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# BUILDING MATTERS

November 2009

## Builder's Legislative Update

Over the past year, many new regulations and requirements have come down on the construction industry. Below is an update of local and national issues that contractors need to be aware of.

### New Requirements for Administrative Services

AGC of NH had been made aware of new labor compliance requirements that were being proposed by Administrative Services in early summer. These new requirements would build on the recently passed Senate Bill 78, which refers to contractor accountability and disclosure. AGC of NH's Building Committee met with representatives from Administrative Services to discuss the new rules. The representatives knew that the rules were difficult, and realize that they might drive up project costs, but they were not in a position to change them. The following took effect on September 8 (it includes the requirements of SB 78 as well as the new Administrative Services Rules):

- The General Contractor shall provide to the Contract Administrator a list of the names and addresses of the CEO, CFO, other LLC principals, and each subcontractor to

be used in the performance of the contractor. This list shall be provided at the Preconstruction meeting.

- The General Contractor shall maintain a Subcontractor/Employee Master List (Master List) of all on-site personnel performing work on the jobsite, including the Contractor's employees, all subcontractors and subcontractor employees, and all independent contractors. The Master List shall identify which entity has hired each subcontractor and independent contractor and which entity is providing Workers Compensation Coverage for the on-site personnel. Subcontractors and independent contractors will not be allowed to perform any work until they have been correctly identified on the Master List.

- The Master List shall be posted on the jobsite and updated as needed to reflect any new subcontractors and independent contractors. The Master List shall be reviewed at each Progress Meeting. On



a monthly basis, the General Contractor shall provide to the Contract Administrator a .pdf or Microsoft Word file of the Master List, showing all subcontracts.

- The General Contractor shall maintain a daily log-in sheet of all personnel performing work on the jobsite. Personnel shall

list their name, name of employer or identify themselves as independent contractors, and shall confirm that they have an OSHA-10 certification, per state statutes RSA 277:5-a. No one shall be allowed on-site without first signing the daily log-in sheet.

- The General Contractor shall verify that personnel listed on the daily log-in sheet are also on the Master List. If personnel are not listed on the Master List, they will not be allowed on site until their employer has certified, in writing, that that employee is covered under Workers Compensation coverage for the appropriate work classification noted on the work certificate.
- The contractor shall post four mandatory labor posters in conspicuous, weather-tight

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## Federal Bill Offers Hope of School Construction



Schools may see money for renovations and repairs if a House bill advocating for increased funding for school facility renovations passes the Senate. On September

17, the House passed the Student Aid and Fiscal Responsibility Act of 2009. The bill would provide more than \$4 billion in aid to elementary and secondary school facilities to be renovated and repaired. The goal is to create healthier, safer, and more energy efficient educational facilities. Also included in the bill are grants to states to help modernize and finance new construction for community colleges. The bill will now move to the Senate.



Passage of this bill will not only improve our schools, but also provide much needed building work for the construction industry. Additionally, this bill would pick up where the America Recovery and Reinvestment Act (ARRA) left off. In the ARRA provisions, money is allocated to schools in different ways. One way is through state fiscal stabilization funds, which states that 18.2% of that money can go towards the renovation or modernization of schools. However, many school districts, including ones in New Hampshire, are finding that there is not a lot of money left over for repairs and renovations after the budget has been balanced.



## New Job Corp Facility in Manchester, NH

The Department of Labor (DOL) is soliciting qualified construction firms for the construction of a new Job Corp facility in Manchester, NH. The project will consist of the construction of six buildings, totaling to approximately 160,000 square feet. Previously, NH had been one of only two states that did not have a Job Corps. The solicitation for the project carries two strict requirements, 1) the work must be performed under a project labor agreement (PLA), and 2) there is a 100% small business set aside, meaning that no company with gross sales of over \$33.5 million is eligible to bid.

