, then certain reasonable indemnity concessions can be requested.

If you are pledging both company and personal indemnity, the surety may, given the scenario above, waive your homestead, for example. If you are enjoying a long-term relationship with your surety, they may consider a capital retention agreement, limited dollar indemnity or perhaps waiving personal indemnity. It all depends on the surety and how much excess liquidity you have in your statement to support the program you have or want in the future.

To bolster liquidity, consider subordinating any stockholder or owner notes payable. Subordinating the debt to the surety will convert the payable to quasi-additional capital in the “eyes of the surety,” not the IRS. If you are Sub S or an LLC, consider converting such notes payable to additional capital for stronger consideration of the cash infusion. (Converting such notes into capital in a C-Corporation is not advised because you pay tax twice on your money.)

Stockholder or owner notes receivable are not treated as a current asset for underwriting purposes. If such notes have plateaued or increased over time, the IRS could consider them as additional salary and apply tax on the outstanding amount and assess a penalty. The surety would rather you increase your salary than show such receivables on your balance sheet. Such notes payable can be a red flag for sureties and your bank.

Growing your capacity may also affect your bond premium rates. Every surety company has a different rate structure accompanied by unique guidelines. If you are not an active bond user, chances are that preferred or super preferred rates will not be offered. Nonetheless, there are surety companies that may offer a very low premium rate structure just to capture your account. While a blessing to receive, such rates are often subject to an increase. Shopping rate can cause diminishing returns for your reputation as a contractor. Sureties do not see themselves as a commodity. If you are looking to scale up and win support from a surety company that will take you to the next level, be candid about the rate structure without making it a priority. Your agent should know how to finesse this to your favor.

Above all, find an agent knowledgeable in surety. Your local commercial insurance agent will most likely not possess the skill set you need to establish or grow your bonding capacity. Remember, a surety agent is not your adversary but advocate. It does not matter if the the surety agency you are working with is large or small. It just matters if your agent has the talent and a healthy amount of appointments with surety companies to help you, along with a huge sense of urgency.

Karen Barbour
President, The Barbour Group

The content was originally published in the Spring 2019 edition of American DBE and is reprinted with permission.

For additional information, please contact Karen at 410.876.9610

1- If your projects involve a scope of work that is repetitive in nature, such as laying carpet tile for example, surety companies may look beyond the “2-times completed” rule.

“Effort only fully releases its reward after a person refuses to quit.”

~ Napoleon Hill
6. Surface method lighting

Always with surface lighting, the goal is to illuminate the surface of structures and/or buildings. This method is particularly favorable to residential areas.

7. Area lighting

Area lighting is just that – lighting designed to illuminate large areas. It’s typically found in open areas such as parking lots, but “area lighting” is a very broad term that may refer to lighting for any specific location.

If you are looking for more specific lighting standards, you can check out our referenced resource at Electrical Construction & Maintenance Magazine online. The article we’ve referenced here includes illumination details for protecting various areas including open yards, storage spaces, and piers and decks.

Supplementing Your Protective Lighting Strategies

It’s important to remember that protective lighting alone, while effective, is not a complete solution. Whether you’re managing, planning, or updating a protective lighting system, consider:

- One-size-fits-all never works
- You may not need lighting where certain alarm systems are already in place
- Complexity does not equal better security

Protective lighting is not enough on its own.

Shawn Scarlata  
CEO, Mobile Video Guard

Mobile Video Guard delivers specialized mobile remote surveillance solutions to facilities and operations across Maryland, DC, and Virginia. If you’re interested in protecting your business with the best remote video camera surveillance option in the Chesapeake Bay region, please contact us today for a free quote.

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was being jeopardized, which would not be tolerated and that my client would not be on the project until the general contractor properly addressed this matter.

Typical of a large general contractor, its response, without any evidence or documentation, was that the other two employees on that prior project had been quarantined and that the employee in question was not in jeopardy. Their further response was that my client's employees should practice “social distancing” more effectively and that my client must have workers at the project to maintain the schedule or it would be subject to liquidated damages.

Upon my further investigation, after talking to several of the other superintendents working for my client, I learned that the general contractor was not in compliance with its own mitigation plan, including, but not limited to, failing to provide sanitizers on the project, making no accommodations to retain healthcare providers to take daily temperatures of persons on the project, failing to provide adequate cleaning/sanitizing, and many other omissions which were grossly negligent. Further, this general contractor knew that “social distancing” was not possible with the type of work my client was performing and the number of employees that were required to be on the project. Ironically, the general contractor had reduced its workforce, but it required far too many people on the project so it could maintain its schedule, completely ignoring the safety of the workers.

