AMERICA’S 59,000 STRUCTURALLY DEFICIENT BRIDGES

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America’s Structurally Deficient Bridges

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On the cover: The Arlington Memorial Bridge in Washington, D.C. is among the nation’s nearly 69,000 structurally deficient bridges.
Transportation Builder® (TB) is the official publication of the American Road & Transportation Builders Association, a federation whose primary goal is to aggressively grow and protect transportation infrastructure investment to meet the public and business demand for safe and efficient travel. In support of this mission, ARTBA also provides programs and services designed to give its members a global competitive edge. As the only national publication specifically geared toward transportation development professionals, TB represents the primary source of business, legislative and regulatory news critical to the success and future of the transportation construction industry.

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**Joint Committee Co-Chair:** Charles Gallagher  
Gallagher Asphalt Corp., Thornton, Ill.
This issue of Transportation Builder is a little late arriving because we wanted to include ARTBA's third annual analysis of our nation's nearly 59,000 structurally deficient bridges, which was released in late February.

A summary can be found starting on Page 14. More detailed information is available at www.artbabridgereport.org.

While these bridges may not be imminently unsafe, ARTBA wants to educate the public and policymakers about these needed repairs, which will cost tens of billions of dollars. The five-year FAST Act provides a modest increase in funding for bridge repairs, but "won't come close to making an accelerated national bridge repair program possible," ARTBA Chief Economist Dr. Alison Premo Black says.

On Page 6, 2016 ARTBA Chairman David Zachy outlines the association's strategic game plan to fully engage the next generation of transportation design & construction industry leaders. You'll want to note that the Young Executive Development Program (YEDP), which celebrated its 20th anniversary in 2015, is now rebranded as the Industry Leader Development Program (ILDP). Likewise, the Young Executive Leadership Council (YELC), the home for YEDP graduates, is accordingly renamed the Industry Leader Development Council (ILDC).

Also in this issue, beginning on Page 18, we offer important business intelligence from last year's annual Transportation Construction Law and Regulatory Forum. Our hope is that reading about these issues will prompt ideas and suggestions for topics that you would like to see explored in this year's forum, June 1-2 at the ARTBA Building.

CORRECTION: John Rignani is an ARTBA Life Member. His name was left out of the printed version of the 2016 ARTBA Leadership Directory & Buyers’ Guide. We apologize for the oversight.
Before you are a leader, success is all about growing yourself. When you become a leader, success is all about growing others."

Former General Electric CEO Jack Welch’s observation is one ARTBA embraces. The industry’s ability to grow and protect the U.S. transportation construction market in the years ahead will be determined in good measure by the association’s ability to develop the next generation of volunteer leaders.

Industry firms are facing a similar situation with their business operations. In 2015, millennials became the nation's largest generational workforce, surpassing the 51- to 70-year-old baby boomers, and the 34- to 50-year-old Generation Xers. As baby boomers continue to retire, companies are being strategic in their development and implementation of succession plans to ensure they have the right people in place for the future. That’s just smart.

ARTBA Task Force
A little more than a year ago, ARTBA gathered in person at its headquarters and over the phone a group of 20 executives for a day-long meeting of the “Young Executive Leadership Task Force.”

Their stated mission: “To develop specific recommendations for the consideration of the ARTBA Board of Directors on how to expand the association’s base of younger industry executives and better engage them in its activities, leadership structure and advocacy core mission.”

The discussion was focused, lively and chock-full of good ideas. Subsequent conference calls by the Task Force helped put more “meat on the bones,” and resulted in a final 8-page report that was endorsed by the ARTBA Board of Directors during its meeting last October in Philadelphia.

I encourage you to read the full report in the “Foundation” section of www.artba.org.

To highlight just a few of its findings, a consensus emerged that ARTBA should stop the adjective “young” from the names of some of its programs because it is not how rising executives wished to be identified or categorized in the business world. The group also agreed that ARTBA should focus its attention on creating more value and opportunities for industry executives between the age of 30 and 50—the “target demographic.”

Rebranding the Young Executive Development Program
To that end, the Young Executive Development Program (YEDP), which celebrated its 20th anniversary in 2015 and now boasts of more than 600 graduates, has been renamed the “Industry Leader Development Program” (ILDP).

