The Past Presidents’ Planning committee met and reviewed MICA’s Vision Statement and Strategic Initiatives. The past presidents are asked to identify and discuss emerging issues facing the insulation industry and the MICA members. As new issues are identified, the past presidents review the vision statement to see if a new strategic initiative needs to be added or existing initiatives removed. No new initiatives were added at this meeting.

The Board of Directors met on Saturday, January 21, 2017. Part of the agenda was to approve the technical programs for the 60th annual spring convention of MICA. This convention will be held June 19 to 22, 2017, at the Kona Kai Resort & Spa in San Diego, California. The Resort provides a picturesque view of San Diego harbor. This is one of those unique experiences that you should not miss. Begin now to plan your participation at our 60th annual spring convention.
PRESIDENT’S MESSAGE

TO: THE MICA MEMBERSHIP

Welcome to 2017. When you read this, we will have enjoyed New Orleans at our winter meetings. I hope you were able to attend. I hope you enjoyed the venue, and I hope you found useful our various meetings. I know that the temperatures are not typically as warm as say Florida in January, but I couldn’t pass up the Cajun cooking, seafood, hurricanes (the beverage, not the weather), and great Blues jazz.

Now that the holidays are over and the new year has begun, we are getting back into the heavy swing of making another year as profitable as we know how. Our clients are back from vacation, bid activity starts to pick back up, we look to the spring thaw in order to start new commercial work, and we look to spring outage season in the industrial plants.

While doing all of those things, I hope you will also use 2017 to further educate yourself. Learn something new about an insulation product, take a computer class in Excel or accounting, visit one of our vendor’s/manufacturer’s production facilities, etc. Society and the business world is constantly changing and evolving. We must personally do the same for ourselves and our businesses, or we will find ourselves always looking in the rearview mirror instead of out the windshield.

I hope you will consider our Spring Convention in San Diego as a great opportunity to do this self-education. One of the reasons the Board of Directors met in New Orleans was to ensure that the educational content at the Spring Convention is rich in knowledge, interesting, and hopefully humor-filled to top it off. I know for sure that the people of MICA will bring plenty of humor!

George Shimada
MICA President

Change Order, Productivity, Overtime – A Primer for the Construction Industry

This month and the next several months, I am going to speak to this great article put out by Mechanical Contractors Association of America, Inc. (MCAA). My copy was published in 2005 and there may have been revisions since then. Regardless, I highly recommend every one of us to acquire a copy.

The document covers:
- Change Orders
- How to Calculate and Submit a Delay Claim
- Time Impact Analysis – Project Delay
- Maintaining Control of Labor Productivity
- Factors Affecting Labor Productivity
- Cause & Effect in Loss of Productivity Claims
- Using MCAA Labor Factors
- Real Cost of Overtime
- Effect on Productivity of Shift Work

It is the basis of all of my project claims management and productivity loss management. I refer to this document to develop all deserved revenue that my company is owed, and I even use the document charts as backup inside of my delay change requests to clients. If the client is a mechanical contractor, this document is incredibly useful and the mechanical contractor is not able to discredit the numbers since the information is put out by an association of which they are most likely members.

I also use this document when bidding work, especially work that, at bid time, we know will have extended periods of overtime and/or shift work. Both of these things greatly affect productivity, and we can use the included factors charts to estimate the number of hours we need to complete work. I actually consider all the other factors the document discusses, such as trade stacking, crew size inefficiency, concurrent operations, dilution of supervision, etc. All of these degrade productivity and if we can bid these into our work properly up front, we will have a

(Continued on page 6)
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I know what you are thinking, “If I bid all of these into a job, we’ll never get the work,” and you would be correct. We are all hungry for revenue, and we must balance that hunger and reality carefully. I would challenge you; is it better to not get a potential bad job and have no revenue or capture a job and end up going out of pocket in order to finish? This really is the ultimate question that each of our companies ask ourselves during the risk analysis portion of bidding work.

As you can see, I use the fundamentals of this document at the front end of a job as well as throughout project execution. I believe this document (and I’m sure others like it) is THAT important. If you don’t already have a copy, please consider getting it. I believe you will find it extremely helpful in your business.