I wrote another letter to the general contractor making it crystal clear that my client was unyielding when it came to the safety and health of its employees and that it was apparent that the general contractor's sole priority was not a safe workplace, but only the desire to complete the project in an unrealistic timeframe. The general contractor was further advised that their actions were grossly negligent, that they were in violation of numerous laws, including OSHA, MOSH and Governor Hogan’s orders, and that, if it did not take immediate measures to create a safe workplace, my client would be contacting not only Governor Hogan, but OSHA, MOSH, the project owner, and the media. I further stated that my client would not be complying with the unrealistic schedule.

The next morning, my client received a call from the vice president of the general contractor apologizing and acknowledging its omissions. Suddenly, sanitizers were on the project, and other appropriate action was taken to rectify the general contractor's omissions in its mitigation plan. They further acknowledged that my client was not required to comply with the schedule due to the COVID-19 Virus and that they desired to work with my client.

The lesson to be learned is that subcontractors must push back against general contractors when the health and safety of its employees are in jeopardy.

Subcontractors must also have their own mitigation plans, good communication with their employees, and proper training and oversight to ensure that there is a safe work environment.

Another common hurdle that a number of subcontractors are currently encountering is the disruption of the supply chain and the inability of subcontractors to obtain materials, and in some situations, specially designed products. A Maryland subcontractor recently had specially designed products being produced in Pennsylvania for a Maryland project. And, although in Maryland construction is classified as an essential business, in Pennsylvania, it is not. The general contractor threatened this subcontractor with delay damages if it could not promptly obtain the product.

In an attempt to assist subcontractors that I represent in navigating the challenges caused by this horrific virus, I prepared a letter (which is available upon request by e-mailing me at beklaw@comcast.net) which stated that the subcontractor's ability to continue to perform the work is subject to: (1) the availability of its workforce, which is subject to reduction due to the virus; (2) the prudence of the employees' presence at the project due to health and safety concerns; and (3) the availability of necessary materials to perform its work due to disruptions in the supply chains. I emphasized that the subcontractor cannot assure the general contractor that it can comply with the current construction schedule due to the COVID-19 Pandemic. Further, the general contractor was advised that if it requested the subcontractor to accelerate its work in the future if there was an adequate workforce available, the subcontractor

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would be entitled to additional compensation. I certainly anticipate that general contractors are going to insist that subcontractors accelerate their work to meet unrealistic construction schedules without compensation.

The letter also provided that the subcontractor preserves all of its rights and remedies pursuant to its subcontract and applicable laws for the unanticipated additional costs and damages which it may incur in the performance of the work due to the pandemic, and that the subcontractor will provide written notice of those expenses and damages as they may be incurred.

I provided language to be incorporated in new subcontracts that the subcontractor will not be responsible for delays caused beyond its control, including, but not limited to, delays caused by the general contractor, its subcontractors, the owner, vandalism, terrorism, disease, and epidemics, including the COVID-19 Pandemic.

I prepared an additional letter when a time extension was required and for additional compensation due to delays caused by the COVID-19 Virus. The letter also reserves the subcontractor’s right to request additional time extensions and compensation in the future.

These were some of the immediate measures that were taken. However, it is also essential that subcontractors document as soon as possible if there is an event that occurs that can affect the subcontractor’s work at the project and furnish same to the general contractor.

The subcontractor should always be familiar with the terms of their subcontracts, but particularly now, under these circumstances.

There are provisions that may be helpful in the subcontract in addressing the COVID-19 Virus. It is important that the subcontractor review the prime contract as this is one of the times that the “flow down” provisions to which the subcontractor is subject under the prime contract may be of benefit as a provision that is not contained in the subcontract may be available under the prime contract, which would flow down to the subcontractor’s benefit. In reviewing the subcontract, the subcontractor should look to see if the contract provides for a force majeure provision. Most subcontracts may not provide a force majeure provision. However, it may be in the prime contract, so a subcontractor may get the benefit of this provision. A force majeure provision is a contractual term that essentially provides that if performance becomes impossible or impracticable due to an occurrence of certain specified events or due to events outside the control of the parties, the provision will generally either excuse the performance of the obligations or extend the time for performance of a contract, but not necessarily provide additional money. However, there are situations that even if a force majeure clause is not expressly addressed, in an event such as the COVID-19 Virus, it is possible that performance may be still be excused under common law principles such as impossibility or impracticability.

