

PIPELINE NEWS

Suncoast Utility Contractors Association Newsletter

April 2018



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Letter From The Chairman



The first quarter of 2018 has already flown by and we are still going fast and furious. SUCA's first quarter was jam packed with industry events including Muddy Water Blues, OSHA Alliance Workshop, Legislative Days in Tallahassee and the NUCA Convention in San Antonio. We also had a little fun too, with a Lightning game (Go BOLTS!!) and Pittsburg Pirates spring training game. It is rewarding to see so many SUCA Members attend the education and political events. This is how we make our industry safer and secure funding for infrastructure projects. Throughout the year SUCA will continue to offer an array of trainings, seminars and social events to keep us connected.

The 2018 Sawyer Memorial Scholarship applications are now available. Any SUCA Member with a college bound high school senior is eligible. Over the years SUCA has awarded over \$130,000 in scholarship money to very deserving individuals. Applications are due May 18th. In addition to SUCA's scholarship, both NUCA of Florida, and NUCA also offer scholarships. Please pass this information on to your employees. SUCA's Scholarship Night is June 7th at the Columbia Restaurant. Join us as we celebrate the incredibly talented youth that are a part of the SUCA Family.

NUCA's Washington Summit is May 22-24, 2018. This is the perfect opportunity to provide feedback to your Representative or Senator. NUCA provides experts in infrastructure and federal regulations to fully brief participants before we walk the halls. You will learn how the government works and does not work for our industry. It is such a humbling experience being in our Nation's Capital with other SUCA & NUCA Members advocating for the betterment of our industry. Join us and be part of the solution!

SUCA's 2018 membership recruitment initiative is now underway. The Membership Committee recently had a meeting, and compiled a list of prospective members. Information packets are being mailed out, and personal visits have been scheduled. So far in 2018, we have recruited 8 new SUCA Members. Way to go! Let's keep the ball rolling. If your company is doing business with a Non-SUCA member, please reach out to them! Bring them to a SUCA event or send their contact information to Theresa so she can send them an information packet. Let's continue to grow this great organization that represents our industry so well.

As always, please share your thoughts with me on how we can continue to make SUCA a better organization.

At your service ~ Penny Danielecki

**** SUCA Members do business with SUCA Members ****



SUCA and Polk State Corporate College to Launch Employment and Training Program

The shortage of skilled workers has been at the top of the list of challenges facing the construction industry for many years. Unfortunately, the SUCA and NUCA membership are experiencing the same conditions. With both the current and anticipated future growth of our industry, proactive steps must be taken immediately in the areas of new employee recruitment and craft training.

During the past year, SUCA has been working closely with Polk State Corporate College in developing an industry-specific curriculum to address the needs of our membership. Individuals attending the craft training will experience a blend of both knowledge and hands-on training as they build their understanding of the job and the skills to perform the tasks. The training program extends over 900-hours and covers the industry concerns in the area of OSHA Construction requirements with in-depth emphasis on Trenching/Excavation and Confined Space. Students will receive instruction in the field of soils, grading, dewatering, concrete, formwork, deep foundations, pipe fitting, welding, pipe laying, equipment operation and maintenance, heavy highway construction, roadway traffic control, and specialized topics to meet additional needs of the SUCA members. During the 900-hours of training, about half of the time is skill training through hands-on practice as the student develops the skills the SUCA members need in their employees. By the proctored testing of both the student's knowledge and their physical ability to perform the activities in the skills examination; students have the opportunity to earn approximately nine nationally recognized certifications and credentials.

The use of a classroom and lab setting will develop the skills and knowledge of a student; however, nothing can replace the live training that an employee gains while working on the job site. Because of this, the program will contain two components, classroom/lab skills training and on the job experience. The program is designed for the employees to work on the job three days a week and report for two 8 hour days of craft training. By the end of the training program, the student would have been exposed to knowledge, skills and on-the-job experience, providing them with the ability to be a skilled producer on the job site.

The recruitment of employees is becoming a challenge as we compete with other industries for workers. As an additional employee search effort, Polk State Corporate College recruitment program will work to help recruit students with interest in both employment with our SUCA participating companies and a desire for craft training. Through the many seminars with graduating high school seniors, adult schools, trade organisations, technical centers, industry events, and job fairs, Polk State Corporate College is aggressively searching for the best possible candidates for our companies. Only by way of aggressive candidate search and recruitment, skills training and on-the-job training can we begin to fill both the skills gap and the employee shortage facing our industry.

