MONTHLY EDUCATIONAL JOURNAL OF THE FOUNDATION OF THE AMERICAN SUBCONTRACTORS ASSOCIATION

FEBRUARY 2024

THE CONTRACTOR'S COMPASS

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FASA'S

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THE CONTRACTOR'S COMPASS

EDITORIAL PURPOSE

The Contractor's Compass is the monthly educational journal of the Foundation of the American Subcontractors Association, Inc. (FASA) and part of FASA's Contractors' Knowledge Network. FASA was established in 1987 as a 501(c)(3) tax-exempt entity to support research, education and public awareness.

Through its Contractors' Knowledge Network, FASA is committed to forging and exploring the critical issues shaping subcontractors and specialty trade contractors in the construction industry. The journal is designed to equip construction subcontractors with the ideas, tools and tactics they need to thrive.

The views expressed by contributors to *The Contractor's Compass* do not necessarily represent the opinions of FASA or the American Subcontractors Association, Inc. (ASA).

MISSION

To educate and equip subcontractors and suppliers with the education and resources they need to thrive in the construction industry. Additionally, FASA raises awareness about issues critical to and about construction in the United States.

SUBSCRIPTIONS

The Contractor's Compass is a free monthly publication for ASA members and nonmembers. For questions about subscribing, please contact ***communications@asa-hq.com***.

ADVERTISING

Interested in advertising? Contact Richard Bright at (703) 684-3450 or ***rbright@ASA-hq.com*** or ***advertising@ASA-hq.com***.

EDITORIAL SUBMISSIONS

Contributing authors are encouraged to submit a brief abstract of their article idea before providing a full-length feature article. Feature articles should be no longer than 1,500 words and comply with The Associated Press style guidelines. Article submissions become the property of ASA and FASA. The editor reserves the right to edit all accepted editorial submissions for length, style, clarity, spelling and punctuation. Send abstracts and submissions for *The Contractor's Compass* to communications@ASA-hq.com.

ABOUT ASA

ASA is a nonprofit trade association of union and non-union subcontractors and suppliers. Through a nationwide network of local and state ASA associations, members receive information and education on relevant business issues and work together to protect their rights as an integral part of the construction team. For more information about becoming an ASA member, contact ASA at 1004 Duke St., Alexandria, VA 22314-3588, (703) 684-3450, membership@ASA-hq.com, or visit the ASA Web site, www.asaonline.com.

LAYOUT

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FEATURES

DEPARTMENTS

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Cherry on the cake.

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PRESIDENT'S LETTER

Dear Readers:

As I write this, there are just a couple more weeks until SUBExcel. The excitement is building, and I'm really looking forward to enjoying the sights and sounds of New Orleans for a few days...not to mention seeing many of you. If we haven't met, please come up, introduce yourself, and let me - or any of us ASA folks - know how we can make your association better. Even better - get involved in your local chapter, join in one of our Think Tank meetings. Start making waves.

Here are some things I want to highlight. We've been busy -

- At the beginning of February Andrew Christ, our current secretary, based in Kansas City, ***testified*** at the U.S. House of Representatives Small Business Committee hearing. He offered his thoughts on small business contracting reform within the federal government relating to the requirements for past performance and qualifications, the use of payment and performance bonds, the impact of continuing resolutions (CRs) on small businesses, and the bundling of contracts. He represented ASA, you, and let Congress know we're relying on them to hear us.

- Four companies are new sponsors of ASA. **Dell Technologies**, **CommercePayments**, **Merchants Bonding Company**, and **Solidus**. All are offering benefits and discounts to ASA members. Make sure you check them out, learn what they offer, and take advantage of them. They want you to!

- We just launched the Foundation of American Subcontractors Association (FASA) website at ***fasacares.org***. It's the focal area for all things FASA - free learning sessions, all past and future issues of *The Contractor's Compass*, disaster preparedness information, etc.

- ***SUBExcel*** - Join the hundreds of subcontractors - like you - to learn, celebrate, and discuss the issues and topics that matter to you. Find out what others are doing, solutions they've found. Fingers crossed for warm, sunny weather.

- **SLDF Fundraiser at the WWII Museum**. It's not too late. If you haven't been, go!

- Some awesome articles in this month's issue. You'll want to learn about Employee Stock Ownership Plans - the good, the bad, the ugly, and the taxes. Everything you wanted to know about "nuclear verdicts." And that's just the beginning of all the good information in this month's issue.

March is starting in a couple days. Can't believe Spring is on the horizon. But I'm ready for it. See you in New Orleans!

Brad Miller
President, ASA - 2023-24

The following are important coverage considerations before executing a sub-contract agreement with an upper tier.

INDEMNIFICATION REVIEW

Are you indemnifying Owner/Developers, GC's and Prime Contractors for contract provisions that are not covered by your Liability Insurance?

ADDITIONAL INSURED REQUIREMENTS

Does your Additional Insured coverage comply with contract language?

COVERAGE RESTRICTIONS & EXCLUSIONS

Do your insurance policies include coverage exclusions and conditions which may either restrict or not respond at all to certain contractual obligations you entered into, and land you in breach of contract litigation?

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ASA Testifies on Capitol Hill

On Tuesday, February 6, Andrew Christ, current Secretary/Treasurer of ASA National and Chief Operating Officer of ***Compass Constructors*** in Kansas City, Missouri, testified before the U.S. House of Representatives Small Business Committee. The committee hearing examined the impacts that the Small Business Administration (SBA) size standard decisions have on small businesses in the federal procurement marketplace. The hearing also reviewed how government decisions and red tape can prohibit small businesses from fully participating in federal procurement.

In his testimony, Andrew addressed the latter, offering comments on small business contracting reform within the federal government relating to the requirements for past performance and qualifications, the use of payment and performance bonds, the impact of continuing resolutions (CRs) on small businesses, and the bundling of contracts into Multiple Award Task Order Contracts (MATOCs) or Single Award Task Order Contracts (SATOCs).

Additionally, he addressed ASA's continued support of H.R. 1740, which deals with bonding requirements for federal water infrastructure projects, and H.R. 2726 relating to change order reform. Finally, Andrew addressed our appreciation to Reps. Stauber (R-MN) and Scholten (D-MI) as co-chairs of the Congressional Construction Procurement Caucus. Congratulations Andrew and ASA on a job well done!

Click here to see Andrew's full testimony.

Illinois Supreme Court Affirms Ruling in Major CGL Coverage for Construction Defects Case

In December of 2023, the Illinois Supreme Court overturned decades of confusing law on insurance coverage for inadvertent construction defects on projects. The contractor in *Acuity v. M/I Homes of Chicago, LLC* was supported by an amici curiae brief sponsored by the American Subcontractors Association and its Subcontractor's Legal Defense Fund (SLDF), in a coalition effort with the Associated General Contractors of America, National Association of Home Builders, and local chapters in Illinois. The Supreme Court answered the call and embarked on a clarification that was extremely favorable to the construction industry and its broad coalition of support. *Last week, the Illinois Supreme Court denied Acuity's petition for rehearing so this matter is now concluded.*

EVERY YEAR, the Subcontractor Legal Defense Fund is fighting for your rights in cases like these across the country. In 2023 alone, we took up five separate cases in Texas, Illinois, New Mexico and Oregon. In order to continue this work, we rely on the generosity and support of members and sponsors like you!

PLEASE SUPPORT THE FUND TODAY by contributing at ***www.sldf.net*** or clicking the graphic below. We are also seeking sponsors for our 2024 SUBExcel New Orleans fundraiser. Details on that can also be found at the SLDF site. Any questions may be directed to Shannon Oscar at ***soscar@asa-hq.com***.

Thank you for all your support of this unique and critical fund for subcontractors!

ASA Strongly Supports S. 2928, the Water Infrastructure Subcontractor and Taxpayer Protection Act

ASA joined the National Association of Surety Bond Producers (NASBP) and the Surety & Fidelity Association of America (SFAA) in a letter to the Senate Environment and Public Works (EPW) Committee Leadership urging the passage of bipartisan legislation S. 2928, the Water Infrastructure Subcontractor and Taxpayer Protection Act introduced by Sens. Cramer (R-ND) and Kelly (D-AZ). This legislation would amend the Water Infrastructure Finance and Innovation Act (WIFIA) program to help protect taxpayer funds, workers, subcontractors and suppliers, including Small and Disadvantaged Business Enterprise (DBE) Program participants and subcontractors, who build water infrastructure especially in at-risk low income communities. Per their letter, "as the Environment and Public Works (EPW) Committee looks at legislation in the second session of the 118th Congress to continue the important work of addressing our nation's water infrastructure, this legislation would accomplish this policy goal with a simple solution that we urge the Committee to advance."

For over 80 years, surety bonds have played a vital role in ensuring subcontractors and workers on public works projects receive compensation and projects are completed within budget and on time if the lead contractor encounters financial distress. Over 95% of all public projects require bonding under either the Federal Miller Act or state-law equivalents (collectively the Miller Acts). However, the applicability of the Miller Acts' bonding requirements is not always clear on newer forms of project procurement, including public-private partnerships (P3s). Therefore, due to the increasing trend of using P3s to procure and deliver water infrastructure, there is a risk of a substantial amount of Federally-financed projects that do not maintain the same level of protections that have been required on public infrastructure projects over the past century.

This gap would leave workers, subcontractors, small business and taxpayers exposed to unnecessary risks. Without these protections, in the event of a contractor default, the project is halted, and can be terminated, leaving subcontractors, including small, minority and women owned construction subcontractors, and workers without pay. Additionally, states and taxpayers are then forced to absorb additional costs of rebidding and completing the project. We propose to amend WIFIA to adopt a policy solution, such as S.2928, which would ensure all forms of project procurement for water infrastructure using WIFIA-authorized financing, including P3s, utilize the traditionally required protections for workers, subcontractors, suppliers, and taxpayers, ensuring parity for all infrastructure projects.