In the next several articles, I will discuss overtime/shift inefficiency, factors affecting productivity, calculating productivity loss claims, etc. Until then...

2016 ELECTRONIC RECORDKEEPING – ANTI-RETALIATION RULES

The following article is provided by MICA’s legal counsel, Mr. Gary Auman. Gary has been monitoring this new OSHA regulation and is providing his understanding of the new rule:

As you all know the New OSHA Electronic Recordkeeping Rules went into effect on January 1, 2017. On December 1, 2016, the New OSHA Anti-Retaliation Rules concerning recordkeeping and reporting work related injuries and illnesses to employers went into effect after several delays. Since the 4 effective date for the anti-retaliation rules there has been quite a bit of speculation as to whether the new Administration will enforce these new rules or will take steps to eliminate or circumvent them. Since the rules were adopted as part of the electronic recordkeeping standard, which was adopted under the formal Administrative Procedures Act, they cannot be eliminated with the stroke of a pen. But, the new Secretary of Labor and the new OSHA Administrator can set parameters for their enforcement.

Even guidelines from the new administration, should they
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FUTURE MICA MEETING DATES

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

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

Winter Board and Committee Meetings — January 2018, TBD.

61st Annual Spring Convention — June 18 — 21, 2018, Mystic Lake Casino Hotel, Prior Lake, MN.

Fall 2018 Annual Fall Business Meeting — October 17 & 18, 2018, Omaha, NE.

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.

BOARD SETS DUES AND ADVERTISING RATES FOR 2017

At its October meeting, the Board of Directors of MICA approved MICA’s operating budget for 2017. In its deliberations, the Board voted a slight increase in the annual membership dues for contractor and associate member firms. Advertising rates for 2017 will remain the same as in 2016. The Board is very cognizant of the current state of the economy and wants to keep MICA affordable to all current and prospective members. Annual dues have remained constant for the past four years.

Contractor member annual dues for 2017 are $700.00. The annual dues for associate members is $500.00. The 2017 membership renewal notices have been mailed to the member firms. The advertising contracts were sent out during the last week in December. If you did not receive one, please contact the MICA office for a copy of the 2017 advertising rates. Advertising in the MICA Messenger continues to be an excellent forum to reach the membership on a monthly basis.

We are anticipating 100% renewals and look forward to your continued participation in MICA in 2017.
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occur, for the enforcement of part or all of the new anti-retaliation rules will take time to be effective. Until such time (if it occurs) all employers are bound by the new rules. But, all is not lost. OSHA has issued several interpretive documents regarding the new rules. OSHA has reminded us that it still has to prove that a company rule for reporting workplace injuries or illnesses that appears to be retaliatory to employees was established to discourage employees from reporting workplace injuries.

**Work-Related Injury and Illness Reporting Procedures**

The first requirement under the new rules is that employers must establish and train their employees on procedures for reporting workplace injuries and illnesses. The procedure must be easy to understand and must be reasonable. For example, OSHA will consider a prompt reporting rule, that results in employee discipline for late reporting, even when the employee could not reasonably have reported the injury or illness earlier, to be a violation of Section 1904.35(b)(1)(iv). OSHA will consider your reporting procedure to be reasonable if it is not unduly burdensome and would not deter a reasonable employee from reporting.

OSHA has stated in a memorandum for regional administrators dated October 19, 2016, that: “While employers have an interest in maintaining accurate records and ensuring that employees are reporting work-related injuries and illnesses in a reasonably prompt manner, these interests must be balanced with the importance of accurate injury reporting and therefore employers’ reporting policies must be designed so as not to discourage employees from reporting.” In other words, if your injury and illness reporting policies are so complicated or time restrictive, while bring connected with disciplinary measures so as to discourage an employee from reporting an injury or illness for fear of not correctly following all the steps in a timely manner, you will likely be cited under this standard.