ADDITIONAL BENEFIT TO SUCA MEMBERS: There is grant funding available through the local workforce boards to assist the employers with offsetting their training costs. What is the result: the talent pipeline will be filled, the participants will develop skills and receive employment and the SUCA member companies will have the best trained employees in the industry after one year.

FLORIDA MUDDY WATER BLUES

RECAP

SUCA partnered with the Department of Environmental Protection, St. Pete College Seminole Campus & R.H. Moore & Associates to provide this indoor/ outdoor free DEP Technology Transfer Workshop for Erosion and Sediment Control BMPs. 150+ attendees included planners, designers, developers, contractors, inspectors and citizens interested in learning more about erosion and sediment control practices and products to help improve water quality during and after construction activities.

MORNING SESSION INCLUDED:

- ◆ DEP Education Program Overview
- ◆ Erosion & Sediment Control in Pinellas County
- ◆ Grassing Applications
- ◆ RocSoxx Technology
- ◆ Stormwater Pollutant Removal
- ◆ SWPPP Compliance Under Federal/ State
- ◆ Polymers for Erosion & Sediment Control
- ◆ NPDES CGP and Compliance Issues



Applied Polymer Systems, Inc.



SPC St. Petersburg College



**AFTERNOON SESSION
INCLUDED FIELD
STATION TOURS WITH
BMP CONTROLS**

SAWYER MEMORIAL SPRING SCHOLARSHIP GOLF

Overall Winner

Tim Fahey
Drew Stimmel
Greg Spaddy
Bruce Burdick



1st Runner Up

Vince Aguayo
Mike Meadows
Jack Calendros
Mike Reinke



2nd Runner Up

Rick Hoffman
Matt Anderson
Eric Elper
Josh Burris



Longest Drive

Rick Hoffman

Closest to the Pin

Dave Carney

Putting Contest

Ted Bickert

Golf Cannon

Lance Croft



Special Shout out to our Spring Scholarship Golf Committee

Shawn Mason Co-Chairman, Fortiline Waterworks

Scott Williams Co-Chairman, Crisdel Group

Chris Wilhelm, MWI Pumps

Bud Shores, Dallas 1 Construction

Brandon Strout, National Trench Safety

Jim Sullivan, Stahl & Associates

Logan Roberts, Ferguson Waterworks

Volunteers: Penny Danielecki, Tisha Perry, Don Campbell, Lori Knickerbocker & Tamara Santoro.



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TEE/GREEN



PRIZES



BALL LAUNCHER



LONGEST DRIVE



CLOSEST TO THE PIN



NUCA CONVENTION

HIGHLIGHTS

March 6th– March 9th: Another amazing Convention held at the beautiful San Antonio Riverwalk. All who attended had opportunities to learn, network and have a little fun! If you missed out on this year I highly recommend attending in the upcoming year!



Educational breakout sessions were extremely interactive and provided fantastic speakers directing the conversations.



One of the most popular Sessions is the Executive Roundtables. This gives Contractors the opportunity to discuss best business practices with other companies that they are not in direct competition with.



Plenty of time for networking! Thanks to CAT we had an awesome Chili Cook Off Challenge that SUCA proudly took 1st Runner Up in! This was a fun opportunity to work as a team and socialize with all in the room as we ran around bartering for ingredients from other teams. This was hands down one of the most fun team building events yet! Special thanks to our head chef, Ray Post for nearly pulling in the win! With out him I'm not sure how our chili would have turned out!

NUCA CONVENTION

KEYNOTE SPEAKERS



Keynote Speaker: Chef Jeff Henderson

If You Can See It You Can Be It

Jeff Henderson inspires with his emotional journey of redemption from the streets to the stove, sharing real-life strategies to help you achieve your dreams, no matter your stage of life. Chef Henderson captured the room with his hard-knock yet transformative life lessons and the secrets to rising above and realizing your potential.

Keynote Speaker: Alison Levine

On the Edge: Leadership Lessons from Everest and Other Extreme Environments

On stage, Alison uses stunning imagery from her various expeditions to demonstrate how progress can be made going backward, why egos are a good thing, and how complacency can kill you. She had the audience on the edge of their seats as she discussed surviving sub-zero temperatures, hurricane-force winds and sudden avalanches during her expeditions.



NUCA CONVENTION

AWARDS & LIVE AUCTION



Chapter Merit Awards presented to SUCA for Special Events and Educational Programing.



Penny Danielecki accepted the Leadership Award for Co-Chairing the NUCA Convention.



Steve Kriebel, Ritchie Bros Auctioneers did a fantastic job at the Live Auction.