This solution would have the Secretary of the Army or the EPA Administrator, as appropriate, ensure water infrastructure projects carried out with WIFIA financing have appropriate payment and performance security protections by requiring a surety bond if the project is not subject to State or local payment and performance security requirements. If a State has requirements for security protections, the Secretary or the Administrator could then accept the State requirements if the Federal interest with respect to Federal funds and other project risks related to design and construction are adequately protected. It is a commonsense solution to a complex problem.

This policy solution is currently applied to transportation projects that use the Transportation Infrastructure Finance Innovation Act (TIFIA) program. Congress overwhelmingly supported the adoption of the policy for TIFIA as shown by way of a unanimous floor vote, 97 – 0, to include the provision in the Infrastructure Investment and Jobs Act (IIJA). S.2928 mirrors the TIFIA solution, and would thereby maintain parity between the two programs.

Finally, aside from performance and payment security, surety bonding provides several additional benefits to public infrastructure projects. Ernst and Young performed a study, "The Economic Value of Surety Bonds," that highlighted a number of these additional benefits, which include, but are not limited to:

- Bonded projects are more likely to be completed on time or ahead of schedule than unbonded projects. What's more, unbonded projects are 10 times more likely to default than bonded projects.
- Bonded projects cost less than unbonded projects. 75% of project owners report that surety bonding reduces contractor pricing by an average of 3.2%.
- If a contractor defaults on a bonded project, surety companies intervene, lowering the cost of project completion by 85% and reducing the time to complete by two times.

As the EPW Committee continues to address our nation's water infrastructure needs, we urge the Committee to pursue this policy fix to provide these vital protections to small businesses and workers who build the nation's vital infrastructure.

Coming Through the Door in 2024!

ConsensusDocs publishes a monthly construction law newsletter that you can ***sign up for free***. ConsensusDocs compiles the top five most-read articles of the year in January as an interesting way to reflect on the previous year as well as indicate some of the trending topics that lie ahead. For 2023, the most-read articles were:

5. "***Best Foot Forward: Preserving Limited Liability and Leverage in Negotiating Termination for Convenience Payment***"
   *By: **Tiffany Raush**, Partner, **Jones Walker LLP***
4. ***Betterment and First Costs – Entitlement to Damages from Defects, Deviations, and Deficiencies Doesn't Come with a Blank Check***
   By: ***Bradley E. Sands***, Associate, ***Jones Walker, LLP***
3. ***Compendium on State Construction Laws Now Updated and Available***
   By: ***Joe Cohen***, Partner, ***Fox Rothschild LLP***
2. ***Tips On Declaring A Downstream Party in Default and Termination***
   By: ***Kaitlyn M. Linsner***, Associate, ***Watt, Tieder, Hoffar, & Fitzgerald, LLP***
1. And the Most Read Construction Law Article 2023 was ***Electronic Signatures on Contracts: Are They Truly Compliant?***
   By: ***Rebecca S. Glos***, Partner, Watt, ***Tieder, Hoffar, & Fitzgerald, LLP***

Upcoming ConsensusDocs Webinar: Understanding the Benefits and Challenges of Progressive Design-Build

Want to learn more about Progressive Design-Build (PDB) and its benefits? Join ConsensusDocs on February 28th, 2024, at 12:00 p.m. ET for a live webinar, "***Understanding the Benefits and Challenges of Progressive Design-Build.***" Current ASA members receive a discount. Look for the code in a recent ASAToday issue. Don't miss out on this opportunity to better understand the potential benefits and risks of PDB.

Progressive Design Build (PDB) is a contracting project delivery method that has grown in usage, especially for bigger projects. PDB uses a qualifications-based or best-value selection, and then design and price are fixed later. PDB differs from traditional design-build and presents some opportunities and risks. This webinar will equip you to understand the differences through project experiences. This webinar help you decide if PDB helps address fair risk allocation, increases transparency, and reduces change orders and major budget busts.

Speakers:

- ***Joanna K. Horsnail***, Managing Partner at Mayer Brown
- ***Jeff Miller***, VP, General Counsel at The Haskell Company
- ***Bert Somers***, Contracting Manager, Western US at Ferrovial Construction US & Canada
- ***Brian Perlberg***, Executive Director of the ConsensusDocs Coalition & Senior Counsel at the Associated General Contractors (AGC) of America

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Solidus

Solidus is a start up dedicated to providing loans for subcontractors to transform retention and procurement in the construction industry. By utilizing the assets on your balance sheet, we unlock the funds tied up in retention for less than 1% of the total job cost. Transform your earned retention into immediate cash. No factoring. No hard money lending. No personal guarantees.

Solidus also offers procurement loans at zero cost, allowing subs to effortlessly acquire materials and equipment. Leverage Solidus' financial strength and trade supplier relationships for immediate cash payments upon delivery. Increase your buying power and free up cash at no cost to you.

Loans made or arranged pursuant to a California Finance Lenders Law license. Cal. Code Regs. tit. 10, § 1550(a). ***www.solidusco.com***

Dell Technologies

Dell Technologies is a unique family of businesses that helps small business owners and entrepreneurs build their digital future and transform how they work and live. Dell provides customers with the industry's broadest and most innovative technology and services portfolio spanning from edge to core to cloud. The Dell Technologies family includes ***Dell***, ***Dell EMC [dellemc.com]***, ***Pivotal [pivotal.io]***, ***RSA [rsa.com]***, ***Secureworks [secureworks.com]***, ***Virtustream*** and ***VMware [vmware.com]***. Through the American Subcontractors Association and Dell Technologies partnership, ASA members have access to an array of valuable benefits. These benefits include exclusive discounts, dedicated Small Business Advisors & complimentary onsite technology consultations to help provide tailored solutions catered to any specific business needs.

Your Dell Tech Advisor is specially trained for your unique needs and is your single point of contact for customized tech advice, product recommendations, technical support and even finding the best deals and promotions. From special events to exclusive savings and personalized advice, start exploring your advantages today. If you have any questions, reach out to your Dell Account Manager, Sara Nauert, at ***Sara_Nauert@Dell.com*** for assistance.

Partnership Benefits:

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- Access to Dell Financial Services Flexible Payment Options
- Complimentary Onsite Consultations Nationwide through Partner Outreach Program

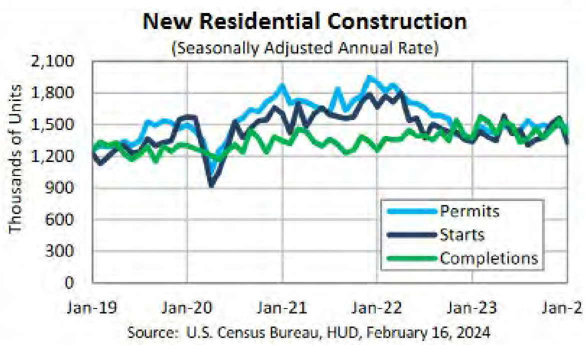
Construction Data & Figures

NEW RESIDENTIAL CONSTRUCTION JANUARY 2024

Building Permits:	1,470,000
Housing Starts:	1,331,000
Housing Completions:	1,416,000

Next Release: March 19, 2024

Seasonally Adjusted Annual Rate (SAAR)
Source: U.S. Census Bureau, HUD, February 16, 2024



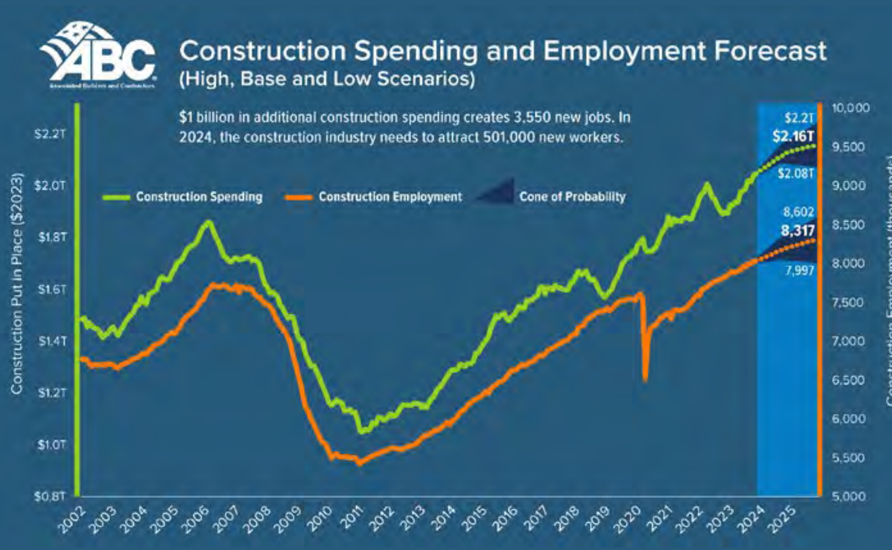
Monthly New Residential Construction, January 2024

Source: U.S. Census Bureau, HUD, February 16, 2024

Building Permits: Privately-owned housing units authorized by building permits in January were at a seasonally adjusted annual rate of 1,470,000. This is 1.5 percent below the revised December rate of 1,493,000, but is 8.6 percent above the January 2023 rate of 1,354,000. Single-family authorizations in January were at a rate of 1,015,000; this is 1.6 percent above the revised December figure of 999,000. Authorizations of units in buildings with five units or more were at a rate of 405,000 in January.

Housing Starts: Privately-owned housing starts in January were at a seasonally adjusted annual rate of 1,331,000. This is 14.8 percent (±10.2 percent) below the revised December estimate of 1,562,000 and is 0.7 percent (±11.7 percent)* below the January 2023 rate of 1,340,000. Single-family housing starts in January were at a rate of 1,004,000; this is 4.7 percent (±11.6 percent)* below the revised December figure of 1,054,000. The January rate for units in buildings with five units or more was 314,000.

2024 Construction Workforce Shortage Tops Half a Million



The construction industry will need to attract an estimated 501,000 additional workers on top of the normal pace of hiring in 2024 to meet the demand for labor, according to a proprietary model developed by Associated Builders and Contractors. In 2025, the industry will need to bring in nearly 454,000 new workers on top of normal hiring to meet industry demand, and that's presuming that construction spending growth slows significantly next year. "Broadly, there are two factors shaping the interaction between construction worker supply and demand," said ABC Chief Economist Anirban Basu. "There are structural factors, including outsized retirement levels, megaprojects in several private and public construction segments and cultural factors that encourage too few young people to enter the skilled construction trades. There are also structural factors, including those related to interest rates, consumer sentiment and general economic performance.