It will help participants understand federal highway and transit financing work, demystify the policymaking process, and explain why coming to Washington and building relationships with elected leaders and agency officials should be viewed like any other critical business development opportunity.

In the same vein, the Young Executive Leadership Council (YELC), which was formed 12 years ago and became the home for YEDP graduates to remain involved, is now the “Industry Leader Development Council” (ILDC).

ILDC Program of Work
The ILDC also has a clear program for the year ahead that is the result of its late February meeting in Jacksonville, Fla. It will:

• Develop the agendas and help with industry outreach for the ARTBA regional meetings.

• Be ready to activate grassroots advocates in the individual regions when policy developments in the Nation’s Capital require action.

• Identify and help recruit prospects for membership.

• Look for opportunities for the ILDC to engage with the ARTBA Board of Directors or with the various councils and committees.
• Recruit resumes for leadership post considerations by the ARTBA Nominating Committee and divisions.

• Provide input and help with industry outreach for the ARTBA Foundation’s Dr. J. Don Brock TransOvation™ Workshop

**We’re Recruiting!**

We believe this strategic approach has unlimited potential. Please identify executives at your firm for participation in the 2016 ILDP (held May 9-11 in the Nation’s Capital) or to serve as an active member in executing the ILDC’s program of work, and share their names with ARTBA’s Vice President of Member Services Allison Klein: aklein@artba.org. Our industry’s future success, as Jack Welch reminds us, is all about growing others.

David A. Zachery

---

The ILDC has a new organization leadership structure, comprised of these individuals who have volunteered to serve:

- **Chair:** Ponch Frank, Ranger Construction
- **Vice Chair:** Jihane Fazio, AECOM

- **Northeastern Region Chair:** Mike Potter, RK&K
- **Vice Chair:** Mike Glezer, Wagman Heavy Civil

- **Central Region Chair:** Tom O’Grady, HNTB

- **Southern Region Chair:** Chris Fronheiser, AECOM
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- **Western Region Chair:** Mary Beth Klein, Trinity
- **Vice Chair:** Chad Critcher, RS&H

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Compatible
The FAST Act Was Just the Beginning

Among the early 2016 headlines reported in ARTBA’s Washington Newsletter, we hope this one grabbed your attention: **Highway Trust Fund Crisis Right Around Corner, New Study Shows.**

The nonpartisan Congressional Budget Office (CBO) released new projections showing a widening gap between incoming Highway Trust Fund (HTF) revenues and the amount needed to preserve existing federal surface transportation investment.

The December 2015 Fixing America’s Surface Transportation (FAST) Act relies on a one-time $70 billion transfer of General Fund revenue over the next five years to bridge the HTF revenue shortfall. Once those funds are exhausted in September 2020, the surface transportation programs face an average $18 billion annual shortfall over the following six years, according to CBO.

While some think the highway program is on auto pilot for the next few years because of the FAST Act’s passage, this is certainly not ARTBA’s view. The next fiscal crisis for the HTF is on the radar screen, and ARTBA believes now is the time to be working on a legislative solution.

ARTBA continues to advocate that a permanent HTF solution be included in any tax reform or other budget-related measures considered by Congress. We are also working to advance initiatives that provide additional transportation capital investment outside of the HTF through public-private partnerships, innovative financing mechanisms and other targets of opportunity.

A HTF fix is no doubt a heavy lift. But, it is our collective responsibility to keep the political pressure on Congress until they do the right thing.

ARTBA is not a “one trick pony,” however. Among the other key industry priorities in 2016:

- Ensuring full funding of the FAST Act’s capital programs. Transportation funding has become a perennial battle in Congress. Before the ink was even dry on President Obama’s signature, members of Congress last December slashed about $125 million from the transit capital program—contrary to the provisions in the law. For fiscal year 2017, the FAST Act authorizes an extra $905 million for highways and $187 million for transit. We’ll work aggressively with the authorizers and appropriators to help ensure these increases are realized.

- Obtaining long-term, increased federal investment for airport capital improvements in the FAA program reauthorization. ARTBA will push for a multi-year reauthorization law that grows revenue through the Airport Improvement Program and by raising the cap on the federal Passenger Facility Charge.