Upon learning of the requirements, AGC of NH was proactive for the construction industry. The Association enlisted the help of its national organization, AGC of America, to question the DOL's usage of a PLA on this project. AGC of America wrote a letter to the DOL using the concerns that AGC of NH and its members had. AGC of America referenced the low union presence New Hampshire has, as well as how a government mandated PLA will force any nonunion company to restructure his or her business. The five points of the President's Executive Order suggesting the use of PLAs were used as the foundation for the letter. AGC of America questioned whether the DOL fully understood the meaning of the points, as well as what research has been done to determine that a PLA was the best course of action on this project.

AGC of NH wrote an additional letter to the DOL in support of AGC of America's letter, and to question the small business set aside requirement. The total cost of the project is expected to be around \$30 million. By most project standards in New Hampshire this would be considered a large project, and it does not make sense to limit the project to only firms who haven't done this size work in the last few years.

The restrictive nature of the project's requirements will most likely lead to out of state contractors performing the work, unless the DOL answers AGC of NH's and AGC of America's questions. Visit the Association's website at [www.agcnh.org](http://www.agcnh.org) to see both letters. They are located in the "AGC Resources" section under "AGC Downloads."



### ***Continued from page 1...***

places at the jobsite: Protective Legislation Law; Criteria to Establish an Employee or Independent Contractor; NH Minimum Wage Law; and Whistleblowers Protection Act. These posters can be found at the NH Department of Labor website, [www.labor.state.nh.us/mandatory\\_posters.asp](http://www.labor.state.nh.us/mandatory_posters.asp).

- The General Contractor shall maintain, on the jobsite, copies of OSHA-10 certificates for all personnel listed on the Master List.

AGC of NH's Building Committee was successful in limiting those listed to only persons who perform work on the jobsite. Additionally, the committee limited the OSHA requirement to only those who are required to be OSHA certified as listed in RSA 277:5-a.

### **Increased Enforcement of Labor Laws**

Many government agencies have stepped up enforcement of their labor laws, and the construction industry should be aware of the following. In addition, the agencies have begun to share information in order to build stronger cases against the violators.

#### ***Changes in OSHA***

- Larger monetary penalties for violations, included in a measure called the Protecting America's Workers Act, which is expected to pass Congress
- More aggressive enforcement: more OSHA inspections, shift to citation/violation approach
- More inspectors: OSHA will probably increase its enforcement staff to support its emphasis on high-risk industries
- More attention to record-keeping
- More liability for actions of subcontractors, enhanced OSHA liability for employers on multi-employer worksites

#### ***Davis Bacon Act***

The Department of Labor (DOL) has increased its enforcement of the Davis Bacon, the prevailing wage law for federal construction contracts. The law has been included as a provision of the American Recovery and Reinvestment Act (ARRA). Increased enforcement of this law includes reviewing certified payroll records, overtime violations, and apprenticeship practices.

#### ***I-9 and E-Verify***

The Department of Homeland Security (DHS) has begun conducting audits of employers' I-9 forms and increased their monitoring of the E-Verify system. DHS has appointed the Immigration and Customs Enforcement (ICE) to focus its resources on the criminal prosecution of employers who knowingly hire illegal workers in order to target the root cause of illegal immigration.

## **Industry Methods Bring Construction to the Front of the Line**



The construction industry has evolved over the years, and new technology is being embraced. Computer modeling through Building Information

Modeling (BIM) has taken hold, and its use is growing. The ability to develop 3D images has revolutionized the construction industry. Similarly, ConsensusDocs has become a top choice for many when it comes to contracts. These contract documents allow the owner, architect, and contractor to come together, forming a cohesive unit to effectively manage a project.

#### ***Visually Planned***

BIM, used to create 3D models of building projects, has continued to gain steam in recent years. The ease of view for both the contractor and the owner make it an ideal choice when drawing up plans. A contractor who specializes in design-build would find

this method to be especially helpful. Not only does it provide a 3D picture, it also helps in the prevention or early detection of clashes.

As the technology progresses, some BIM users are expanding into 4D and even into 5D plans. 4D incorporates time into the project, and 5D adds quantities of materials and cost to the project. The addition of the time dimension can aid in the sequencing and scheduling of a project. Factoring in the cost and quantities of materials can aid in projecting a more accurate cost of the project. These two additional dimensions create a more rounded and complete project plan for a contractor to follow.