"While construction employment is growing, it is not growing fast enough to meet the demand to complete the work on the books for 2024," said Bellaman. "To address this shortage and grow the construction talent pool, ABC has a ***network*** of more than 800 apprenticeship, craft, health and safety and management education programs—including more than 450 government-registered apprenticeship programs across 20 different occupations. ABC chapters also have ***323 entry point programs*** in place nationally to welcome all to begin a career in construction. To address workforce demand that drives the U.S. economy, Congress must also look toward much-needed reforms to our legal immigration system and provide high-demand industries, like construction, with access to new or expanded visa programs."

View the ***methodology of ABC's 2024 construction workforce shortage model***.

Construction input prices increased 1.0% in January compared to the previous month

— according to an Associated Builders and Contractors analysis of the U.S. Bureau of Labor Statistics' Producer Price Index data released on February 16. Nonresidential construction input prices increased 0.9% for the month.

Overall construction input prices are 0.4% higher than a year ago, while nonresidential construction materials prices are 0.7% higher. Prices increased in 2 of the 3 energy subcategories last month. Crude petroleum input prices were up 6.1%, while unprocessed energy materials prices were up 3.8%. Natural gas prices decreased 2.4% in January.

"Construction materials prices surged in January, ending a streak of three consecutive monthly declines," said ABC Chief Economist Anirban Basu. "While this represents the largest monthly increase since August 2023, input prices are essentially unchanged over the past year, up less than half a percentage point. As a result of relatively tame input costs, a plurality of contractors expects their profit margins to expand over the next six months, according to ***ABC's Construction Confidence Index***.

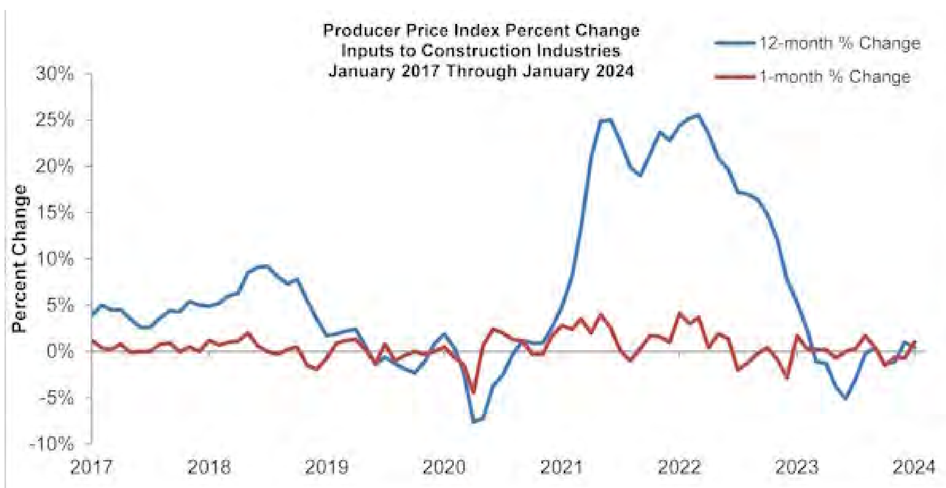
"Additionally, the broader PPI measure of prices received by all domestic producers of final demand products and services rose 0.3% in January, well above the expected 0.1% increase," said Basu. "This, along with the hotter-than-expected Consumer Price Index data released earlier this week, suggests that the Federal Reserve may keep interest rates elevated for longer than previously expected."

The construction industry added 11,000 jobs on net in January, according to an Associated Builders and Contractors analysis of data released today by the U.S. Bureau of Labor Statistics. On a year-over-year basis, industry employment has expanded by 216,000 jobs, an increase of 2.7%.

Producer Price Index, January 2024

	1-Month % Change	12-Month % Change	Change Since Feb 2020
Inputs To Industries			
Inputs to construction	1.0%	0.4%	38.7%
Inputs to multifamily construction	1.1%	1.6%	38.0%
Inputs to nonresidential construction	0.9%	0.7%	39.5%
Inputs to commercial construction	0.5%	0.7%	39.7%
Inputs to healthcare construction	0.7%	0.8%	39.4%
Inputs to industrial construction	0.7%	1.4%	35.1%
Inputs to other nonresidential construction	0.9%	0.6%	39.4%
Inputs to maintenance and repair construction	1.3%	-0.3%	36.7%
Commodities			
Adhesives and sealants	0.0%	1.2%	33.5%
Brick and structural clay tile	0.8%	5.4%	26.2%
Concrete products	0.8%	6.2%	35.9%
Construction machinery and equipment	0.6%	4.5%	29.5%
Construction sand, gravel, and crushed stone	3.3%	8.1%	34.8%
Copper wire and cable	1.8%	-2.2%	32.8%
Crude petroleum	6.1%	-1.6%	50.1%
Fabricated structural metal products	0.5%	2.4%	56.4%
Gypsum products	-1.3%	-1.6%	41.1%
Hot rolled steel bars, plates, and structural shapes	-1.9%	-4.4%	50.6%
Insulation materials	0.8%	1.7%	38.1%
Iron and steel	3.5%	4.5%	61.6%
Lumber and wood products	0.1%	-3.6%	24.2%
Natural gas	-2.4%	-55.8%	42.6%
Plumbing fixtures and fittings	0.7%	1.2%	18.5%
Prepared asphalt, tar roofing and siding products	-0.4%	5.7%	41.0%
Softwood lumber	1.1%	-9.0%	6.1%
Steel mill products	5.4%	4.4%	71.6%
Switchgear, switchboard, industrial controls equipment	1.3%	6.2%	41.9%
Unprocessed energy materials	3.8%	-19.6%	63.2%

Source: U.S. Bureau of Labor Statistics



Source: U.S. Bureau of Labor Statistics

Nonresidential construction employment increased by 7,600 positions on net, with growth in 2 of the 3 subcategories. Nonresidential specialty trade added 13,700 positions, while nonresidential building added 1,600 jobs on net. Heavy and civil engineering lost 7,700 jobs. The construction unemployment rate rose to 6.9% in January. Unemployment across all industries remained unchanged at 3.7% last month.

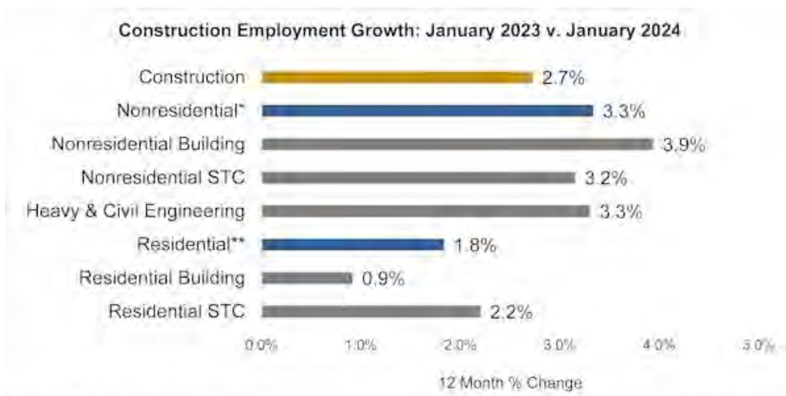
"The construction industry added jobs for the 10th straight month in January," said ABC Chief Economist Anirban Basu. "That was hardly the biggest story from today's release, however, with total U.S. payroll employment increasing by a staggering 353,000 positions. That's nearly twice the consensus forecast and represents yet another economic indicator that has surprised to the upside.

"The construction unemployment rate stood at 6.9% for the month, which is tied for the third-lowest January rate on record," said Basu. "As a result of labor scarcity, construction wages surged in January, increasing at the fastest rate since July 2023. With both the construction industry and the broader economy continuing to grow at a rapid pace, contractors will struggle to remain adequately staffed over the coming quarters, especially with a majority of contractors intending to increase their staffing levels over the next six months, according to ABC's Construction Confidence Index."

Construction Employment Statistics: January 2024

	January 2024	December 2023	January 2023	1-Month Net Change	12-Month Net Change	12-Month % Change
Employment						
Construction	8,137,000	8,126,000	7,921,000	11,000	216,000	2.7%
Nonresidential	4,803,900	4,796,300	4,648,800	7,600	155,100	3.3%
Nonresidential building	904,600	903,000	870,300	1,600	34,300	3.9%
Nonresidential specialty trade contractors	2,774,100	2,760,400	2,689,300	13,700	84,800	3.2%
Heavy & civil engineering	1,125,200	1,132,900	1,089,200	-7,700	36,000	3.3%
Residential	3,332,700	3,330,000	3,272,600	2,700	60,100	1.8%
Residential building	938,400	935,900	929,900	2,500	8,500	0.9%
Residential specialty trade contractors	2,394,300	2,394,100	2,342,700	200	51,600	2.2%
Average Hourly Earnings						
All private industries	$34.55	$34.36	$33.07	$0.19	$1.48	4.5%
Construction	$37.55	$37.34	$35.70	$0.21	$1.85	5.2%
Average Weekly Hours						
All private industries	34.1	34.3	34.6	-0.2	-0.5	-1.4%
Construction	38.6	39.0	39.2	-0.4	-0.6	-1.5%
Unemployment Rate						
All private industries (SA)	3.7%	3.7%	3.4%	0.0pp	0.3pp	
Construction (NSA)	6.9%	4.4%	6.9%	2.5pp	0.0pp	

Source: U.S. Bureau of Labor Statistics. Note. SA: Seasonally adjusted. NSA: Not seasonally adjusted



Source: U.S. Bureau of Labor Statistics *Includes Nonresidential Building, Nonresidential STC, and Heavy and Civil Engineering
**Includes Residential Building and Residential STC

AIA

Spending on nonresidential buildings will see a modest 4% increase in 2024, after increasing by more than 20% last year, according to the latest Consensus Construction Forecast by the ***American Institute of Architects***.

