VOLUME 50 NO. 08
AUGUST 2016

ANNUAL FALL BUSINESS MEETING OF MICA

This notice is to inform you of the 2016 Fall Business Meeting of MICA. This year's meeting is scheduled for Wednesday, October 19, and Thursday, October 20, 2016, in Omaha, Nebraska. Board and Committee members should plan to arrive on Tuesday, October 18, 2016. The site of this fall's meeting is the Embassy Suites Downtown Hotel in Omaha. This will be our tenth year at this hotel.

The past several years we have combined an educational seminar with the fall business meeting. This year the Board decided to host a half-day educational seminar on “Change Management” (see page 28 for details). Registration information regarding this free seminar will be forthcoming. If you wish to attend this seminar, you need to register for the seminar. Space is limited, so register as soon as you receive the material.

This year’s fall business meeting will include updates and discussions on several topics crucial to your business operations. The technical sessions will include presentations on how to structure a business contract to your company’s advantage, motivating your people to excel, how to position your company to be successful in litigation proceedings, and the impact of new OSHA regulations on your company. We will focus on providing the membership with new insights on these issues as we continue to help you to improve in your industry and in your businesses.

In keeping with President Shimada’s theme of “project management”, we will have a presentation on managing your contract from proposal, to claims, to change orders by a seasoned veteran of our industry. John B. Wilhelmi is President Emeritus of the Omaha Division of The Waldinger Corporation. The Waldinger Corporation is a national mechanical construction company performing over 275 million dollars annually. Wilhelmi has served The Waldinger Corporation for forty years, the first ten years as Vice President of Estimating and the last thirty years as Division President. During the last year as Vice President of Estimating, he supervised the bidding of over one billion dollars of mechanical work (present day dollars).

Wilhelmi is a past President of the national Mechanical Contractors Association of America (MCAA) having served as its National President in 2008/09. He is also a past President of the Mechanical Education and Research Foundation, (MCERF), a ten million dollar plus trust fund. He also chaired the Career Development Committee of the MCAA. During Wilhelm’s tenure as chairman, the number of student chapters grew from two to fifty.

At our June convention, Gary Auman updated us on the OSHA rule changes that were in their final stages of enactment. He will provide us with his annual update on OSHA regulations, and he will also bring us up to date on how the recently finalized rules are being implemented by OSHA on the job sites, and how they will impact our businesses.

This is a do not miss session for you and your key safety professionals.

Project management is not limited to on the job policy and procedural issues. Project management involves the people within the organization as well. Dr. Charlie Cartwright is a consultant, author and entrepreneur. He has recently developed a series of training modules centered around improving culture and morale in the workplace. He has accumulated 20 years of Fortune 100 leadership experience and identifies himself as a communicator. Charlie has a passion for bringing out the best in others through personal engagement and vibrant communication, motivating his clients to excel in their respective roles. In addition to his professional roles, Dr. Charlie is a husband, father and avid gamer, and can be found at home with his wife, four children and their three rescued Pitbulls. In his presentation, Dr. Cartwright will discuss pre–task planning, production, people, and safety.

The last area of project management that we will address during (Continued on page 13)
PRESIDENT’S MESSAGE

TO:  THE MICA MEMBERSHIP

Summer is beginning to wind down. Some of us may already be thinking about back to school, I know my family has been. Somehow, one day I woke up and my first born is going to college! Mom, Dad, and Student spent a day in college orientation; the student learning the ins/outs of school and the parents learning that it’s ok to give up control of the minute details of our child’s life. Classes have been signed up for, laptop computer has been purchased, parking passes purchased, tuition started to be paid for, and all of those other fun things that go with the next stage in a child’s life.

The family has still taken time to enjoy the heat of the summer: zoo trips, bike rides, beach time at Lake Michigan, picnics, sweating (I’m the one guy in MICA that doesn’t enjoy summer heat), mowing the lawn (I don’t care for this chore either), gardening, etc. I trust that you are also finding ways to enjoy what remains of the season.

By the time you read this, the Board of Directors has met in San Diego to discuss the Fall Business Meeting. In addition to planning the fall meeting, we got to enjoy the weather and the Pacific Ocean. I look forward to sharing the sites, resort, meals, and fun with you next year at the Spring Convention.