DOES FLORIDA STATUTE §725.06 APPLY TO ALL EXCAVATION CONTRACTS?

In the recent decision of *Blok Builders, LLC v. Mastec North America, Inc., et al*, 43 Fla. L. Weekly D253b (Fla. 4th DCA Jan. 31, 2018) the Court held that excavation to access previously existing underground utility lines but that was not “associated with the construction, alteration, repair or demolition of a building, structure, appurtenance, or appliance . . .” was not subject to the requirements of §725.06.

The Court concluded that the contract between Bell South and Mastec involved the laying and maintenance of utility lines. Further, that the contract did not involve a building, structure, appurtenance or appliance. As a result, even though the contract called for excavation the scope of work of the contract did not subject the agreement to the provisions of §725.06.

The Court suggested that work on the construction of concrete tunnels and the lease of a concrete pump truck for delivery of concrete for a building foundation would be covered by §725.06. On the other hand, the Court noted that a contract for the installation of utility poles did not fall within the provisions of §725.06 since the contract did not involve a building or a structure.

In conclusion, as a result of the decision in *Block* the scope of work called for in an agreement should be analyzed to determine if Fla Stat §725.06 is applicable to the indemnity provision in the agreement.

Andrew J. Mayts, Jr.
Gray Robinson





MEET YOUR BOARD MEMBERS

Shawn Mason, Fortiline Waterworks



Briefly tell us about your professional background

Well if you want the beginning, I had a lawn business at 7 years old. I remember my dad telling me I had to decide to work my lawn business or play baseball. I said I will do both. I did and the baseball paid for college. I graduated in May of 1989 and started with Ferguson Waterworks in Fort Myers as a trainee. I worked 23 years with them. I moved to Tampa in 2012 and worked for Hayes Pipe Supply for 4 years. Both great companies. I saw an opportunity to start the Fortiline branch in Tampa as the only salesman in December of 2015. Fortiline is the fastest growing Waterworks Distributor in the U.S. We have been open for 2 years and 3 months now in Tampa and have 4 salesmen.

What inspires you about your business

What I like about our business is watching our city grow. I look at plans most days and it is cool knowing what is being built even before any signs are put up.

What is your educational background

I graduated in 1983 from Lakeland High School. I graduated from the University of West Florida in Pensacola in 1989. I have a Bachelor Degree in Sports Science with a minor in Management.

How long have you lived in Florida

I was born in Charleston West Virginia. My grandparents lived in Brooksville, Florida and we moved there in 1969. We then moved the next year to Lakeland where I grew up. I have lived in Florida for 48 years.

What is your favorite book

I have to admit I don't have time to read unless it is on blueprints.

What are your hobbies or interest outside of work

I still play baseball in the Red Sox Fantasy camp every January. It is one reason to get myself in shape through the Holidays. One solid week of 9 games and when the week is over I don't work out for a month. Lol.

Grill master or reservations

I do a little of both. When I have time on a weekend to grill our dinner I do, but I will admit that Tisha often fires the grill up and does a better job than me while I am working.

What is your favorite travel location

My favorite getaway is my cabin in the mountains of North Carolina between Cherokee and Maggie Valley. It is up in the woods and one quiet relaxing spot. Problem is I end up working on it so others can enjoy when I rent it out. One other place that we have enjoyed the last few years is Park City. We like to go in early March and get some skiing in. I believe we will do that as long as the legs allow.

What is the secret to your success

Just plain hard work. Put your nose to the ground and get things done for your customers. I often take on more than I can do and that is when I end up burning the midnight oil. The one thing people overlook in this day and age is answering the phone. I try always to answer my calls and if I am busy it is the first thing I do when my task is over.

Do you have any "guilty pleasure" TV Shows

James Spader in the Blacklist is the show we have kept up with lately. Even if I am working that night we tape it and watch it together later.

Tell us about the services your company provides

We provide a quote on materials for water, sewer, force main, irrigation. We work with our contractor to achieve the best outcome for him on his project. We are located at 8504 East Adamo drive in Tampa where we stock our materials. We have experienced employees that are very accommodating to your needs. It helps when the regional manager's family had their own utility business and he realizes the sense of urgency.

What is your business philosophy

The customer is the reason we are able to do what we do for a living. Without them we have no job.

What is your favorite sports team

Pretty obvious that I am a Red Sox fan and growing up here in Florida the Miami Dolphins. Old school Dolphins, Griese, Czonka, Morris, all the way through Marino.