**Safety Discipline**

Another concern under the new rules is the prohibition of disciplining an employee for violation a safety rule, which violation results in an injury. In the same informational memo referred to above OSHA has reminded employers as well as its own regional directors that the new standard does not prohibit employers from disciplining employees who violate safety rules; it does prohibit employers from disciplining employees simply because they reported a work-related injury or illness. If OSHA cites an employer for disciplining an employee for violating a safety rule which violation resulted in a report of an injury, OSHA will have to prove that the discipline was for reporting the injury, not for violation the safety rule. In other words OSHA will have to prove that the alleged rule violation was merely a pretext for being able to discipline the employee for reporting the injury. OSHA points out that circumstantial evidence may be sufficient to prove its retaliation case.

So, what does an employer need to do to avoid such a result? As I have stated many times, every employer needs to have a safety enforcement program. How can you say that you are a reasonably responsible employer from a safety perspective if all you do is provide safety rules, but never ensure that your employees comply with them? Again, as I have “preached” over and over again – **YOU NEED AN EFFECTIVE SAFETY COMMUNICATION AND ENFORCEMENT PROGRAM.** First, you must determine the hazards to which your employees will be exposed. Second, you need to develop rules for protecting your employees from those hazards. This might include guards, the use of PPE, or the adoption of administrative controls. Third, you need to communicate those rules to all of your employees and remind them that they will receive discipline up to and including termination from employment for violation of those rules. Fourth, you need to be sure they understand the rules and their obligations to comply with them. Fifth, you need to establish an audit program to monitor your employees for their compliance. And, sixth, you need to issue discipline and provide retraining for each safety violation, not matter how serious.

If you follow the steps noted in the preceding paragraph and enforce your safety rules consistently and objectively, you should never have a problem demonstrating that the discipline you issued for the safety rule violation that lead to the work-related injury or illness was a legitimate enforcement of your safety rules. One key here is to be to show that you issue discipline as needed to enforce your safety program whether or not an injury resulted from the safety violation.

**Mandatory Post-Accident Drug Testing**

The last point I will address is the one probably causing the most confusion among employers. This relates to the announced prohibition of mandatory post-accident drug
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testing. My experience in working with my trade association members is that many have a requirement for mandatory post-accident drug testing as part of their drug free workplace program. The concern here is that many of these programs, established for a legitimate purpose, will have to be eliminated. OSHA has pointed out that mandatory drug testing programs which are required by local, state or federal laws will be permitted as they are legally mandated. But, what about those other programs that also have a legitimate purpose, but do not have the protection of a law?

Some confusion has arisen on this issue. There appear to be mixed interpretations of this prohibition coming out of different OSHA area offices. We have not yet seen how all of the state-OSHA states, will handle mandatory post-accident drug testing. First, this mandatory post-accident drug testing prohibition applies only to drug testing connected to injury reporting. So, an employer may still require post-accident drug testing following property damage accidents as well as for other identified reasons, not related to injury reporting.

The same memorandum referred to above states that: "section 1904.35(b) (1) (iv) only prohibits drug testing employees for reporting work-related injuries or illnesses without an objectively reasonable basis for doing so. As in all cases under section 1904.35(b) (1) (iv), OSHA will need to establish the three elements of retaliation to prove a violation: a protected report of an injury or illness; adverse action; and causation.” In the next paragraph OSHA advises that in evaluating whether an employer had a reasonable basis for drug testing following the report of a work-related injury or illness, OSHA will look to whether the employer had a reasonable basis for believing that he drug used by the employee who reported the injury could have contributed to the injury or illness.

Unfortunately, as OSHA attempts to further clarify their rationale they seem to create more confusion. An example is provided by OSHA of several employees who are injured in a crane accident in which the crane operator is not injured. OSHA advises that in this instance it would be reasonable to require all employees whose conduct could have contributed to the incident and/or injuries to be tested, whether or not they reported an injury. However, OSHA points out that it would not be reasonable to drug test only those employees who reported an injury and not test other uninjured employees who conduct could also have contributed to the incident. OSHA uses this to underscore the main principle that drug testing may not be used as a form of discipline against employees...
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who report an injury or illness.