I’m going to cut this month’s letter a bit short because the project control topic is going to run a bit in length. I hope you are finding these articles educational and beneficial. I wanted to thank those of you that have taken time to drop us at MICA a note regarding past articles. Apparently the topic of margin vs. markup hit home with a few of you!

Until next month,
George Shimada
MICA President

Progress Measurement – Percent Complete

Last month, we talked about the importance of tracking earned hours and earned value. This number is influenced by the percent complete of a particular task. Because earned hours are required to know whether we are ahead or behind schedule, we must accurately know what percent complete we are of that task. There are a number of methods to measure this value; some good, some bad, some depending on the type of task we are accomplishing. There are many ways to calculate percent complete, but I will only mention 5.

The first method is probably the most common for us in contracting ….. and unfortunately the worst and most inaccurate. This is called supervisor opinion. It is the subjective approach of “sticking your thumb in the air and claiming to be x% done with the task.” There is no way to metrically verify this method and in larger tasks with multiple subtasks, accuracy is probably not something we can even consider! This method should only be used as a last resort and only for very small tasks.

The second method is called units complete. This method works well when there are few subtasks to the particular task and usually involves items of repeated production and easily measured pieces of work. For example, if we are installing 10,000 SF of elastomeric weather protection and we’ve completed 4000 SF of the total, we are 4000/10,000 or 40% complete with the finish.

Another method is called the incremental milestone method and some of our clients try to force us into this type of % complete measurement. This assumes that every task on a project is made up of the same subtasks and the client will state a percentage value that you are allowed to say is complete once you have hit the particular subtask milestone. For example, you might see the following:

- Receive/Deliver Material 10%
- Install Insulation 40%
- Install Jacketing 80%
- QA/QC Inspection 90%
- Accepted by Owner 100%

The fourth method is called cost ratio method. It applies to tasks such as project management, contract administration, project controls, and third party rentals. These tasks span the period of time or are continuous over the life of the project. These are usually estimated by the estimators on a bulk allocation of dollars or work hours rather than on a basis of productivity. An example: if a project is to last 10 months and aerial lifts are estimated to be $10,000 for the entire project, the project can expect to burn $1000 per month, or 10% of a lift can be progress billed each calendar month.

The final method that I bring up, and the one I would highly recommend using for productivity tasks is called the weighted or equivalent units method. This works well for items requir-
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FUTURE MICA MEETING DATES

Fall 2016 Annual Fall Business Meeting — October 19 & 20, 2016, Embassy Suites Downtown, Omaha, NE.

Winter Board and Committee Meetings — Tentatively Set for January 20 — 22, 2017, New Orleans, LA.

60th Annual Spring Convention — June 19 — 22, 2017, Kona Kai Resort, San Diego, CA.

Fall 2017 Annual Fall Business Meeting — October 18 & 19, 2017, Omaha, NE.

61st Annual Spring Convention — June 18 — 21, 2018, In region. The Board of Directors is open to suggestions.

MICA MEMBER ADDRESS/INFO. UPDATES

Be sure to inform the MICA office of any changes or corrections to your listing for either the MICA Directory, e-mail correspondence or mailing address. Even if you update your company listing on the MICA website, please inform the MICA office of the changes. We try to be as current as possible with your help.

Insulating pipe of different sizes and fittings is a good example for this method. Completing one LF of insulation on a small pipe is not equivalent to insulating one LF of insulation of a large pipe (thus the reason I don’t usually use the units complete method). The larger pipe needs to carry more “weight” than the unit of small pipe. Weighting the measurable units with the estimated hours to accomplish those units is the best way. See the table below:

<table>
<thead>
<tr>
<th>Task</th>
<th>Quantity</th>
<th>Est’d Hours</th>
<th>% of total</th>
<th>Installed</th>
<th>% Weight Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>1x1 Pipe</td>
<td>6</td>
<td>1</td>
<td>4.7%</td>
<td>3</td>
<td>2.4%</td>
</tr>
<tr>
<td>1x1 Fittings</td>
<td>2</td>
<td>0.5</td>
<td>2.4%</td>
<td>1</td>
<td>1.2%</td>
</tr>
<tr>
<td>2x1 Pipe</td>
<td>20</td>
<td>3.4</td>
<td>16.0%</td>
<td>20</td>
<td>16.0%</td>
</tr>
<tr>
<td>2x1 Fittings</td>
<td>4</td>
<td>1.3</td>
<td>6.1%</td>
<td>2</td>
<td>3.1%</td>
</tr>
<tr>
<td>10x3 Pipe</td>
<td>6</td>
<td>10</td>
<td>47.2%</td>
<td>0.0%</td>
<td></td>
</tr>
<tr>
<td>10x3 Fittings</td>
<td>1</td>
<td>5</td>
<td>23.6%</td>
<td>0.0%</td>
<td></td>
</tr>
<tr>
<td>Total Pipe LF</td>
<td>32</td>
<td>21.2</td>
<td>100.0%</td>
<td>26</td>
<td>22.6%</td>
</tr>
</tbody>
</table>

The column % of total is calculated by taking the individual row’s estimated hours divided by the total estimated hours; i.e. the 1 x 1 Pipe row is 1 hour / 21.2 total hours, or 4.7%. This means that the 6 LF of 1x1 represent 4.7% of the total task.

The column % Weight Complete is calculated by taking the installed amount divided by the row’s quantity amount multiplied by the row’s % of total value; i.e. the 1x1 Pipe row calculation is 3 installed / 6 total quantity * 4.7% to arrive at 2.4% complete of the total task. By completing 3 LF of 1x1, we have completed 2.4% of the total task.

I know I have given you a lot to digest. I tell you this is probably THE most important task that our project management teams need to excel at. The profit of our jobs and ultimately our companies depends on knowing exactly what percent complete we are at any given time. Almost every project control calculation depends on this one, single value.

Knowing percent complete has bearing on more than just project management. It also weighs heavily, or should, on cash flow. I’ll talk about that next month.
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the fall business meeting will be from a legal perspective. Richard Carr, a Director with the firm of Dunlevey, Mahan & Furry in Dayton, Ohio, will speak on this issue. Richard’s practice focuses on representation of business clients in planning, transactions and litigation. Richard’s pragmatic approach to the law has earned the respect of his clients and peers. His clients include general contractors, subcontractors and material suppliers. He will address general scope issues in a contract and how to avoid some of the standard contract clauses that are not favorable to a subcontractor. This includes “pay when paid” clauses and errors and omissions issues.

The fall business meeting will address the above issues and more. We will once again have three concurrent forums dealing with member issues. We will have a union contractor forum, an open shop contractor forum, and an associate member forum, all running simultaneously. This format continues to be overwhelmingly positive. This approach allows more of the members to participate in craft issues without being part of a formal committee. This format will give each of you the opportunity to interact with other MICA members with similar business concerns. The associate member forum will discuss several issues of interest to our associate members regarding their membership status in MICA.

Last year our associate members classified as manufacturers were invited to display their products at our fall business meeting. The table top displays were available for viewing by our membership during our extended Wednesday evening welcome reception. We will continue with such displays again this year for our member firms classified as fabricators, distributors or independent reps. These table top displays will be open for viewing during our Wednesday evening reception. Our reception will begin at 5:30 p.m. and conclude at 7:00 p.m. This will still leave you with plenty of time for dinner and socializing with your fellow MICA members.

The discounted room rate at the Embassy Suites is $156.00 per night, single or double occupancy. Included in this rate is complimentary wireless internet in your guestroom. Room reservations are to be made directly with the Hotel. You should call the hotel reservations department at (800) EMBASSY (362-2779) to make your individual room reservations. To receive the contract rate, you need to identify that you are with the Midwest Insulation Contractors Association group. Please reserve your room by September 18, 2016. This is our cut-off date for reducing our room block without any penalty.