The pace will slow to just over 1% growth in 2025, a marked difference from the strong performance in 2023. Spending on commercial facilities will be flat this year and next, manufacturing construction will increase almost 10% this year before stabilizing in 2025, and institutional construction will see mid-single-digit gains this year and next.

Factors of the slowdown

- The Consensus Construction Forecast panelists, a group comprised of the leading construction forecasters from across the country, found there are many factors fueling the projected slowdown:
- Tighter credit conditions continue to put pressure on many regional banks that account for a sizeable share of construction lending.
- Higher construction input costs due to inflation in materials costs and labor in recent years.
- Declines in commercial property values as weak demand continues in many sectors.

Structural changes in demand, disrupting notoriously cyclical construction industry.

What AIA says

"There are several economic headwinds behind the projected slowdown," says AIA Chief Economist Kermit Baker. "We already started to see construction starts either slow dramatically or turn negative in virtually all construction sectors in the latter part of 2023 and the weaker conditions are expected to stay into 2025."

View the Forecast

Solidus Construction Materials Price Report for February

Commodity	12 Month % Change	1 Month %
Softwood Lumber	24.5%	24.4%
Hardwood Lumber	30.7%	0.2%
General Millworks	15.0%	2.4%
Soft Plywood Products	22.8%	13.6%
Hot Rolled Steel	59.1%	5.4%
Copper Wire & Cable	18.4%	-0.1%
Power Wire & Cable	43.7%	-2.7%
Builder's Hardware	18.1%	0.8%
Plumbing Fixtures	7.1%	2.6%
Enameled Iron & Metal Sanitary Ware	8.4%	0.2%
Furnaces and Heaters	19.2%	3.6%
Sheet Metal Products	38.6%	1.9%
Electrical Lighting Fixtures	13.1%	-3.5%
Nails	44.5%	3.3%
Major Appliances	7.8%	1.7%
Flat Glass	13.3%	0.3%
Ready-Mix Concrete	8.9%	2.2%
Asphalt Roofing & Siding	19.7%	4.9%
Gypsum Products	23.0%	4.9%
Insulation	23.0%	5.2%

After a year in which the economy and starts slowed considerably, the coming year should provide a transition to stronger growth for construction. In 2024, total construction starts are expected to gain 7% to $1.2 trillion after growth slowed to just 1% in 2023 (and was down 2% after adjusting for inflation). In 2024, Dodge predicts U.S. economic growth will slowly begin to improve as inflation subsides and the Federal Reserve begins to lower interest rates. During the first six months of the year, however, the nation's economy will need to weather several potential storms, such as an extended government shutdown, potential new union strikes and higher energy prices due to the conflict between Israel and Hamas. In general, if the economy can weather the storm over the next six months, the outlook becomes much clearer. In early 2024, economic growth will continue to ebb, and job growth will slow. But this downshift will take a bite out of inflation bringing the core Consumer Price Index down to 3% by mid-2024. That will allow the Fed to begin easing and the economy to recover in the latter part of the year.

Every month, ***Solidus*** compiles a construction material price report to help subcontractors navigate the market with ease. Don't miss this opportunity to gain insider knowledge about the current state of the construction industry and how it may affect your business.

It's always something
AWESOME

What's Behind the Paint?

by Mary Klett, ASA Communications Team

How many people have looked at the capitol dome in D.C., looking up 180 feet to "The Apotheosis of Washington", and thought, "Wow, I wonder if that dome ever leaks when it rains?" Thanks to Adrienne Smoot-Edwards, and her team at Regeneracy, they probably never will. Nor will they wonder about all the other behind the scene restoration work her team has performed at historical churches, libraries, theaters, and other major landmarks in the Washington, D.C. area.

Working in the back end of construction is a typical path – or at least starting point – for many women - HR, accounting, finance.... And when Adrienne joined a few others in a partnership for restoration work, she was ready to do just that – accounting, marketing, management...maybe even a little front end work as well, as she loved craft work, painting, and hands-on love of historic architecture. And DC – not to mention Virginia and Maryland - has plenty of it.

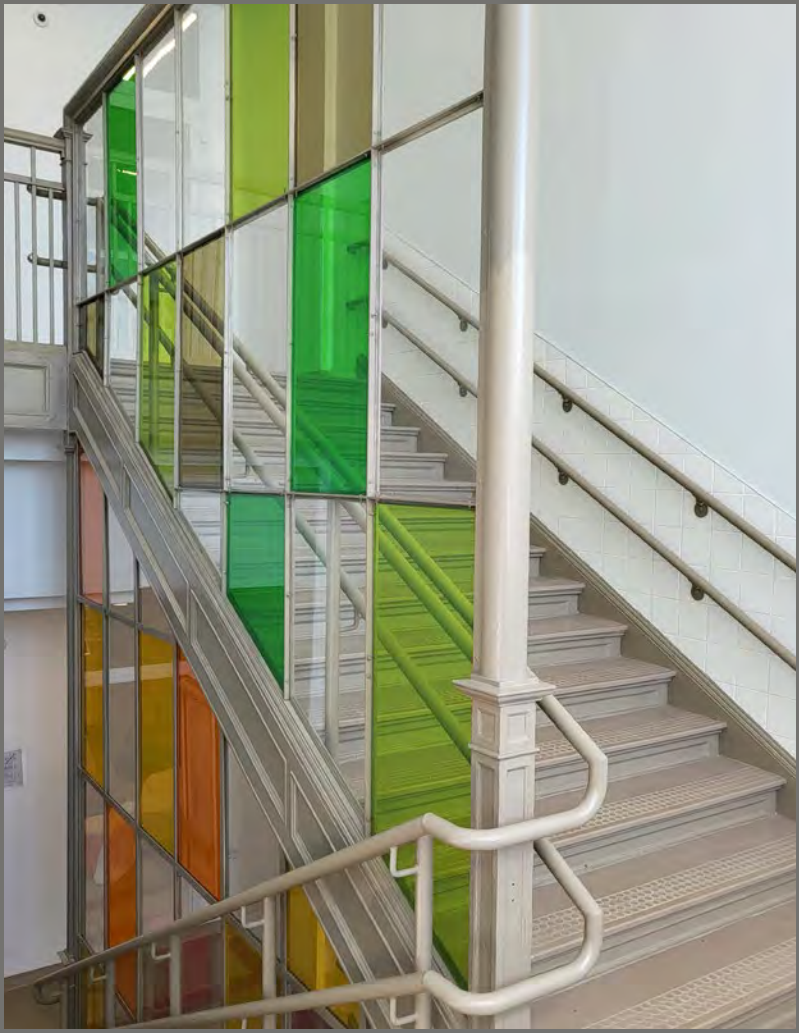
Shortly after, she started running the show, and 21 years later she's going strong – along with her team of 32 dedicated artisans – restoring, caring, and refurbishing the windows, doors and unique architectural features on which Washington's renowned humidity, pigeons, squirrels, and time have taken their toll.

*Left: Mary Church Terrell House, Washington, DC in 1933. Historic American Buildings Survey, collections of the **Library of Congress***

Above: Original windows of the Mary Church Terrell House

Right: Original, restored windows installed in the Mary Church Terrell House

Randle Highlands stairway during renovation



Randle Highlands stairway after

She's a relatively new member of ASA of Metro Washington. Ike and Cindy "wouldn't leave me alone." Adrienne thought it was a club – and she didn't need a club. But she did like the aspect of advocacy, and when she found out how hard ASA works on behalf of subcontractors in her hometown, she decided to join.

Most of Regeneracy's marketing is word-of-mouth. When you do a good job, people talk (when you do a bad job, too).

She's proud of the diversity of her crew. The youngest is in their 20s; the oldest in their 80s.

But while there's no doubt she's busy, Adrienne recognizes the need in her community where she can have an impact:

1. An apprenticeship program for students who want to learn the trade, but don't have the funds. The problem is, most grants are short term (think six months), while students' needs for tools, equipment, training, learning, might take a couple years. She's trying to find a way to make sure the students have a chance to experience the full range of historic restoration skills with an appreciation for why restoration is a viable trade.

2. Restoration for properties that can't afford it. How many incredible edifices have been lost because their owners and caregivers just didn't have the funds or skills to maintain them. You can only paint so much, or spackle so many holes and cracks, before the place comes tumbling down. Adrienne is recording a podcast called "Preservation Partners" (not quite ready for prime time) that will provide a training ground for her students, while repairing some of the properties in disrepair . We'll keep you posted on that when the first five episodes are ready.

So the next time you admire some historic structure – whether in DC or in your own town, use your imagination and think about the structure behind the scene. Who knows – maybe you already do, being who you are. How many times has it been repaired? Does it probably need repair? Who did it? And if you see Adrienne, say "Thanks for saving history."

The Contractor's Compass is recognizing excellence in ASA's ranks. Every month we are highlighting the activities, achievements, and actions of ASA members that might inspire others. Do you have something you want to share? Send us an email at communications@asa-hq.com.