OSHA follows this illustration with: “drug testing an employee whose injury could not possibly have been caused by drug use would likely violate section 1904.35(b) (1) (iv).” Of course, this last statement would require you to separate those injuries reported because of an accidental occurrence from those occasioned by happenstance. I suggest that a blanket post-accident drug testing policy following any accidental occurrence with or without an injury is the best way to reduce the chance of a problem.

The example in the preceding paragraph is fairly easy to understand. Unfortunately most on the job injuries involve only one employee, whose actions or inactions cause the injury or illness to that same employee. So when viewed in its totality, it appears that the memorandum released by OSHA on October 19, 2016 reaffirms the prohibition against mandatory post-accident drug testing. Some OSHA area offices for some reason have placed their own “spin” on this language. Some are stating that if state law provides for a drug free workplace program (DFWP), with a promise of lower workers’ comp premiums for those who participate, the area director will consider that program to provide a reasonable non-retaliatory reason for mandating post-accident drug tests, even if the state law only requires the employer’s DFWP to provide for reasonable suspicion testing.

So, where does this leave the employer? It appears that employers have several options. The first option, and the most likely not to result in a citation will be to stop requiring mandatory post-accident drug testing, unless such testing is specifically required by a state or federal law. Of course, if you take this option you may institute a reasonable suspicion testing program.

A second option would be to be sure that any mandatory drug-testing program extends to all employees involved in any mishap while working, whether or not an injury occurs. This would be similar to the OSHA example with the crane. So, any employee involved in any mishap would have to submit to a drug and/or alcohol test. If you take this approach you should not make any exceptions, especially as to employees in a non-injury causing mishap. This option, if properly crafted and implemented should permit you to continue with mandatory post-accident drug testing with little or no risk of drawing a citation.

A third option is to contact your local federal OSHA area director or the head of your state OSHA to see what his/her approach will be.

Finally, you can conduct business as usual hoping that no employee or employee representative complains about your mandatory post-accident drug testing program. I know there will be a group of companies who chose to take this approach, at least until the new administration takes office and establishes its own priorities. There are inherent risks associated with this last option.

Here we have a new broad rule that impacts all employers, whether or not they ever considered their post-accident testing protocol to anything more than part of their accident investigation/prevention process – an assist in determining the cause of an on-the-job accident. That tool has been significantly impacted and ALL employers need to take a look at their current post accident procedures to ENSURE that they do not fall into the category of retaliatory conduct designed to inhibit or discourage employees from reporting on the job injuries and/or illnesses.

OSHA ISSUES RECOMMENDED PRACTICES TO PROMOTE WORKPLACE ANTI-RETALIATION PROGRAMS

WASHINGTON - The Occupational Safety and Health Administration issued Recommended Practices for Anti-Retaliation Programs to help employers create workplaces in which workers feel comfortable voicing their concerns without fear of retaliation. The recommendations are intended to apply to all public and private sector employers covered by the 22 whistleblower protection laws that OSHA enforces.

The recommendations are adaptable to most workplaces, and employers may adjust them for such variables as number of employees, the makeup of the workforce, and the type of work performed. The concepts can be used to create a new program or enhance an existing one.

The document outlines five key elements of an effective anti-retaliation program:
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"These recommended practices will provide companies with the tools to create a robust anti-retaliation program," said Jordan Barab, acting assistant secretary of labor for occupational safety and health. "In the long run, it's good for workers and good for business."

An initial draft of the Recommended Practices was posted for review and comment in the fall of 2016. The final document incorporates many of these comments.

These recommendations are advisory only and do not interpret or create any legal obligations, or alter existing obligations created by OSHA standards or regulations.

OSHA enforces the whistleblower provisions of Section 11(c) of the OSH Act, and 21 other statutes protecting employees who report violations of various securities laws, trucking, airline, nuclear power, pipeline, environmental, rail, maritime, health care, workplace safety and health regulations, and consumer product safety laws. For more information, visit www.whistleblowers.gov.