What was the first car you drove

A Mercury Tank and I drove it like one. Well, until I totaled it after about 6 months.

What is one interesting thing we should know about you

I am a fighter and not a boxer. If you knock me down I will work harder than ever to get back on my feet, as I did in April of 2013 after a quadruple by-pass at 48 years old. My goal then was to pitch in that baseball camp in January. I got into great shape and was proud that I did pitch 13 innings in 5 days. I look at it as I am on borrowed time and live life to the fullest. Be there for your family and if something is worth your time to do then do it right with enthusiasm.

What is your favorite Charity

I support Warriorssoar.com

What is one thing you would like to see SUCA accomplish

I appreciate all of the charities we support in SUCA. I believe it is important for us to be supportive and involved in our community. We are all very blessed and should share those blessings with others not so fortunate.

What do you find to be the best benefit of being a SUCA member

I have met some great friends through SUCA. My customers and SUCA members tend to be my friends.

NUCA OF FLORIDA

LEGISLATIVE DAYS PRIORITIES



◇ **WORKERS COMPENSATION REFORM**—NUCA of Florida SUPPORTS legislation that minimizes workers compensation rates, reduces litigation and provides adequate benefits to injured workers for they may return to work swiftly.

◇ **CONSTRUCTION INDUSTRY WORKFORCE DEVELOPMENT**—NUCA of Florida strongly SUPPORTS



◇ **STATUTE OF REPOSE**—NUCA of Florida SUPPORTS

◇ **LINEAR FACILITIES**—NUCA of Florida supports storm-hardening initiatives that promote the safe, reliable delivery of electricity and is monitoring HB 405 and SB 494.

◇ **IMPACT FEES**—NUCA of Florida SUPPORTS

◇ **PERMIT FEES**—NUCA of Florida SUPPORTS



◇ **STATE ASSUMPTION OF SECTION 404 DREDGE & FILL FEDERAL PERMIT AUTHORITY**—NUCA of Florida SUPPORTS efforts to streamline permitting and reduce duplicative regulations as included in HB 7043 and SB 1402.

◇ **CONSTRUCTION BONDS**—NUCA of Florida is OPPOSED to additional hurdles when seeking payment under a construction bond and is monitoring HB 723 and SB 908.

◇ **CONSTRUCTION DEFECTS**—NUCA of Florida SUPPORTS HB 759 and SB 680.

◇ **STATE BUDGET—INFRASTRUCTURE FUNDING**—NUCA of Florida encourages Legislature to continue to adequately fund the Clean Water and Drinking Water State Revolving Fund (SRF) programs for water pollution control, small community sewer construction and safe drinking water initiatives.



NUCA OF FLORIDA

LEGISLATIVE DAYS MEETINGS



SUCA meets with Representative Wengay “Newt” Newton from St. Petersburg. The Representative who sits on the Transportation & Infrastructure Sub. Committee was very interested in hearing our priorities.

Meeting with Representative Chris Latvala, Clearwater went very well. The Representative is a strong supporter of our industry and agreed with all of our priorities.



Senator Denise Grimsley discussed the importance of Workforce Development and how we can get our next generation interested in the Construction Industry again.

It's time for Congress to start building again!



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SUCA HELPS PAVE THE WAY FOR THE NEXT GENERATION THROUGH TAMPA BAY CONSTRUCTION CAREER DAY

Dover, FL – More than 650 students from across the Tampa Bay area attended the third annual Tampa Bay Construction Career Day at the Hillsborough County Fairgrounds to get hands-on experience and learn about the construction industry. From operating 18 pieces of heavy machinery to learning about concrete, paving, traffic control, engineering and more in interactive “learning labs,” they were able to connect with representatives from the Florida Department of Transportation and various engineering firms and contractors, many of which are looking to hire students right out of high school.



“Construction Career Day is a unique opportunity that allows students to explore the industry and the career opportunities it has to offer. A labor shortage in the construction industry is something that the entire United States is experiencing right now,” explained Penny Danielecki, SUCA Chairman.

“We need to make sure that our industry is represented in such a light that these kids want to join the construction industry. This event helps the younger generation understand that there are careers out there in construction that, while they don’t require

a traditional college education, still have amazing benefits. Through Construction Career Day, we’re building the roads for tomorrow.”

For more information on Tampa Bay Construction Career Day, please visit <https://ccdf.org/tampa/>.



IT TAKES AN ARMY TO PUT THIS EVENT TOGETHER. WE THANK ALL INVOLVED!