In a force majeure provision the subcontractor must establish that the event, such as the COVID-19 Virus, actually impacts the subcontractor’s ability to perform under the subcontract. The subcontractor must also be particularly careful to make sure it complies with the notice requirements for invoking a force majeure provision.

In the event that a subcontractor executes an AIA contract, there is a force majeure provision in that subcontract and also in Section 6.3 of the Consensus Documents.

In the AIA A201 2017 version, Section 8.3 provides for delays and extensions of time. Section 8.3.1.3 provides that if the contractor is delayed at any time in the commencement or progress of the work by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the contractor's control, then the contract time shall be extended for such reasonable time as the architect may determine. Unlike the Consensus Documents, the AIA provision only provides for additional time, but not additional compensation.

In the absence of a force majeure provision, the subcontractor may have a convincing argument for an equitable adjustment in the contract sum as a result of a changed condition, if it can establish that the general contractor or the owner restricted its manpower and its ability to perform its work at the project, including, but not limited to whether due to a reduced workforce, social distancing, restricted work hours, access to

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the site, temporary suspensions, shutdowns, etc. To prevail in an equitable adjustment claim, it is critical to establish a right to additional time and/or money by documenting the amount of the delay or additional costs. Accordingly, the subcontractor must instruct its project managers and superintendents to carefully track and record impacts in the daily logs, schedule updates, and notes and that same are due to the COVID-19 Virus.

It is also critically important that the subcontractor stays ahead of the curve. The subcontractor should reach out to its subcontractors, vendors, etc. and inquire if there are going be any delays and to immediately notify the general contractor in writing, including the reasons for the delays. The subcontractor also should advise the general contractor of the efforts the subcontractor has taken to mitigate any disruptions whether in its supply chain, reduction of workforce, or other causes. Documentation is the key as that is what judges and juries want to see, which ultimately wins cases if it gets to that point.

In protecting its rights, the subcontractor must be familiar with the notice provisions of its subcontract. Unfortunately, many subcontractors do not thoroughly read their contracts, particularly the prime contract, and then ultimately fail to provide proper notice resulting in the waiver of a legitimate claim. In providing notice, if the actual cost impact cannot be identified, it is important to identify the reasons that the subcontractor is seeking additional compensation, and immediately notify the general contractor when all or some of the costs can be identified in strict compliance with the notice provisions of the subcontract.

The subcontractor should also review the termination provisions of its subcontract. For example, in the 2017 version of the AIA contract, Section 14.1.1 provides that the contractor may terminate the contract if the work stops for thirty (30) consecutive days due to the issuance of an order of the court or other public authority having jurisdiction that requires all work to be stopped. In 14.3 of the AIA contract, it also provides termination for convenience if the owner suspends the work for a period of time, providing for additional compensation.

Finally, I recently sent letters to my clients advising them to consult with their insurance professional to ascertain what type of insurance coverage they may have available, such as business interruption insurance, due to the COVID-19 Virus. A number of jurisdictions such as New York, New Jersey, Massachusetts, and Ohio are considering legislation that would require property insurers to pay COVID-19 business interruption claims.

I have recommended to my clients that they have their insurance professional file a claim, regardless of whether it is denied, to prevent the insurance company from maintaining that a claim was not timely filed.

Let’s hope and pray that this horrific nightmare ends quickly and for the safety and wellbeing of all of the workers on these projects and their families as well as our fellow citizens.

This article has been written and submitted by Bruce E. Kauffman, Esquire, Senior Partner and Brad E. Kauffman, Esquire, Associate Attorney with Kauffman and Forman, P.A., who specialize in the representation and protection of subcontractors and suppliers. Bruce and Brad can be contacted at 406 W. Pennsylvania Avenue, Towson, Maryland 21204, 410-823-5700.

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~ Albert Einstein
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We look forward to seeing everyone, sooner rather than later!

Stay Well,

Verna and Rob

We’re Hopeful

**July 23rd at the Crazy Tuna!**

If we’re there, it’ll be one hell of a good time!

Here’s Hoping We Can Make It Happen!

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