This year’s program is a must attend for you and your key employees. We have tiered this year’s registration fee to encourage more participation by individual firms. The registration fee is $205.00 for the first attendee from a member company. Registration for a second attendee from a given company is reduced to $195. Registration for all additional attendees is $185 per attendee. Please register for the fall business meeting by October 7, 2016. Your prompt response helps us to plan a more efficient and effective meeting for you.
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<td>Insulation Mastics and Coatings</td>
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The hazard in the space was one of engulfment. The employee became trapped in sand, which gradually rose to his neck. He cried out and several employees came to his aid. At risk to their own lives they entered the confined space and tried to dig the entrapped employee out. They got him free to his waist but could not go any deeper. The plant manager was told about the accident within about ten minutes of its occurrence. He felt there was no emergency and that the employee was in no danger because fellow employees were working to free the trapped employee. He was told by the rescuers that they thought they could get the employee free. Eventually the trapped employee asked his fellow rescuers to call 911, but no one did. Finally, after the plant manager was told of this request he called 911. By this time the employee had been trapped for over ninety minutes.

OSHA cited the employer for a willful violation of 1910.146(d)(9) for not having a procedure to summon rescue personnel. Here the employer got into a battle of semantics with OSHA. The standard requires the employer to develop and implement a plan to summon rescue. The employer felt that the standard referred to developing a plan and maintaining it while OSHA contended that implement means to apply the plan. The Court disagreed with the employer’s interpretation.

The Stark case follows this theme. In Stark we are dealing with an excavation situation. The supervisor always examined every trench or excavation before anyone entered it. He did a penetrometer test, recorded the results and then determined how to (Continued on page 23)
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best protect employees based on the condition of the soil. On the day of the inspection he did his soil test, entered the data, but he did not complete the bottom part of the form which identified the methods available for the type of soil. The bottom portion even indicated that for type B soil, the maximum slope allowed was 45 degrees.

The Court applied the same test that it developed in *Dukane*; “proof of willfulness requires proof only that the defendant was aware of the risk, knew that it was serious, and knew that he could take effective measures to avoid it, but did not.” In this case the Review Commission reviewed the administrative law judge’s decision before the Court did. The Commission concluded that although the supervisor testified that he was in a hurry and was not paying attention, the evidence showed that he knew or at least deliberately avoided knowing that the slopes of two the walls exceeded 45 degrees by a wide margin. Some additional testimony by the supervisor did not help the employer’s position in this matter – he testified that he usually got into trouble because he took too much time making sure the ditches were correct.

I think we can see from these decisions that the 7th Circuit has moved away from a standard for willful violations of “intentional disregard of, or plain indifference to, the requirements of the statute” to “being aware of the risk, knowing that it was severe, and knowing that it could take effective measures to avoid it, but did not take those measures.” This latter definition is significantly less stringent than the standard applied in most other circuits.

Employers in Wisconsin, Illinois and Indiana (recognizing that Indiana is a state OSHA program state) need to be aware of this standard for willful citations. This means that when you see a serious safety hazard you need to take immediate action to neutralize it to protect your employees. Do not decide to “get to it later.” As workplace safety gains importance and penalties increase more courts and states may move into a similar broad definition of willful.

There was one other interesting point made by the Court in the *Stark* case. Stark asserted that it makes a good faith effort to comply with safety rules and that the effort should negate willfulness. But, Stark’s compliance mechanism for its safety rules could not be used to establish an unpreventable employee misconduct defense and/or be used to argue good faith compliance. The Commission and the Court found that Stark routinely disregarded its enforcement policy. In fact, in a two year period Stark had only issued thirty-three tickets (safety violation write-ups) for violations and that in one office no safety tickets had ever been issued.

I mention this to underscore the need to take safety seriously 100% of the time! Just having a safety enforcement program is not enough – YOU HAVE TO DO IT! Now not only is it necessary to be able to use the unpreventable employee misconduct defense and to prove that you are a reasonably responsible employer, but also as an added defense to a willful classification, at least in Illinois, Indiana and Wisconsin!
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MICA TO OFFER HALF-DAY EDUCATIONAL SEMINAR

In past years, we have combined an educational seminar with the fall business meeting. This combination of business meeting and seminar was designed to keep your travel costs to a minimum, yet allow you to participate in both educational activities. This year, the Board decided to sponsor a free half-day educational seminar on “Change Management”. The Board is sponsoring this seminar as one of the many benefits that come with your membership in MICA. This half-day seminar will be held on Tuesday, October 18, 2016, from 12:30 p.m. until 4:15 p.m. at our fall business meeting hotel, the Embassy Suites Downtown, in Omaha. Please note that space is limited, and registration will be taken on a first-come, first-served basis. The number of attendees per company may have to be restricted depending on the overall interest shown by the membership.