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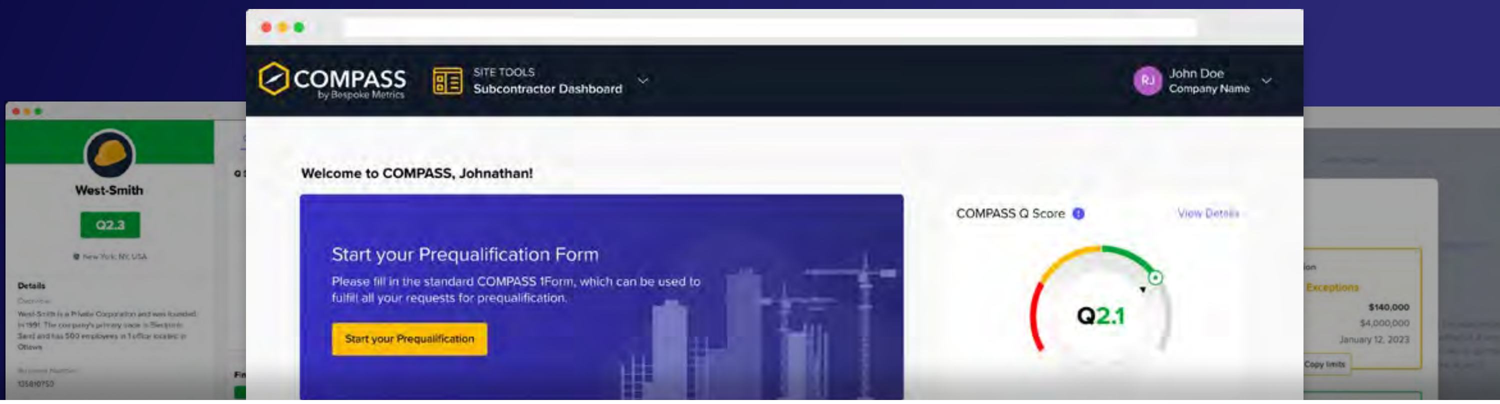

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LOOKING FOR VOLUNTEERS!

Consider joining the editorial board of *The Contractors Compass*

by Mike Kline, ASA Director of Communications

The Contractor's Compass is ASA's popular monthly journal that is delivered to nearly 13,000 subscribers.

Officially published by FASA, the Foundation of the American Subcontractor's Association, Compass has been part of the ASA family for seven years and is one of the most read publications dedicated to construction subcontractors.

Featuring a mix of strategic and practical content, the journal covers topics important to subcontractors and their business such as Legal Issues, Government and Regulatory Impacts, Tax Strategies, Safety, Workforce Development, Jobsite Technology, Leadership, Ethics, Financial Management, and more.

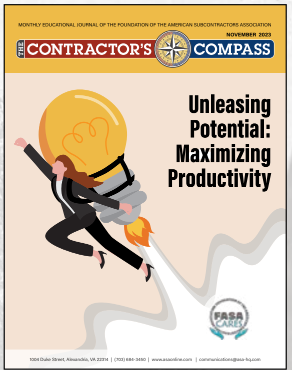
As the organization grows and ASA's influence expands, there is a desire to ensure that Compass stays on top of construction industry trends and issues so that we may continue to provide timely and relevant content. To this end, we're searching for volunteers to be part of a new editorial board to advise The Contractor's Compass.

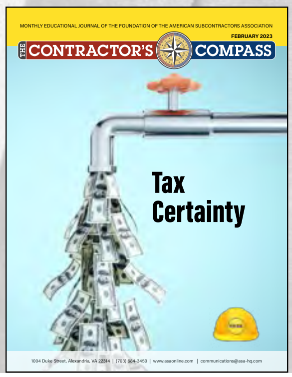
The primary purpose of the board will be to provide guidance on potential content, participate in the development of the editorial calendar, and assist with the expert review process.

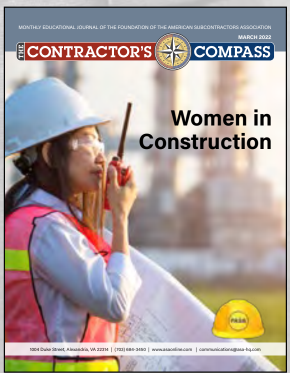
The estimated time commitment for board members is up to 20 hours annually including:

- 1 hour per month reviewing the upcoming issue
- 2 to 4 hours dedicated to planning the editorial calendar
- 2 to 4 virtual meetings per year

If you are interested in volunteering, and keeping this publication relevant, and even more vital to the industry, send an email to Mike Kline, ASA Director of Communication, at ***mkline@asa-hq.com***.







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FEATURE

Not a New Idea—But a New Trend: Employee Stock Ownership Plans

by Todd A. Feuerman, Ellin & Tucker

One of the most difficult processes that a privately held construction company will face in its lifetime is the transition of the business to new ownership. Family members and of course key employees as well as company legacy all play critical roles in success when considering the options for a business transition.

Creating and implementing a formal transition plan helps to ensure the selling party's goals and objectives are properly documented and addressed. Without a formal plan, the chances for a successful transition could be greatly reduced. But as important as it is to design a meticulous plan, it's also important to choose which kind of sale to pursue. A new trend that is being evaluated as part of an exit strategy is an Employee Stock Ownership Plan, commonly known as an ESOP. An ESOP is a tax qualified retirement plan that gives workers ownership interest in the company in the form of shares of stock. ESOPs are authorized and encouraged by federal tax and pension laws and, depending on the company's specifics and succession goals, can be a viable option to be considered.

But before we dive into ESOPs, it's worth examining the best ways to begin the succession process and ensuring the plan is settled. A solid succession plan should address how to:

- Retain key employees
- Minimize business interruption and disruption
- Maximize enterprise sale value
- Minimize tax obligations
- Handle unexpected life circumstances and business changes
- Ensure the business operates as if a sale will not take place.

While construction company owners have vast knowledge of their respective specialties, most have limited experience in the sales and divestitures of their own business interests. Not only must an owner decide on the proper course of action, but he or she must also be prepared to address and resolve any unanticipated issues, including that the transition plan may fall through.

Even if the transition is properly contemplated, planned, and executed, companies will still face a variety of challenges, but a transition team can help to manage the process and support leadership. The team can be comprised of high-level current employees or family members who have served in the organization. Given the extra time and efforts on the part of the transition team and their contributions to the company, financial incentives should be considered for these key individuals.

The transition team must consider the company's responsibility to its stockholders. Respect should be given as to whether the position of the company will be better off if sold to a third party rather than internally to the family or key employees. Leadership should also think about the pros and cons of selling to a competitor, strategic buyer, or financial buyer.

Lastly, leadership should work with the transition team to ensure that the process is efficient while maintaining culture, philosophy, reputation, and profitability and maximizing financial return to the owner.

Value the Company Fairly

A successful sale, whether to family members, employees, private equity or to an ESOP will ultimately depend on and determining the value of the company and cost of the transaction. A construction company valuation can be tricky and there are several key factors that can impact that process. Construction companies will be evaluated based on their ability to bid work successfully and identify high-risk cost areas upfront in the bid process. Buyers will also look at the company's ability to complete projects on time and in line with profit expectations, as well as their ability to identify, negotiate, resolve, and collect change orders and resolve field issues.

Not surprisingly, the best time to sell a construction company is when the construction market and backlog of jobs is strong, with healthy profit margins. But what can be missed is the biggest way to measure value: people! A company's employees are the key to value, so it is essential to ensure the employees who are critical to business development, estimating, operations, and field support continue to run a successful construction company.

Deciding to Sell With An ESOP

Because retaining great employees is so vital to any business' success, particularly construction firms, the aforementioned ESOPs are a compelling opportunity to show appreciation for the team and keep them motivated to do well. After all, if the company does well, the ESOP gets stronger. But that's just one of many reasons to consider an ESOP. Let us review why they're gaining traction and also explore why they can fail to take hold.

Why ESOPs Are Gaining Traction:

- **Seller's Tax-Deferred Rollover—** One potential advantage is the ability to structure the sale of C-Corporation stock to the ESOP and the gain on the sale can be tax deferred under the IRS rules around code section 1042. While there are certain stipulations to qualify for the tax deferred rollover, the current tax savings are typically very significant.
- **ESOP's Ability to Not Pay Income Tax** — Specifically, an ESOP is considered a tax-exempt pension trust that does not pay income tax on its share of the S-Corporation income. While ESOPS's provide potential tax deferred savings to owners of C-Corporations, there are tax savings advantages for owners of S-Corporations too.
- **ESOP Owned S-Corporation's Ability to Pay-Off ESOP Debt —** Assuming the ESOP is the owner of an S-Corporation and pays no current income tax, the owner can use the cash savings on taxes to help fund the ESOP liability that is created because of the initial transaction.
- **ESOPs are Great Employee Retention Programs —** SOPs will reward employees for contributing to the success of the business as they will begin to earn ownership in the ESOP owned Company. For the construction workforce, creating retirement wealth via traditional 401k programs is daunting and the ESOP plan can provide a great opportunity to help employees build their retirement nest egg.

What Stops the ESOP from Gaining Traction:

- **ESOPs are Complicated —** To consider, evaluate, form, and live in the ESOP world, everyone needs to have a very clear understanding of all the nuances and complications it can entail. Professionals, including lawyers, accountants, valuation experts, trustees, consultants, and others will need to be heavily involved with the ESOP- and it is not cheap!
- **ESOPs are Expensive —** ESOPs in general incur significant professional costs which can burden the Company's cash flow. Currently, professional fees have gotten very expensive. Not only are ESOPs costly to form, the on-going legal, valuation, third party administrators, trustees and more.
- **ESOPs are Cash Drains —** Yes, ESOPs can certainly be expensive, but in addition to these cash demands, the ESOP will need to generate enough cash to service the redemption debt and fund eventual shares of stock from the ESOP plan participants.
- **ESOPs are Monitored Very Closely —** There are great reasons for a business to be privately owned and typically the owners of these companies enjoy the fruits of the efforts, but the main reason is that it is private! But once the ESOP is formed there is enhanced scrutiny by lots of different parties. ESOPs are monitored by plan trustees, plan participants, auditors and just as important, the IRS and Department of Labor will now provide review and oversight. Privacy becomes a thing of the past.

When a contractor is seeking an exit plan, it is imperative to consult with a team of professional advisors who can evaluate all the options. This includes financial, tax, and legal experts who are experienced in construction sale transactions. If a contractor is considering a sale to an ESOP, it is imperative to be fully educated on the pros and cons. While there are potentially significant tax and employee benefits, the complexity of an ESOP's structure and the uniqueness of specialized tax considerations make it imperative to approach the sale with careful planning and professional guidance.