- Preventing unwarranted and excessive regulatory actions. The Obama Administration has made it clear that it intends to use Executive Orders and regulatory action—particularly in the environmental and health arenas—during its final year in office. ARTBA is monitoring these developments and assessing potential threats to the transportation infrastructure market. We will take immediate action if proposals harm our interests.

- Continuing to help state chapters and their allies to achieve transportation investment increases at the state and local levels through the dynamic Transportation Investment Advocacy Center™. Now in its third year, www.transportationinvestment.org has been established as a national hub for information and research reports. This repository of “lessons learned” has already helped our partners frame better strategies to meet their goals.

Finally, as I write this column, the first votes have already been cast in the Republican and Democratic presidential races. ARTBA will again elbow its way into the political fray to present the industry’s agenda by: providing policy information to the campaigns; working to ensure that sound transportation investment strategies are included in the Republican and Democratic National Party Platforms; and keeping our members informed of presidential candidate transportation-related statements and positions.

The FAST Act was just the beginning. The looming presidential and congressional elections will not distract us from advancing a full plate of advocacy priorities. With your leadership and grassroots activism, I’m optimistic our industry can make important progress on multiple fronts during 2016!

From the **President’s Desk**

T. Peter Ruane
President & CEO
ARTBA

The FAST Act Was Just the Beginning

The FAST Act Was Just the Beginning
ARTBA Federal Issues Program & Transportation Construction Coalition Washington Fly-In

Hyatt Regency Washington
May 9-11, 2016
Register: www.artba.org

Contact ARTBA Vice President of Meetings & Events Ed Tarrant at 202.289.4434 or etarrant@artba.org for sponsorship opportunities.
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Spotlighting Innovation by ARTBA’s Research & Education Division

National Institute for Transportation and Communities Explores Economic Impact of Bus Rapid Transit

Bus rapid transit (BRT) has a positive impact on jobs, housing and development, according to a new report by the National Institute for Transportation and Communities (NITC).

The report, “National Study of BRT Development Outcomes,” looked at systems across the country, and found that BRT influences development patterns in important ways.

Key findings include:

- After the Great Recession, BRT corridors increased their share of new office space by a third.
- At the same time, multifamily apartment construction doubled in share along BRT corridors.
- BRT corridors increase employment in the manufacturing sector.
- There is an office-rent premium for locating within a BRT corridor.
- During the economic recovery, BRT corridors saw the largest positive shift in the share of upper-wage jobs.
- Technically advanced BRT systems have a greater impact on development than less advanced systems.

BRT has experienced growing popularity in recent years because it offers benefits traditionally associated with light-rail transit systems but with lower capital costs and greater flexibility. This report’s findings allow planners and policymakers considering the use of BRT to make an informed choice while taking into account the potential for BRT’s use as an economic development tool.

Arthur C. Nelson at the University of Utah’s Metropolitan Research Center directed the research. NITC is a program of the Transportation Research and Education Center (TREC) at Portland State University.

Contact: TREC Communications Director Justin Carinci (carinci@pdx.edu)

For more information about this project, go to: http://bit.ly/NITC_BRT
Rensselaer Polytechnic Institute Creates Model to Address Freight Transportation Challenges

Freight transportation challenges are being solved by a new analysis technique developed by researchers at the Center for Infrastructure, Transportation, and the Environment (CITE) at Rensselaer Polytechnic Institute and the Volvo Research and Educational Foundations (VREF) Center of Excellence for Sustainable Urban Freight Systems (CoE-SUFS).

Using confidential micro-data collected by the Bureau of Transportation Statistics’ Commodity Flow Survey, CITE and VREF CoE-SUFS researchers estimated the amount of cargo produced by commercial establishments. In turn, municipalities and state transportation departments can evaluate the estimates to make better planning decisions to improve freight mobility, enhance local economic competitiveness, and efficiently manage infrastructure.

Practitioners use Decision Support Tools (DSTs) created as part of the model to analyze and find solutions to various freight transportation challenges. Two of the most popular DSTs are:

- **The Freight Trip Generation Estimator**, which has been used by several transportation agencies to analyze truck parking issues, congestion problems, and freight corridors in their regions. An expanded set of new models that estimate the amount of cargo generated and number of freight and service vehicle trips will be released in early 2016.