BROUGHT TO YOU BY:

Suncoast Utility Contractors Association, SUCA

Florida Department of Transportation, FDOT

Florida Transportation Builders Association, FTBA

Steering Committee

SUCA, Technical Sales Corporation, FDOT, Linder Industrial Machinery, Pepper Contracting, Quest Corporation of America, Sunshine 811, Dallas 1 Corporation, Synergy Rents, Ajax Paving, Nelson Construction, HNTB Corporation & H2R Corp.

Learning Labs

DRMP, Dallas 1 Construction, Florida Masonry Apprenticeship, FDOT, Aerotek, MTN Resources, Complete Property Services, Florida Gas Transmission, Hillsborough County Public Works, Quest Corporation, Ajax, Universal Engineering Sciences, Middlesex, Mott MacDonald Florida, Hillsborough County Economic Development, Renew Construction, Hubbard, TECO, KCI, Nelson Construction. TRC, Florida Irrigation Society, Dobbs Equipment, Linder Industrial Machinery, St. Petersburg College, Maser Consulting, ACP, Great Southern Equipment, Preferred Materials, OSHA, Prince & Laborer's Southeast Training Fund.

Equipment

Synergy Rents, Bobcat, Ring Power, Ajax Paving, Pepper Contracting, Dobbs Equipment, Hillsborough County, Team Fishel, Linder Industrial Machinery & Southern Land Services of SW FL.





PLATINUM SPONSORS

Crisdel Group, Preferred Materials, Scalar Consulting Group, Granite Construction Company, Miller Electric Company, Mott MacDonald, Cardno, MiddleSex Corporation, PRINCE Contracting, Sunshine State One Call, Bob's Barricades, Archer Western and Synergy Rents.

SILVER SPONSORS

Linder Industrial Machinery Company, Dallas 1 Construction, GLF Construction Corporation, Asphalt Contractors Association of Florida, RIPA & Associates, CWR Contracting, ECS, KCI, Polk State College, Quest Corporation of America and UA Local Union.

BRONZE SPONSORSHIP

Florida Westcoast Apprenticeship Council, CDM Smith, Burgess Civil, AIM Engineering & Surveying & RK&K.



An Unprotected Trench IS AN EARLY GRAVE

Extraordinary efforts to rescue two men in this trench collapse saved one man's life but one 20-year-old man died.

~ OSHA

National Trench Safety Stand Down Week June 18-23, 2018

Trench-related fatalities continue trending up. NUCA, OSHA, and NAXSA have teamed up for our 3rd annual Trench Safety Stand Down Week, June 18-23, 2018, to educate workers and reverse this trend.

Who Should Participate

Any construction company that engages in trenching operations, plumbers, military, unions, associations, educational institutions, safety professionals, and safety equipment manufacturers.

How Companies Can Hold A Stand Down

- Hold a 20-minute Toolbox Talk
- Show an Excavation Safety Video
- Hold a Training Class

Recognition

Every company or organization that holds a TSSD will receive a certificate of participation, as well as hard hat stickers for all employees who participated. Recognition will also be given in a press release, and NUCA and NAXSA publications.

TSSD details, as well as Toolbox Talks, fact sheets, and other stand down materials can be found at www.nuca.com/tssd



Also sponsored by NUCA's Safety Ambassadors Club

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Wacker Neuson Corp.

The Damage Prevention Partnering Process

BY WAYNE JENSEN, DAVID WIRTH AND HOYT LOWDER

The Tampa Bay Excavation Task Force (TBETF) is a utility damage prevention pilot project that was initiated by excavators to address the needs of excavators but designed to take input from all stakeholders, including utilities. In many ways, the efforts of the TBETF parallel work done by the Best Practices Committee of the CGA that is predominantly comprised of utility members but designed to take input from all stakeholders, including excavators.

The TBETF encourages experimentation with damage prevention ideas. During a recent TBETF meeting, David Wirth, a project manager for member contractor Dallas 1 Construction & Development, expressed his concern over utility strikes on an upcoming directional drill project in the City of New Port Richey. There were no contract requirements to provide Subsurface Utility Engineering work on the project and the cost to conduct a full SUE investigation was prohibitive for Dallas 1, the directional subcontractor, and the City of New Port Richey. However, due to a “no excuses for damage” approach championed by Wayne Jensen at the monthly TBETF meetings, all parties realized that this mindset would ultimately result in a project that began with a more complete design and ended in lower change orders and increased profits. The decision was then made to invest the upfront time to locate all existing facilities along the proposed pipe route.