#### ***Contracting Together***

With the expiration of the 1997 AIA A series documents, now may be the best time to make the move to ConsensusDocs. Created by a number of industry professionals, including: owners, designers, contractors,

subcontractors, and sureties; ConsensusDocs represents a unified approach to a project. Another reason to try ConsensusDocs: 23 industry associations have endorsed them.

ConsensusDocs are helpful right from the beginning of a project by laying a foundation for the project participants to work from. This foundation takes each participant's interest into mind, with the goal of completing the best project possible. It also involves the Owner, so that they feel more like a part of the process. With ConsensusDocs 300 Tri-Party Collaborative Agreement, each involved party signs the same agreement. This forms a core management team that will further the project's best interests.

More information on both these topics is available on the AGC of America website, [www.agc.org](http://www.agc.org).

## Compliance with Accessibility Standards



Beginning on January 1, 2010, HB 530 will become effective. HB 530 is relative to compliance with accessibility standards. It establishes a system of certification and enforcement for the accessibility standards in the state building code for the construction, addition, or alteration of a public building beginning on or after July 1, 2010.

The bill requires that the plans and drawings be certified that they meet accessibility standards before the start of construction. The completed project must be certified as well. If the protection and advocacy system of NH finds fault with a completed project, it shall issue a letter to the owner. The owner will then have 30 days to respond to the letter, and 270 days to bring the building into compliance.

### *Contractor Responsibilities:*

- At the start of construction have a qualified individual, or municipal building inspector, certify that plans and drawings are in compliance with accessibility standards and provide written certification to the owner
- Upon completion of the project, have a qualified individual, or municipal building inspector, certify that the completed project is in compliance with accessibility standards, and provide written certification to the owner
- Qualified individuals include:
  - NH licensed architects
  - Professional engineers
  - Certified building officials
  - Master code officials
  - Any person who has successfully passed the International Code Council exam

## State Funded Construction Uses CM At-Risk In Certain Areas

Four state funded construction areas in New Hampshire have the ability to utilize the construction management at risk (CM At-Risk) project delivery method. AGC of America and the National Association of State Facilities Administrators (NASFA) collaborated on a survey of state-by state information on CM At-Risk. The table below shows the four areas where this project delivery method is allowed.

Area	CM At-Risk Allowed?
State Building Construction	Yes
K-12 Education	Yes
Higher Education	Yes
Local Government	Yes
Dept. of Transportation	No

AGC of America's website has the survey results for each state available on their website. Visit [www.agc.org](http://www.agc.org), and under "Industry Topics" click on "Project Delivery Methods."

## DOL Collecting Information for Davis Bacon Wage Rates

Soon, the U.S. Department of Labor (DOL) will be conducting Davis Bacon Wage surveys for the building and heavy sectors of the construction industry. These surveys will be conducted throughout New Hampshire, Maine, and Vermont, and the data collected will be used to calculate the Davis Bacon prevailing wage rates for federal contracts. This year, the DOL will be using a new form WD-19. To view the form, and instructions for completion, visit [www.dol.gov/esa/programs/dbra/index/htm](http://www.dol.gov/esa/programs/dbra/index/htm).

AGC of NH believes it is important to participate in these surveys, as it will ensure that the results will reflect accurate industry information. Previously, it has been very difficult to overturn a wage determination. AGC of NH is available to help any member with the survey or process should they need it. You can call the chapter office at (603) 225-2701 with any questions you may have.





## New Project Specific Newsletter & Virtual University Keep Members up to Date with Ease

AGC of NH offers two, convenient resources that members can take advantage of without leaving their workplace. AGC of NH's Plans Room & Low Bids Newsletter offers project information that is emailed directly to members each week. Similarly, the Virtual University lets members keep up to date with trainings right from their own computers!

AGC of NH created the Plans Room & Low Bids newsletter as a way to get project information to members quickly and easily. The newsletter includes a lot more than just what is currently in the Plans Room and the Low Bids results. There is a *News & Updates* section that covers upcoming projects, announcements of stimulus funded projects, requirements that a project may have, and more. Often times, this newsletter runs important charts or tables before it is run in the regular, bi-weekly newsletter. A *Pre-Bid Meetings* section gives information for pre-bid meetings that will be held in the coming week for plans that are currently in the Plans Room. The Plans Room Contents section lists what is currently in the plans room, but has the added convenience of marking which plans are new from the previous week. Lastly, Low Bids lists the low bid results that are over \$100,000 from the past week.