**U.S. DEPARTMENT OF LABOR ISSUES FINAL RULE TO LOWER BERYLLIUM LEVELS, INCREASE WORKPLACE PROTECTIONS TO REDUCE HEALTH RISKS**

A new rule issued today by the U.S. Department of Labor’s Occupational Safety and Health Administration dramatically lowers workplace exposure to beryllium, a strategically important material that can cause devastating lung diseases. The new beryllium standards for general industry, construction and shipyards will require employers to take additional, practical measures to protect an estimated 62,000 workers from these serious risks.

Beryllium is a strong, lightweight metal used in the aerospace, electronics, energy, telecommunication, medical and defense industries. However, it is highly toxic when beryllium-containing materials are processed in a way that releases airborne beryllium dust, fume, or mist into the workplace air that can be then inhaled by workers, potentially damaging their lungs.

Recent scientific evidence shows that low-level exposures to beryllium can cause serious lung disease. The new rule revises previous beryllium permissible exposure limits, which were based on decades-old studies.

“Outdated exposure limits do not adequately protect workers from beryllium exposure,” said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. “OSHA’s new standard is based on a strong foundation of science and consensus on the need for action, including peer-reviewed scientific evidence, a model standard developed by industry and labor, current consensus standards and extensive public outreach. The new limits will reduce exposures and protect the lives and lungs of thousands of beryllium-exposed workers.”

The final rule will reduce the eight-hour permissible exposure limit from the previous level of 2.0 micrograms per cubic meter to 0.2 micrograms per cubic meter. Above that level, employers must take steps to reduce the airborne concentration of beryllium. The rule requires additional protections, including personal protective equipment, medical exams, other medical surveillance and training, as well. It also establishes a short-term exposure limit of 2.0 micrograms per cubic meter over a 15-minute sampling period.

OSHA estimates that – once in full effect – the rule will annually save the lives of 94 workers from beryllium-related diseases and prevent 46 new cases of beryllium-related disease. Workers in foundry and smelting operations, fabricating, machining, grinding beryllium metal and alloys, beryllium oxide ceramics manufacturing and dental lab work represent the majority of those at risk.

Beryllium exposure is also a concern in other industries. Employees handling fly ash residue from the coal-burning process in coal-fired power plants risk beryllium exposure. In the construction and shipyard industries, abrasive blasters and their helpers may be exposed to beryllium from the use of slag blasting abrasives. Work done in these operations may cause high dust levels and significant beryllium exposures despite the low beryllium content.

To give employers sufficient time to meet the requirements and put proper protections in place, the rule provides staggered compliance dates. Once the rule is effective, employers have one year to implement most of the standard’s provisions. Employers must provide the required change rooms and showers beginning two years after the effective date. Employers are also required to implement the engineering controls beginning three years after the effective date of the standards.

The final rule is available at the Federal Register.
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THE DEATH OF MICA MEMBER
ED MORROW

It is with great sorrow that we inform you of the death of a long-time MICA member and past member of the Board of Directors, Ed Morrow. Ed passed away last Saturday evening, and his funeral was held on Friday, January 27, 2017, in Bartonville, IL.

For those of us who knew Ed and his wife, Marj, we will remember their warmth and openness whenever they would meet you. Ed devoted all of his energy to help Marj through her illness the past three years until her death last March, but he always kept in touch and continued to support MICA and the insulation industry. He was able to join us at the fall business meeting this past October. It was good to see him back with the MICA family. We are deeply saddened by the news of his unexpected death, and we will truly miss his laughter and his smile, and we will miss him.

The following are excerpts from Ed’s obituary:


He was also preceded in death by his father. He is survived by his two children, Melissa (Nels) Soderberg of Laramie, Wyoming, and Michael (Vanessa Malcom) Morrow of Pekin. He has two grandsons, Weston and Wyatt Soderberg; his mother, Judith Morrow of Banner, Illinois; and two brothers, Joseph (Shellie) Morrow of East Peoria and John Morrow of Canton. He has several nieces and nephews.