Wirth met with Gary Peterson, the City of New Port Richey Public Works Construction Project manager, to discuss how to accomplish this task. Eager for improved data on their existing facilities and fully aware of the headaches caused by utility strikes, Mr. Peterson offered the services of his in-house locate team to assist in the location efforts. Realizing the value of such an effort, the directional subcontractor offered to employ a radar team led by Darlene Truluck of GeoMasters, Inc., with Dallas 1 personnel physically uncovering all facilities in the right-of-way using an air knife and air vacuum. Andrew Hartman, Owner of Supersonic Air Knife, Inc., provided the TBETF with these tools and allowed Dallas 1 a hands-on opportunity to showcase their inherent value.



Measuring the depth of a verified utility.

One of the steps in a “Damage Prevention Partnering Process” can be as simple as bringing together the stakeholders in a project to brainstorm what might be possible if everyone worked together to generate solutions, with all parties sharing in a pretty modest and insignificant cost compared to possible damage. It would have been easy for Gary Peterson to say “you bid it, you do it,” but he didn’t. It would have been easy for David Wirth to say “I’m not required to do it so why should I?” But he didn’t say that either. They didn’t say that because each took the “no excuses for damage” approach on this project. They simply began with each discussing “here’s what I can do” until they had a plan that would verify and document the location of every facility in the project construction area. Instead of saying what they can’t do, they discussed what they could do. Additionally, by investing the time and driving this “no excuses” attitude down to the crew level, Dallas 1 empowered their staff to take ownership of the project. Damage prevention was made the responsibility of everyone.

The project was initiated through the use of the One Call system with a “request for locate” before this effort began:

- Darlene Truluck first began sweeping the area with the ground pen-

“Instead of saying what they can’t do, they discussed what they could do.”

etrating radar to confirm the location of marked facilities. As was expected, the phone cable facilities were pretty close to where they were marked on the surface.

- Dallas 1 began physically exposing the phone cable facilities to confirm the accuracy of the marks. The phone cable facilities were very close to the One Call marking by GeoMasters.
- The location of water services marked in the One Call locate also were verified very close to where they were marked with a one foot or less in marking error.
- The wild card was the sewer laterals.
 - The City of New Port Richey knew with good accuracy where the lateral wyes’ were placed in the sewer main, but the routing of the laterals from the wyes’ to residences, especially those built 20 to 50 or more years ago, were not well documented. This is the case across the country.
 - Some laterals that were marked were found to be in excess of 20 feet away from locate marking when located by ground penetrating

radar and also by running wire down the lateral from a cleanout at the house to apply a locatable signal.

– Again, in each case, the Dallas 1 crew used the air knife and vacuum to physically uncover each facility.

In each case that a facility was exposed using the air knife and vacuum, all parties were able to document depth. On this project, cross-bores with all facilities will not be damaged because of the time spent in this effort.

The value of this joint effort to the City of New Port Richey is:

- They have now experienced the Damage Prevention Partnering Process even though that label was not used in this effort.
- The next time Gary Peterson has a similar project with Dallas 1 Construction, he will be completely comfortable with this concept of a public/private partnership that is an integral part of the Damage Prevention Partnering Process.



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Partnering Process



A crew vacuuming a pothole to verify utility.

- Experiencing this kind of collaboration is the best way to understand the concept. This kind of collaboration was necessary on this project because there was no other contract mechanism that required the effort. There was no mechanism to pay for the effort. This example of partnering would not have happened without Gary Peterson and David Wirth taking a “no excuses for damage” approach to damage prevention and working together to get it done.

The value to Dallas 1 Construction can be measured in many ways:

- Start with the intrinsic value of “success” in completing this project without damage.
- There were no production delays as a result of a work stoppage to repair damage. Additionally, Dallas 1 can close this project without the fear of unforeseen utility backcharges.
- There was no threat of injury to workers or the public that could result from a damage.
- Overall project cost is lower even though there were upfront expenditures to verify the location of facilities to avoid damage.
- The individuals on the ground were given an opportunity to drive the design of this project, ownership that leads to a higher level of both quality and employee satisfaction.

If the project owner and the contractor did not take this partnering approach and damage were to occur on this project:

- The blame would likely fall to the locator who failed to mark within the regulatory tolerance zone. And, this is likely due to the lack of ac-


curate as-built drawings and difficult facilities to locate.

- There certainly could be other failures on the part of multiple stakeholders that could have resulted in damage.
- The damage would be reported to the national DIRT database.
- The CGA might actually have found themselves studying the root cause of the failure to avoid future damage.