About the Author

TODD A. FEUERMAN, CPA, MBA, CCA, is a director in the Audit, Accounting and Consulting Department of Ellin & Tucker in Baltimore, MD, where he oversees audit, accounting, consulting and tax services for general contractors, specialty subcontracting and government contracting firms. Todd can be reached at 410-727-5735 (ext. 3066) or ***tfeuerman@ellinandtucker.com****.*

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FEATURE

Understanding Nuclear Verdicts is the First Step in Preparing for—and Preventing—Them

by Sharen Groppell, Marsh McLennan Agency

The legal landscape, particularly within the ***construction industry***, is profoundly influenced by various litigation trends. One trend making waves today is the rise of nuclear verdicts in civil litigation. This is especially true in cases involving personal injury liability.

Nuclear verdicts, a relatively recent trend in litigation, refer to legal judgments that bestow significant sums of money upon plaintiffs. The term "nuclear" indicates the potentially devastating financial impacts on businesses and the insurance industry. To be classified as a nuclear verdict, a payout must exceed $10 million, with some reaching astronomical figures in the billions. The exorbitant nature of these rulings is the subject of debate regarding the proportionality of compensation in relation to the damages suffered.

Several elements are contributing to the rise of these verdicts, including the strategic use of Reptile Theory, the phenomenon of social inflation spurred by the pandemic, and the practice of litigation funding. These factors collectively contribute to the escalation of court judgments. This is, in turn, leading to an upswing in business insurance rates. It's critical for construction companies to understand this sizable risk and be prepared to address—and prevent—it from becoming a reality.

Nuclear Verdicts in Construction

The construction industry finds itself at the epicenter of these nuclear verdicts. For instance, a ***$74 million settlement*** ensued from an incident involving an improperly paved road. The substandard conditions of the road caused a truck to overturn, colliding with another vehicle carrying a mother and her 12-year-old twins. In another tragic case, a ***tower crane collapse resulted in an $860 million award*** to the family of a woman killed in an adjacent building. Another example involved a jury granting ***$1 billion to the family of an 18-year-old killed in an auto accident*** caused by the driver of a service company.

The construction industry—no stranger to operating fleets of vehicles—is witnessing a surge in costly rulings involving heavy trucks. According to the ***American Transportation Research*** Institute, between 2006 and 2019, there were 26 cases with verdicts exceeding $1 million out of 600. However, in the last five years, there were almost 300 cases with verdicts surpassing $1 million. The number of verdicts exceeding $10 million also doubled during that time. Moreover, from 2010 to 2018, the size of verdict awards grew at a staggering annual rate of 51.7%, far outpacing the growth rate of inflation and health care costs.

Reptile Theory

The Reptile Theory is a key legal strategy contributing to the likelihood of a nuclear verdict. The term stems from David A. Ball and Don Keenan's book, "Reptile: The 2009 Manual of the Plaintiff's Revolution." The tactic itself is surprisingly simple and effective. Plaintiff attorneys strategically tap into jurors' primal—or "reptilian"—instincts by appealing to their concerns about safety and security.

The theory aims to instill the belief that construction companies prioritize profits over safety, posing a direct threat to the community and the jurors' loved ones. It suggests that jurors can only mitigate the perceived threat posed by these businesses through a substantial punitive verdict.

Social Inflation

Beyond courtroom tactics, social inflation also plays a pivotal role in the upward trajectory of nuclear verdicts—particularly for construction companies. The pandemic heightened fears of financial hardship, unemployment, and a lack of community connection. Notably, the actual cost of accidents or injuries is often disregarded as plaintiffs and jurors seek to express their feelings of unease and victimhood through punitive financial judgments. Simultaneously, escalating health care costs, litigation expenses, and tangible property values contribute to the rising figures plaintiffs aim to secure in court.

Litigation Funding

Litigation funding introduces another dynamic to the landscape. It's not uncommon for law firms, hedge funds, or private equity firms to finance the legal costs associated with litigation in exchange for a predetermined amount or percentage of the ultimate verdict. These costs encompass attorney fees, court expenses, and sometimes, cost of living expenses. The plaintiff must only reimburse the funder if their case is successful. In return, the funder receives a predetermined share of the settlement or judgment. This practice incentivizes individuals who might otherwise not pursue legal action, especially if indemnified, to engage in litigation with the hope of a substantial financial reward. Funding companies, motivated typically by financial interest, often hire industry and trial experts to advocate for nuclear verdicts against construction companies.

Insurance and Risk Mitigation Efforts

As a result of these trends and their financial impact on construction businesses, insurance companies are increasingly limiting their available funding to underwrite policies. The financial strain resulting from these verdicts prompts insurers to distribute the costs across all policyholders, regardless of their actual loss experience. This makes large sums of coverage harder to come by. It also presents a formidable challenge for businesses seeking to secure adequate coverage in an environment where insurers tighten their underwriting practices.

Despite their potency, it's critical to remember that nuclear verdicts are often entirely avoidable. Navigating these litigation challenges requires strategic measures, including partnering with the right insurance broker. You need a partner who understands that managing casualty risk involves utilizing loss projection modeling for auto, general liability, and workers' compensation claims. This approach gives businesses a more precise understanding of potential risks, allowing for proactive risk management strategies.

Safety consultants and risk transfer specialists can also play a crucial role in helping businesses determine best practices for managing everything from contracts to job sites, fleets, and premises. Additionally, working with a broker who can help gain control of the claims process through personalized coaching and guidance sessions can prepare you for accidents—mitigating the potential for nuclear verdicts.

Unfortunately, accidents are an inherent part of daily life. Remember, strategic preparedness can significantly lower the risk of facing nuclear verdicts. By staying informed about evolving legal trends, adopting proactive risk management measures, and leveraging the expertise of insurance professionals, businesses can fortify themselves against the financial implications of nuclear verdicts. As the legal landscape evolves, a comprehensive and adaptive approach becomes essential for businesses navigating the complex terrain of litigation risks.

About the Author

Sharen Groppell is Executive Vice President at Marsh McLennan Agency. Sharen leads the Construction and Surety Practice in Houston, Texas. Clients include General Contractors, Subcontractors and Specialty Contractors. In her role, Sharen develops and builds relationships with carrier partners, construction attorneys, CPAs, and other stakeholders in the construction space. For more information, contact the author at sharen@groppell@marshmma.com or visit **Marsh McLennan Agency's website***.*

A Guide to Subcontractors About Solar Energy Project Tax Credit Obligations

How subcontractors can ensure they don't get burned!

by Michael Metz-Topodas, Saul Ewing LLP

Introduction

Solar energy construction has increased significantly in recent years across the United States, with some forecasters expecting another rise of at least 75% for 2024. This growth in solar projects results in good measure from existing and additional tax credits continued and implemented through the Inflation Reduction Act (IRA). These credits, however, do not apply to any and all solar projects. Instead, the amount of such credits varies according to both the materials used and the labor supplied to the project under a detailed set of regulations. Naturally, developers are turning to knowledgeable and experienced builders to make sure construction meets these regulatory requirements to maximize tax credit eligibility. As a result, such requirements are finding their way into solar energy project contracts and associated subcontracts. For general contractors and subcontractors, alike, they need to review carefully contractual obligations meant to satisfy solar energy project tax credit requirements. Failing to meet these contractual terms could make contractors liable for an owner's resulting additional tax burden for up to ten years after the project ends.

Available Tax Credits for Solar Energy Construction Projects

Developers and owners having solar energy systems installed can take advantage of one of two tax credits—the investment tax credit (ITC) or the production tax credit (PTC) (and in rare cases both). The ITC reduces federal income tax liability based on the solar energy project's cost with additional credits for using certain domestic materials. The PTC provides a per-kilowatt hour tax credit for the electricity a completed solar energy project generates during its first ten years of operation. Project owners usually determine the credit that makes the most sense based on the project's unique circumstances.

As credits, they can result in significant reductions in tax liability. These credits, however, apply only to eligible projects—those sited in the United States, using new (or almost new) equipment, and not leased to a tax exempt entity. Because the ITC is based on project cost, it has inherent materials requirements. Both credits have labor requirements related to prevailing wage and apprenticeship participation.

Construction Requirements for Solar Energy Project Tax Credits

The ITC's credit varies based on eligible project costs, which include solar panels and supporting equipment, energy conversion materials, electrical connection equipment, installation, and certain energy storage equipment. Furthermore, the ITC has a bonus credit for using a certain portion of domestically produced materials, including structural steel. Consequently, project owners want to ensure that as much of the materials and equipment used or installed fall within the scope of those to which these credits apply.

Both the ITC and the PTC have project labor requirements. To remain eligible for either credit, all construction, alteration, or repair performed on any solar energy production facility must be paid at the applicable prevailing wage rates in accordance with federal Davis-Bacon Act (DBA) rules for the first five years of such work for the ITC and the first ten years for the PTC. Additionally, at least ten to fifteen percent (depending on the project start date) of all project labor hours must be performed by an apprentice working through an apprenticeship program registered with the federal Department of Labor and meeting all related regulatory requirements. Furthermore, the workforce must maintain the applicable federal or state apprentice to journeyman ratio, and for any construction performed by four or more individuals, the workforce must have at least one apprentice. In short, the IRA conditions the tax credit available for private solar energy system construction on complying with prevailing wage and apprenticeship requirements normally applicable on public work.

Contract Terms Related to Solar Energy Construction Tax Credit Requirements

In planning solar energy construction projects developers and owners factor tax credits in calculating project cost and profitability projections. Consequently, owners need to ensure they obtain all expected tax credits, which in turn means construction must meet all associated requirements. To do so, owners must pass those requirements onto builders through contract terms. But in making tax credit requirements contract obligations, owners shift to contractors the risk of failing to obtain those tax credits. Failing to meet such obligations would constitute a breach of contract for which the general contractor or subcontractor would have liability for the resulting damages, i.e. the owner's lost tax credits. So, if a contractor fails to meet the prevailing wage or apprenticeship requirements, then it could owe the owner for any additional tax liability it incurs from the lost credits—potentially millions of dollars, depending on the project.[1] Faced with such risk, solar energy project contractors need to ensure (1) they can meet contractual obligations related to tax credit requirements and (2) their project performance actually satisfies such requirements.