Edward was the president and owner of Sprinkmann Insulation, Inc. for 15 years. He was the past fire chief of Banner. He was a member of the Midwest Insulation Contractors Association and the Illinois Regional Insulation Contractors Association. He enjoyed time with his family at their cabin in Schuyler County. He loved spending time with his grandsons. He was an avid fisherman and hunter and NASCAR Fan.

Memorials may be made to the Scleroderma Foundation. You may create an online condolence at www.davison-fultonbartonvillechapel.com.
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DOE RELEASES SECOND ANNUAL NATIONAL ENERGY EMPLOYMENT ANALYSIS

The U.S. Department of Energy released the agency’s second annual analysis of how changes in America’s energy profile are affecting national employment in key sectors of the economy. By administering a new supplemental survey to over 30,000 energy sector employers, the Department’s 2017 U.S. Energy and Employment Report (USEER) tracked dramatic growth in several key sectors of the U.S. economy in 2016.

“This report verifies the dynamic role that our energy technologies and infrastructure play in a 21st century economy,” said DOE Senior Advisor on Industrial and Economic Policy David Foster. “Whether producing natural gas or solar power at increasingly lower prices or reducing our consumption of energy through smart grids and fuel efficient vehicles, energy innovation is proving itself as the important driver of economic growth in America, producing 14% of the new jobs in 2016.”

Some key findings of the report include:

- 6.4 million Americans now work in the Traditional Energy and Energy Efficiency industries which added over 300,000 net new jobs in 2016, 14% of the nation’s job growth.
- Energy efficiency jobs increased by 133,000 jobs for a total of 2.2 million.
- Investments in energy transmission, distribution and storage (our energy infrastructure) generated 65,000 new jobs.
- Solar industry employment jumped by over 73,000 jobs or 25%.
- Wind industry employment added 25,000 new jobs to land at 102,000.

USEER examines four sectors of the economy -- electric power generation and fuels; transmission, wholesale distribution, and storage; energy efficiency; and motor vehicles -- which cumulatively account for almost all of the United States’ energy production and distribution system and roughly 70 percent of U.S. energy consumption. By looking at such a wide portion of the energy economy, USEER can provide the public and policy makers with a clearer picture of how changes in energy technology, systems, and usage are affecting the economy and creating or displacing jobs.

Additional findings of the 2017 USEER include:

- Of the 1.9 million workers in Electric Power Generation and Fuels, 800,000 employees contribute to the production of low-carbon electricity, including renewable energy, nuclear energy and low emission natural gas.
- Roughly 32 percent of the 6.5 million employees in the U.S. construction industry work on energy or building energy efficiency projects.
- In an analysis of the 2.4 million employees in the Motor Vehicles industry, the 2017 USEER identified 259,000 jobs supported by alternative fuels vehicles, an increase of 69,000 during 2016.

The report also found several energy industries with projected increases in new jobs. Responding to the USEER survey of employers, the energy efficiency sector predicted hiring rates of 9 percent in 2017, or 198,000 new hires. Projected hiring rates were at 7 percent within the electric power generation sector. Transmission, wholesale distribution, and storage firms anticipate 6 percent employment growth in 2016. However, the Fuels sector predicts a decline of 3 percent during 2017.

Yet even as the report found the opportunity for job growth in many energy sectors, 73 percent of all employers surveyed found it “difficult or very difficult” to hire new employees with needed skills. This represented a slight increase in hiring difficulty over the previous year.

The 2017 USEER also provides individual State Energy and Employment Profiles for the first time. The state reports highlight the growth and loss of jobs in particular energy sectors across the country and will provide a useful tool for state energy offices and economic development agencies. State profiles demonstrate the unevenness of growth in new energy technologies. For instance, 41% of all solar jobs are in California, while 24% of all wind jobs are in Texas.

USEER relies on primary data collected on behalf of the United States Department of Energy (OMB Control No. 1910-5179) and secondary data from the United States Department of Labor’s Quarterly Census of Employment and Wages for Q1 of 2016. This approach provides a quantitative analysis of how the four sectors provide direct employment across the economy within other occupations. DOE will conduct subsequent surveys to provide annual USEER reports that will provide year-over-year analysis of the American energy employment landscape.
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