Fortunately, we now have this example to discuss how a contractor/excavator partnered with a city project owner to avoid damage. From this point forward, informed stakeholders can

take steps to capture successes. We literally have many millions of successes each year by excavators and locators who find ways to avoid damage. This year’s DIRT Report shows a 99%+ success rate of excavations without damage when the One Call system has been notified to locate.

For each locate request or dig ticket, the One Call system captures a treasure trove of “success data” for excavations that are done without damage. The only piece of data typically not requested from the excavator at the conclusion of excavating activities is the answer to the question, “Was this excavation completed without damaging buried facilities?” This request wouldn’t necessarily uncover practices used to prevent damage, but it would provide a great insight into the kinds of excavations that are done without damage—and who avoided damage.

The Damage Prevention Partnering Process (D3P) is the key to capturing this information. This data could provide the foundation for future research into successes. 

Wayne Jensen is the Director of Safety for Stahl & Associates insurance. Wayne founded and currently chairs the Tampa Bay Excavation Task Force. He also serves on the board of the Suncoast Utility Contractors Association. He can be reached at wayne.jensen@stahlinsurance.com. Hoyt G. Lowder is Managing Member of HGB& Associates, LLC, an applied technology firm in Tampa, Florida. Hoyt is a member of the American Institute of Constructors and a member of the Executive Board of the Supplier and Service Providers Council of the AGC of America. He can be reached at hoyt.lowder@hgbnet.com. David Wirth is a Project Manager and Chief Estimator at Dallas 1 Construction and Development in Thonotosassa, Florida. He is an active member of TBETF and is the 2013 Chairman of the Suncoast Utility Contractors Association. He can be reached at david.wirth@dlcd.com

DBE COMPLIANCE UPDATE



DBE Compliance

The National Association of Wholesale Distributors (NAW) published a document providing very useful information on DBE Compliance and the definition of a Commercially Useful Function (CUF). WASDA recently sent it to their members as a WASDA ALERT. ***The article below is a reprint of the document from the NAW webpage.***

This NAW article highlights the need to be able to document that a DBE has performed a Commercially Useful Function (CUF) on a specific transaction, by: (1) determining quantity & quality of the material, (2) negotiating price directly with the Distributor, (3) ordering the materials by issuing a contract (such as a PO), and (4) paying the invoices. In general, a DBE must manage its phase of a project and have reasonable experience and capacity to perform the work.

The information below is based on the Federal DBE program requirements. State and Local requirements can differ from the Federal requirements and may require further investigation.

BEWARE OF YOUR LIABILITY EXPOSURE FOR DBE FRAUD WHEN SELLING TO GOVERNMENT CONTRACTORS

Updated May 2016

Wholesaler-distributors often supply products and materials to contractors for use on public procurement projects that are funded, at least in part, with government funds. Under federal, state and local laws and regulations, a certain portion of that government contract may need to be awarded, or subcontracted, by the general contractor to Disadvantaged Business Enterprises, or DBEs. For example, the U.S. Department of Transportation spends about \$50 billion per year on construction projects and about \$5 billion goes to DBEs.

Generally, a DBE must be majority owned and controlled by socially and economically disadvantaged individuals, including minorities and women. Government certification that the business qualifies as a DBE only confirms that this business ownership requirement is met.

A number of recent Justice Department criminal and civil enforcement actions have involved a scenario where the Contractor -- often after having received the Distributor's quote and worked out product quality, quantity and logistics -- asks the Distributor (who is not a DBE) to supply product on a public

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procurement project through a designated DBE as a conduit - rather than have the Distributor sell directly to the Contractor. The Contractor then claims credit for the DBE's "participation" on the project toward the contract goal. For its role, the DBE receives a small fee for the use of its name and DBE certification.

However, DBE utilization is lawful only if the DBE actually performs a "commercially useful function" in the product supply chain.



The Justice Department and other enforcement authorities have challenged these arrangements and charged the Distributor and Contractor with DBE fraud because the designated DBE was a mere "pass-through" entity, and did not perform any commercially useful function. The Distributor may face criminal and/or civil liability for participation in this scheme, even if the DBE has been duly certified by the government as a Disadvantaged Business Enterprise. (DBE "certification" only means the DBE has sufficient ownership and control by minority or disadvantaged individuals. Whether the DBE actually has the capability and performs a commercially useful function is a separate determination made for each contract, based on the specific facts of the transactions involved.)

What's a Commercially Useful Function?