President George Shimada has identified “Project Management” as his theme for his year. Project management covers a vast array of topics, one of which is managing change during a project’s life cycle. George has structured his monthly “message” in the MICA Messenger around a topic or concept that can have a major impact on the success of a project. The educational process for managing a project will be the key focus of the half-day seminar.

This seminar is designed for anyone that is involved in a project from superintendent, project manager, estimator, to upper management. The seminar is geared for those that would be involved in calculating change cost. The seminar will also go into what training should be given to the entire work force in recognizing all aspects of change. Scope change is the most obvious reason for a change request, but there are many other aspects that can cause cost change; attendees will consider these other, often forgotten, aspects. Such items may include schedule change, site conditions change, extended overtime, etc. If you deal with any of these issues, this seminar will benefit you.

The seminar is free, but travel and lodging is at your expense. Take advantage of this seminar offering in conjunction with our annual fall business meeting. The fall business meeting will be held on Wednesday and Thursday, October 19 & 20, 2016. Save yourself time and travel by registering and attending both the seminar and fall business meeting.

DODGE MOMENTUM INDEX INCHES HIGHER IN JULY

The Dodge Momentum Index moved slightly higher in July, increasing 0.5% to 134.7 (2000=100) from its revised June reading of 134.1. The Momentum Index is a monthly measure of the first (or initial) report for nonresidential building projects in planning, which have been shown to lead construction spending for nonresidential buildings by a full year. July’s modest rise follows a substantial increase in June, which saw the Momentum Index climb 10.9% from the previous month. The Index has now moved higher in four consecutive months, the first such string of increases since late 2014. July’s improved pace was due to slight gains for each of the two major sectors, with institutional planning up 0.7% and commercial planning up 0.4%. The recent rise in the Index from April through July suggests that planning for construction projects is progressing, albeit in an uneven pattern, despite concerns over the subdued rate of economic growth.

In July, 11 projects entered planning with a value that exceeded $100 million. For the commercial building sector, the leading projects were a $200 million mixed-use project in Sugar Land TX and a $161 million office in Fremont CA. The leading institutional projects were a $177 million hospital tower in Chapel Hill NC and a $138 million hospital in Atlanta GA.

FEDERAL INVESTIGATION FINDS WAGE AND HOUR VIOLATIONS

An Overland Park flooring company that misclassified installers as independent contractors will pay 22 workers a total of $159,144 – representing $79,572 in back wages plus an equal amount in liquidated damages – after a U.S. Department of Labor Wage and Hour Division investigation.

The division found Uni Floor Inc. violated overtime and recordkeeping requirements of the Fair Labor Standards Act when it failed to pay installers overtime after treating them as independent contractors instead of employees. The investigation determined the flooring installers met the definition of employees, triggering overtime protections under the FLSA. The company violated the FLSA’s recordkeeping requirements when it failed to maintain time records for these employees. In this case, Uni Floor provided the equipment used by the workers, controlled their day-to-day schedules and paid them flat salaries. The employer also bid for all work and supervised job sites daily.

“Far too often, employers misclassify workers as independent contractors when the law defines them as employees. In this case, Uni Floor denied workers overtime for hours worked over 40 per week and access to employee benefits, unemployment insurance and the payment of federal and state taxes on the worker’s behalf,” said Brad Bobowski, acting district director for the Wage and Hour Division in Kansas City. “We are committed to rooting out misclassification and, as this case shows, will take enforcement actions needed to achieve that goal.”

These illegal practices lower standards for all workers, especially in highly competitive markets and industries where employers try to reduce overhead, often at the expense of their workers. The division has aggressively expanded its efforts to combat employee misclassification in sectors where workers are especially vulnerable and violations are rampant. To assist in combating the problem, the department has entered into agreements with more than 30 states to share information and to coordinate enforcement efforts.
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