AGC of NH's Virtual University is a great resource for members too. The online courses make it simple for you and your employees to get their OSHA-10 certification quickly and easily without registering for a traditional classroom course. Virtual University offers many courses from DOT Training to OSHA to Human Resources.

There are many benefits to training online in addition to convenience. In most cases, the online training is less expensive than traditional classroom courses, and there is a higher rate of retention. Studies show that comprehension rates increase by as much as 200% when employees can learn at their own pace. Also, Virtual University just lowered their prices on many of the OSHA classes, so now is the perfect time to take use this resources.

If you are interested in receiving the Plans Room & Low Bids Newsletter, please contact Nicole at (603) 225-2701, or by email at [ndamboise@agcnh.org](mailto:ndamboise@agcnh.org). If you have any questions on either of these two benefits, please call the chapter office at (603) 225-2701.

## Join AGC of NH's Building Committee

AGC of NH has a committee specifically for the building sector of the construction industry. This committee focuses on building related legislation, and the rules and regulations that govern builders in New Hampshire. Members of this committee have a chance to make a difference for New Hampshire builders through testifying and drafting important legislation, and meeting with state agencies to develop adequate and appropriate rules and regulations.

During the 2009 legislative session, the committee met with Administrative Services to discuss the proposed changes to Labor Compliance Enforcement requirements. The committee was able to work with Administrative Services to add language into the requirements that clarified who needed to be on the Master List, and who was required to be OSHA certified. This is a great committee for AGC of NH's building members to be a part of. Many issues face builders each year, and being a part of this committee will give your company the opportunity to work towards fair regulations that reflect building in New Hampshire. If you would like to join the committee, or sign an employee up, please contact Nicole at (603) 225-2701, or by email at [ndamboise@agcnh.org](mailto:ndamboise@agcnh.org).

## Get Ready for Build NH Awards 2011!

Is your company currently working on a project that you think is innovative, challenging, or environmentally friendly? If so, now is the time to start taking pictures for AGC of NH's Build NH Awards. The next presentation of these prestigious awards will be in 2011, but entries can be from up to two years prior from the award year. That means that right now is the perfect time to begin taking pictures and preparing your entry. The best entries include many pictures of projects in all stages of completion.

The Build NH Awards recognize the most innovative projects representing the construction industry in New Hampshire. There are four categories, Best Highway or Bridge Project, Best Environmental Highway Project, Best Building Project, Best Environmental Building Project. The environmental categories were added last year in order to reflect the movement towards greener construction.

Last year's winners include Harvey Construction Corporation for Best Building Project with the renovation of the Currier Museum of Art, Gilbane Building Company for Best Environmental Building Project with the additions of the East and North Wings to the Concord Hospital, and Redimix Companies for Best Environmental Highway or Bridge Project with the new pervious pavement parking lot for White's Park. Many companies have won Build NH awards over the years, and this next time it could be yours!





## 2010 Building Legislation



The following is a list of bills that will affect builders throughout the upcoming legislative session. One bill is proposing a movement

towards a greener NH by requiring new construction and renovations of commercial buildings over 4,00 square feet to follow LEED guidelines. Other important topics include changes to the state building code and fire code. The Senate still has time to file bills, so there may be additional important legislation.