Generally under federal regulations a DBE performs a commercially useful function when it is responsible for execution of the contract and is carrying out its contractual responsibilities by actually performing, managing and supervising the work involved - negotiating product price with the Distributor, determining quality and quantity, placing orders, receiving, warehousing and delivering the products, paying the Distributor and invoicing the Contractor. A DBE that acts as a mere "front" or "pass-through" (i.e., an extraneous participant in the transaction through which funds are passed in order to obtain the appearance of DBE participation) will not qualify.

Enforcement Actions

Criminal DBE fraud cases involving a pass-through DBE prosecuted by the U.S. Attorney's Office have resulted in prison sentences for individuals involved ranging from 3 years probation to 7 years in prison. The federal government and private whistleblowers (who could be a competitor of the Distributor or the DBE) may also seek substantial civil penalties in DBE fraud cases under the federal False Claims Act. Since 2011, the U.S. Department of Transportation (USDOT) has recovered over \$245 million in fines, restitution and forfeitures in these cases. Penalties may include debarment from future government contract work.

A Distributor who sells product through a pass-through DBE - even if the DBE is "certified" - is a potential target for enforcement actions.

For example, in a recent federal case in New York a materials wholesaler paid nearly \$5 million to settle a DBE fraud claim brought by the U.S. Department of Justice. Without admitting liability, the wholesaler acknowledged that it supplied materials to federal contractors through a DBE that the government could prove at trial served as a "pass-through" on several project contracts. In fact, the wholesaler negotiated terms directly with the contractors and used the DBE as a pass-through. Wholesaler invoices were sent to the DBE; the DBE transferred the invoice information to its own invoices and added a markup; the

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DBE then sent its invoices to the contactors for payment. The wholesaler's conduct enabled the contractors to certify falsely that the DBE supplied the materials and served a commercially useful function, which all parties knew was not the case, according to the complaint. The settlement was not an admission of liability. The DBE in this case was duly certified by New York and several other states as a Native American owned DBE, but it really did no work in the transaction.

Red Flags Indicating a Pass-Through DBE

The USDOT Office of the Inspector General has issued the following "red flag" indicators of DBE fraud:

- DBE owner lacking background, expertise, or equipment to perform subcontract work
- Employees shuttling back and forth between Contractor and DBE payrolls
- Business names on equipment and vehicles covered with paint or magnetic signs
- Orders and payment for necessary supplies made by individuals not employed by DBE
- Contractor facilitated purchase of DBE-owned business
- DBE owner never present at job site
- Contractor always uses the same DBE
- Financial agreements between Contractor and DBE
- Joint bank accounts (Contractor/DBE)
- Absence of written contracts

Conclusion

Wholesaler-distributors must exercise thorough due diligence review and oversight when asked to sell products and materials for a government funded project to, or through, a DBE. An understanding of the applicable laws, rules and regulations and compliance guidance from professional advisors is essential. When a contractor-customer attempts to just insert a DBE between the contractor and a non-DBE Distributor, the tough answer must be that the Distributor will not participate in the transaction, for the Contractor's protection, the protection of the DBE and the protection of the Distributor.

Government scrutiny, claims and prosecutions of distributors and contractors using a pass-through DBE are on the increase and penalties are severe. Most of the rules have been in force for many years, but the recent increased enforcement environment necessitates that all Distributors review their methods of operation in this area. Old practices are under heavy scrutiny by not only law enforcement but by other businesses and the media. Remember, the fact that a DBE has achieved government certification only confirms the entity's status – the DBE must also add real value in the transaction which confirms the DBE's performance of the necessary, required commercially useful function.



SAVE THE DATES!

May 3rd: Membership Dinner Meeting with John Lyons,
Hillsborough County & Howard Drake, Polk State College @
Maggiano's Little Italy

June 7th: Scholarship Night @ The Columbia, Ybor City

June 9th: Chartered Fishing Trip @ Clearwater Marina

August 30th: SUCA Showcase @ The Crowne Plaza

September 14th: Fish Fry @ Al Lopez Park

October 4th: Live Auction @ The Eagles Country Club

October 19th: Clay Shoot @ Tampa Bay Sporting Clays

December 14th: Holiday Banquet @ The Centre Club

SUCA MEMBER NEWS:

Congratulations to ACP's new
hires:

Ben Newlon - Staff Accountant

Janette Gentilella - Staff
Accountant

Chad Finch - Project Estimator

Suncoast Utility Contractor Association

P.O. Box 21424, Tampa FL
33622

Tampa, FL 33622

www.suca.org

tmannix@suca.org



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thoughts and ideas for
upcoming Pipelines!

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Pipeline!