Contractor and Subcontractor Guidance for Solar Project Contract Negotiation and Performance

In negotiating solar energy project contracts, general contractors and subcontractors alike need to employ multiple strategies in finalizing contract terms, in particular warranties and representations, indemnification, consequential damages, and notice. Typical agreements require a contractor to represent and warrant that it can perform the contract's obligations, such as procuring all materials, paying prevailing wage, using a registered apprenticeship program, and using the necessary number of apprentices. To avoid a false representation, and thus a breach of the agreement, contractors must obtain and then review all project specifications to make sure they can achieve all necessary procurement. Also they should check that they have systems in place to ensure they pay proper wages and fringe benefits, and that they have a current registration for their apprenticeship program with the Department of Labor. To the extent the contract requires indemnification for lost tax credits, the agreement should specifically list the contractor's performance requirements for those credits or require the owner to identify them. Further, such indemnification should be conditioned on the owner complying with its obligations for obtaining the credits, such as submitting a proper tax return. Any consequential damages waiver should expressly waive or eliminate any liability for lost tax credits or cap such liability. Finally, if possible, the contractor should seek language requiring the owner to notify the contractor of any performance that does not comply with tax credit requirements within a certain time or forever waive any claim for damages from lost credits.

Should negotiations not necessarily protect the contractor from any and all risk associated with solar construction project tax credit obligations, the contractor can safeguard against remaining risk by managing properly how it performs the contract, especially with respect to ordering materials, paying prevailing wage, documenting performance, and communicating with the owner. In ordering materials, contractors should ensure both accurate and complete submittals and materials orders that match quality and quantities in project plans and specifications. For payroll, contractors should determine the proper wage and fringe for all workers as the DBA requires or consider a third party provided or auditor to provide or ensure correct payment. Contractors should also keep regular and accurate procurement and payroll records and, where appropriate, share them with the general contractor or owner to provide notice that contractor has satisfied project performance requirements for obtaining tax credits.

Conclusion

Given the significant tax savings a solar construction project can have, owners and developers will be seeking to rely on knowledgeable solar contractors. With effective negotiations, preparation, and performance, general contractors and subcontractors can ensure they meet owners' requirements to secure available tax credits for solar energy system construction projects. Due to the complexity any given solar project entails, following the above guidelines on contract terms requires advice from experienced construction counsel. In this way builders ensure solar projects do not mean they get burned, but rather they shine.

About the Author

*Michael Metz-Topodas is a partner in the Construction Group at Saul Ewing, LLP. His practice includes construction litigation, day-to-day project and claims counseling, contract review, drafting, and negotiation, and OSHA compliance and citation defense. Michael represents general contractors, subcontractors, owners, designers, and suppliers on private, public, and federal projects, including solar energy construction projects. He counsels clients and handles construction disputes involving delay and inefficiency claims, design and construction defects, unforeseen site conditions, project scope disputes, bid protests, and payment claims, including mechanics liens, bond claims, and Miller Act claims. He can be reached at **michael.metz-topodas@saul.com**.*

[1] For example, a $4 million solar project could be eligible for a $1.2 million credit.

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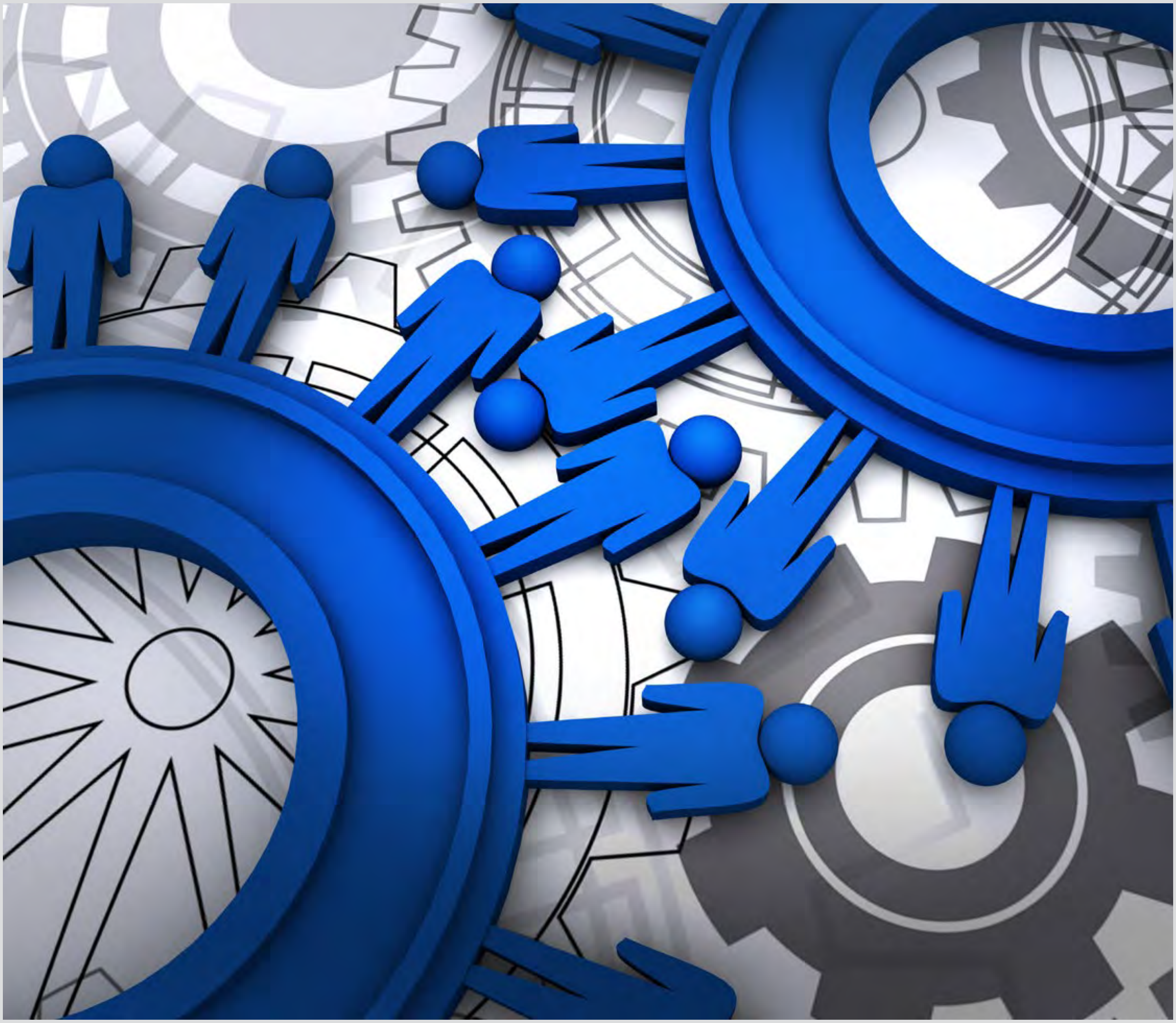
FEATURE

How to Master Your Financial KPIs with the Trigger Point Strategy

by Robbie Reynolds, Billd

Every year you start with a target bottom line and build a plan to achieve it. And every year tens of unexpected twists and turns – both in your control and outside of it – put that plan (and your bottom line) at risk. So how do subcontracting executives build a plan that is flexible enough to handle the bumps in the road?

Kyle Follett, VP of Finance and Administration at ***SPAAR***, has developed his own strategy to maintain a pristine bottom line, and it hinges on something he calls "trigger points." He uses them to monitor the key variables of his business so that he can act before something hurts the bottom line. Billd asked him to unpack how trigger points work and how you can use this strategy yourself.



What Are Trigger Points?

A trigger point tells you when a variable in your business – like the number of projects per PM, or the cost of materials per job – is crossing into the "danger zone." It's a bit like monitoring cholesterol or blood sugar. Up to a certain number, everything is fine. Past that number, you've entered dangerous territory and need to start making changes.

For Example: Let's say you have a PM who manages projects totaling to $2M in revenue every month. Easy. But then you land another project, then another, and now they're shouldering $4M in revenue. Already strained, the PM pipes up and says there's no way I could add to my workload without sacrificing work quality. You should confirm this anecdotal evidence by asking them to support their feedback with data like timecards and struggling KPIs. If you confirm it, at that moment, you could set a trigger point. $2.5M in revenue is the max you want any PM to take on at a time. This ensures you're never compromising quality, and that you're respecting your employee's limits. If you don't have enough PMs for the work you want to take on, then by the logic of the trigger point, you hire more or don't proceed.

Trigger points require predictability. You have to be able to reliably predict how much something usually costs, how often something needs maintenance, how much time something is supposed to take. Your trigger points must be based on objective, quantitative metrics that you have pulled from historical data. By defining those standards, you can establish when a variable is deviating from them. Whenever the deviation gets intense enough to cause trouble, it becomes a trigger point. It's a way to flag when something is costing or taking or consuming more than it's supposed to.

Three Real-World Examples of the Trigger Point Strategy

There is no hard and fast list of triggers every sub should monitor, especially with the variation between trades. Each subcontracting business should define its own key metrics based on business needs. However, these are the KPIs, trigger points, and example responses that Kyle Follett uses at SPAAR construction. You can take this framework and apply it to your own KPIs.

Revenue per Employee:

How you get it: Divide total revenue by the number of employees, or divide department revenue by the number of employees in that department, if applicable.

Example: If you find that your company operates well when revenue per employee sits at $1.5M, then a figure like $2M may be your RPE trigger point. Although more revenue sounds good in theory, in this context, it means your team is operating over capacity. However, if you find that your RPE dips toward $1M, this could mean the exact opposite – you're under-capacity and can take on more work.

Why it matters: RPE can tell you whether you need to increase or downsize your team, or increase the amount of work they do. As your business grows and you seek out new contracts, keeping an eye on RPE ensures you're not overburdening your team with a workload they can't handle, while also ensuring you're not overstaffed and/or underworked on projects.

How Follett responds when the trigger point is hit: After the example $2M trigger point is hit, Follett could justify hiring more people. However, that doesn't mean you should just throw new hires at the problem or sign new contracts until the KPI evens out again.