- requiring new construction and renovations of commercial buildings over 4,000 square feet to follow LEED (Leadership in Energy and Environmental Design) guidelines relative to VOC (Volatile Organic Compounds) limits.  
Sponsors: (Prime) Yvonne D Thomas
- 2010-H-2195-R relative to fire sprinkler systems.  
Sponsors: (Prime) Carol M McGuire, Warren J Groen, Edith A Hogan
- 2010-H-2313-R requiring the licensing of building energy auditors.  
Sponsors: (Prime) David A Borden
- 2010-H-2365-R prohibiting the state building code, or any local amendment, from including a mandatory fire sprinkler system requirement for residential construction.  
Sponsors: (Prime) Susi Nord
- 2010-H-2395-R clarifying certain provisions relative to the department of administrative services.  
Sponsors: (Prime) Anne-Marie Irwin
- 2010-H-2399-R relative to procurement procedures of the director of plant and property management, and relative to approval of design build projects.  
Sponsors: (Prime) Maurice L Pilotte, Lynne M Ober
- 2010-H-2539-R establishing a program for state agencies to evaluate the performance of state contractors, to be administered by the department of administrative services.  
Sponsors: (Prime) Carl W Seidel
- 2010-H-2658-R relative to fire codes and the state building code.  
Sponsors: (Prime) Paul Ingbretson
- 2010-H-2672-R establishing a committee to study the inclusion of universal design requirements in the state building code.  
Sponsors: (Prime) Patricia M McMahon



## Spotlight: On the Jobsite with Harvey Construction

*On occasion, AGC of NH may spotlight member projects in the newsletter. These spotlights will focus on the project's challenges, successes, and overall description.*



**Project:** Southern New Hampshire University Dining Facility  
**General Contractor:** Harvey Construction Corporation  
**Cost:** \$12.5 million  
**Start Date:** August 2008  
**Anticipated Completion Date:** November 2009

In October 2007, Southern New Hampshire University leaders agreed to contract with Harvey Construction Corporation to design and construct a new, free-standing 50,000 square foot campus dining facility. The project was critically important to the University and their efforts to develop a new academic quad and to address new demands being placed on existing food service operations. Facing a need for quick action the University turned to Harvey for solutions.



Harvey's proposal to the University was to deliver a design/build contract that would ensure a signature building; meet the required dining program; provide energy efficiencies; and be completed within budget limitations. The University approved the project and identified an occupancy date of November 2009.



Harvey quickly assembled a team of professionals to program, design, budget, and schedule the new building: Cube 3 Studio for architectural design; TF Moran for civil and structural design; Granite State Plumbing and Heating for mechanical design; Liberty Electric for electrical design; and Hampshire Fire Protection for sprinkler design. The team worked closely with the University's leadership team, food service department, and food service consultants to develop a plan to prepare, serve and host up to 600-students in various seating environments over two floors.



The design/build team met all of the University's specific requirements for dual purpose spaces and kitchen/servery flexibility. The private dining, located on the first floor, can be quickly and efficiently closed off for parties of up to 100 and is adjacent to a private patio. Onsite parking is provided to accommodate for all ADA and staffing needs; and loading docks on the basement level are easily accessible for the multiple trucks that bring meals made this facility to other locations. Interior design features curved soffits which were modeled at the drywaller's shop months in advance of stud and drywall installation; the resulting templates were transferred to the slab and used as benchmarks for all trades mirroring the soffits saving time and money once construction began. Construction will be complete in November and the University will begin serving students in January 2010.

*Project Spotlights will be printed as the Association feels is appropriate, and is dependent on the size of the newsletter and other construction issues occurring at that time. Please contact the chapter office at (603) 225-2701 with any questions.*





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*This newsletter is a first for the Association and we will be looking for your feedback. Please feel free to share this newsletter with your employees. You may also find this newsletter online at [www.agcnh.org](http://www.agcnh.org) under the "publications" section. If you have any questions, please feel free to contact us at (603) 225-2701.*

For more information, please contact **Bobbie Caradonna**  
at AGC of NH at **(603) 225-2701**.



# A partnership for savings.

Verizon Wireless has teamed up with National Purchasing Partners Construction to provide members of the Associated General Contractors exclusive discounts. As an AGC of New Hampshire member, you may receive:

- **22% off Monthly Access**  
on Calling Plans. For existing customers or new 1- or 2-yr. activations, on plans \$34.99 or higher.
- **\$100 Bill Credit**  
For a new 2-yr. activation on plans \$34.99 or higher (activation fees, taxes & other charges apply).\*
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Contact your Account Manager **Janson Dupre** at **603.496.0366**  
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