You want to consider:

- The capacity of each employee, new and old
- Increases in capacity per employee as your team gains new skills, equipment, or experience
- Whether new employees can truly handle the workload or will just burden your payroll
- Whether you need to work with other subcontractors instead of new employees

Overhead % of Revenue

How you get it: Divide overhead by revenue to get the overhead percentage of revenue.

Example: Follett tries to keep his company's overhead percentage in the ballpark of 10% or lower. Anything over this amount is a trigger point, alerting him that he needs to change something to increase the efficiency of his business. Under this amount, the company is healthy and may even be able to shoulder more overhead expenses (or investments) if need be.

Why it matters: Overhead is of course a catch-all for a million different expenses, but what they have in common is their predictability. Compared to the variable, direct costs of a project, overhead is more or less fixed. This makes it easier to control. If the percentage compared to revenue gets too high, you can take it as a sign that there's either been a change to your fixed expenses – maybe your building rent has gone up 15%, maybe you've approved several simultaneous salary bumps in your C-suite – and all of a sudden, the overhead percentage is getting unmanageable. If you don't monitor overhead this way, you risk it eating into your gross profit.

How Follett responds when the trigger point is hit: If the overhead percentage is higher than where you want it to be, you can look for any areas where fixed costs, like rent or salaries, have increased, and weigh the option of downsizing some of your fixed expenses. Because these costs are predictable, you'll have a better idea of where you can afford to trim down.

On the other hand, you can also increase your project load to offset the increase in overhead, which will also help you get that overhead percentage down.

If the percentage is lower than expected and the company is still healthy and performing well, it may be a sign to adjust your trigger point. This needs to be continuously monitored, because the variables that affect overhead are always changing.

% Material Cost per Project

How you get it: Divide the material cost by the total budget of the project.

Example: Past projects can help you set a benchmark for how much materials should cost on particular types of project. Historical data may tell you that materials should cost roughly 30% of your budget on a project. Therefore, anything greater than 30% would be your trigger point.

Why it matters: Follett believes that subs should establish a maximum percentage that materials cost within the budget. Using the 30% trigger point, if you notice a project went as high as, say, 60% for materials, you'll know you either greatly undercharged for your services, or more material than necessary was used. A bloated % cost of materials will cut into your gross profit, so you'll want to get to the bottom of why you chewed through that extra material.

How Follett responds when the trigger point is hit: To get the material percentage down:

- Use the past to predict the future. If there are patterns in the market you can anticipate, then increase your estimates to compensate for the growing material cost
- Leverage your supplier relationships and share your business goals with them as a way to encourage them to offer you better deals
- Shop out your material needs to different suppliers
- Train up your employees on how not to be wasteful with material
- Revisit historical data and market conditions to reevaluate the accuracy of your KPIs

According to Follett, every department in your company should set their own trigger points.

How Do You Set and Monitor Trigger Points for Construction KPIs?

Collaborate with your team to:

- Define what business variables should be monitored with trigger points.
- Decide what the trigger point numbers will be for each variable you want to monitor. This should be a long, involved process, because different people will have different opinions. For example, for trigger points that relate to the amount of work that the company can feasibly take on, the estimator may have a different idea than the foreman. Poll a wide range of employees to get a rich picture of your trigger point ranges.
- Build a dashboard, likely in Excel or your chosen software, where you can view this information, and ideally have some information auto-populate from different sources.
- Set your ideal meeting cadence to discuss trigger points. If you meet to discuss it too infrequently, it may mean missing the point at which something gets triggered. But you always want to avoid death by meeting. Weekly is a good starting point.

Many trigger points are only as good as the flow of information from the field to the office. Make sure you're always finding ways to strengthen this flow of information, to maintain the integrity of your trigger points.

Can Trigger Points Change?

It depends on the trigger point, but yes, it wouldn't hurt to revisit your triggers periodically to make sure they still make sense for your business and ***growth stage***.

For Example: If you did $15M last year, and have $15M anticipated for just the first 6 months of this year, you can probably immediately flag that as a project load trigger point. However, other factors may affect whether or not it truly is. Maybe your PMs were new last year, and this year they have a better grasp of how to do their job. Their capacity to do work has evolved. The same goes for your crews. It doesn't mean the $15M is feasible, but you still may have stronger capabilities than you did last year. This is just one example, but it illustrates how the variables that affect a trigger point can change over time, and should be revisited to make sure they reflect those changes.

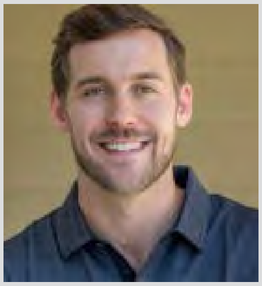
Should You Use a Specific Software to Manage Trigger Points?

If you already have software on deck that would be great for monitoring your trigger points, then go right ahead. However, Follett offered a recommendation. ***Power BI*** is a Microsoft Data Visualization tool that he characterized as "extremely powerful." It allows you to pick information running through your system and create detailed reports. The dashboards are updated every 2 hours and everything can be assembled at the click of a button.

Pro Tip: Beyond using the right software for your business, "the best thing your finance person can do is be a jack of all trades, to not only understand the numbers, but how we got to the numbers. To employ a serviceable, top-level understanding of how projects are completed." Follett says. "Work with your team to build something meaningful to position the info they need." Follett says.

The financial health of your company depends on being careful, deliberate and using strong internal processes. Trigger points are an excellent way to maintain good financial and operational hygiene, and ultimately protect your bottom line.

About the Author



Robbie Reynolds is a seasoned executive with experience in both construction and financial markets. As Billd's Vice President of Business Development, Robbie is focused on expanding the impact and accessibility of Billd's subcontractor-specific financial products. Robbie has fostered broad-reaching partnerships between Billd and industry-leading partners including Autodesk, ConstructConnect, AIA Contract Documents, all of which serve a combined 8.9 million users worldwide.At Billd, we provide a payment solution that enables commercial construction contractors to free up cash for material purchases while enjoying the flexibility of 120-day payment terms. This article was originally published in September 2023, and is republished with permission.

FEATURE

Facing Serious Labor Shortages, Construction Needs a New Approach

by James Hall, Tenstreet

The construction sector is currently confronting a pivotal set of issues. As projections indicate an upsurge in construction spending, the industry grapples with multifaceted hiring challenges, including a widening skills gap, an aging workforce, and heightened turnover rates.

Research from the U.S. Bureau of Labor Statistics' Job Openings and Labor Turnover Survey (JOLTS) of November 2023, as disseminated by the ***Associated Builders and Contractors (ABC)***, reveals a year-over-year (YOY) increase of nearly 32% in unfilled job positions within the industry. This trend underscores the compounding issue of escalating demand for construction spending and the unavailability of skilled labor.

Further compounding this issue is the rising trend of employee resignations, with a YOY increase of 28%, contributing to approximately 38% of the total vacancies in the sector.

Construction Industry Job Openings and Labor Turnover Data: November 2023

	November 2023	October 2023	November 2022	1-Month Net Change	12-Month Net Change	12-Month % Change
Total						
Job openings	459,000	416,000	348,000	43,000	111,000	31.9%
Hires	362,000	379,000	337,000	-17,000	25,000	7.4%
Total separations	351,000	345,000	294,000	6,000	57,000	19.4%
Layoffs & discharges	171,000	163,000	146,000	8,000	25,000	17.1%
Quits	173,000	173,000	135,000	0	38,000	28.1%
Other separations	7,000	10,000	14,000	-3,000	-7,000	-50.0%
Rate						
Job openings	5.4%	4.9%	4.3%			
Hires	4.5%	4.7%	4.3%			
Total separations	4.4%	4.3%	3.8%			
Layoffs & discharges	2.1%	2.0%	1.9%			
Quits	2.2%	2.2%	1.7%			
Other separations	0.1%	0.1%	0.2%			

Source: U.S. Bureau of Labor Statistics

Technological Integration in Recruitment and Retention

Addressing these recruitment and retention challenges requires a technological approach that transcends conventional desktop recruiting dashboards. Companies need to incorporate mobile applications designed for construction workers. These programs can streamline the job application process, allowing workers to find and apply for suitable job openings efficiently.

Several suppliers have developed mobile apps that exemplify this approach, but make sure that whatever option you choose includes a comprehensive and mutually beneficial worker/manager platform combining dashboard and mobile application functionalities. Being able to connect with workers on their mobile devices means you can stay in communication more easily while they're on job sites. In addition, look for dynamic engagement between project management and construction crews, experience in working with the challenges of a fluid workforce, and the necessity for continuous recruitment and post-hire training and compliance management.

Transitioning from Recruitment to Networking and Onboarding

The best apps will go beyond recruitment. You need a mobile app that can facilitate ***employee referrals - a critical hiring method in the construction industry***. Workers can easily recommend openings to colleagues, and project managers can reward such referrals. Additionally, these apps can be used by workers to efficiently send compliance documentation and complete electronic form submissions, streamlining the onboarding process and reducing the need for multiple site visits.

The goal of any software is to cut down the time it takes to make smart decisions. Any app that can ease the recruitment process, enhance its efficiency, engagement, and accessibility, particularly for a younger, technologically adept workforce, is a winner. And while attracting skilled workers is key, retaining them, and then making communication and post-hire interactions as easy as possible, is vital.

About the Author

James Hall is responsible for the growth and performance of ***Tenstreet's Construction*** *product portfolio. He drives the development, user experience, and end-to-end design of the mobile application and web-based platform to seamlessly integrate with the construction industry, and has successfully automated the implementation process for onboarding accounts. He has executed marketing programs to promote products across local, regional, and national Construction markets while also generating a market presence for Tenstreet by speaking at key industry events on integrated technology for the construction industry.*

And Now for Something Completely Different

As editor of *The Contractor's Compass*, for 2024 I'm highlighting something different each month. Here's what I like for February—If you haven't tried your state's weirdest food…why not? You don't have to like it, but did you at least try it? Have an idea for something different? Please send your idea to ***communications@asa-hq.com***.

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