- **The Initiative Selector Tool for Improving Freight System Performance**, a dynamic web-based tool that provides practitioners with suggestions about possible solution strategies to address given freight issues.

These DSTs were developed with funding from CITE, CoE-SUFS, and the National Cooperative Freight Research Program (NCFRP) projects #25 “Freight Trip Generation and Land Use” and #38 “Improving Freight System Performance in Metropolitan Areas.” They are available free of charge to the transportation community.

Contact: CITE Director and VREF CoE-SUFS Director José Holguín-Veras (jhv@rpi.edu)

For more information about this project, go to: [https://coe-sufs.org/wordpress/ncfrp33/](https://coe-sufs.org/wordpress/ncfrp33/)
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Imagine slogging through five more presidential campaigns, or waiting for the final score of the next 21 Super Bowls. That's at least how many years it will take to replace or upgrade the nation's current inventory of 58,500 structurally deficient bridges, according to ARTBA's analysis of the U.S. Department of Transportation's 2015 “National Bridge Inventory” database.

The association's third annual review of state bridge data collected by the federal agency notes that if placed end-to-end, the deck surface of the nation's structurally deficient bridges would stretch from New York City to Miami, or about 1,340 miles. About 9.5 percent of the nation's approximately 610,000 bridges are classified as structurally deficient, ARTBA found, but cars, trucks, school buses and emergency vehicles cross these structures nearly 204 million times a day. The Brooklyn Bridge in New York and the Arlington Memorial Bridge in Washington, D.C., are among the more famous spans on the list.

To help ensure public safety, bridge decks and support structures are regularly inspected by the state transportation departments for deterioration and remedial action. They are rated on a scale of zero to nine—with nine meaning the bridge is in “excellent” condition. A bridge is classified as structurally deficient and in need of repair if its overall rating is four or below.

Funding to state and local transportation departments for bridge work is not keeping pace with needs.

While these bridges may not be imminently unsafe, the ARTBA report is aimed at helping educate the public and policymakers that they have structural deficiencies that need repair.

Almost all of the 250 most heavily crossed structurally deficient bridges are on urban highways, particularly in California. Nearly 85 percent were built before 1970.

At least 15 percent of the bridges in eight states fall in the structurally deficient category. They are:

- Rhode Island: 23 percent
- Pennsylvania: 21 percent
- Iowa: 21 percent
- South Dakota: 20 percent
- Oklahoma: 16 percent
- Nebraska, 16 percent
- North Dakota, 16 percent
- West Virginia, 15 percent

Nearly 59,000 U.S. Bridges

by Mark Holan
Still Structurally Deficient

New ARTBA Analysis Finds

Greensboro Bridge, North Carolina.

Under 6% of bridges structurally deficient

6-8.5% of bridges structurally deficient

8.5-12% of bridges structurally deficient

Over 12% of bridges structurally deficient
The good news is there were 2,574 fewer structurally deficient bridges in 2015 compared to the number in 2014.

“Every year we have new bridges move on the list as structures deteriorate, or move off the list as improvements are made,” said ARTBA Chief Economist Dr. Alison Premo Black, who conducted the analysis in February.

In the 2015 report, there were 4,625 structurally deficient bridges that were not so classified in 2014. On the positive side, about 7,200 bridges classified as structurally deficient in 2014 were repaired, replaced, rebuilt or removed from the 2015 inventory.

The net effect, Black said, is a slow national reduction in the overall number of structurally deficient structures.

Black notes the recently-enacted five-year federal highway and transit law (the FAST Act) provides a modest increase in funding for bridge repairs.

“The funding made available won’t come close to making an accelerated national bridge repair program possible,” Black said. “It’s going to take major new investments by all levels of government to move toward eliminating the huge backlog of bridge work in the United States.”

**STATES WITH THE MOST STRUCTURALLY DEFICIENT BRIDGES**

<table>
<thead>
<tr>
<th>STATE</th>
<th># OF BRIDGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iowa</td>
<td>5,025</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>4,783</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,776</td>
</tr>
<tr>
<td>Missouri</td>
<td>3,222</td>
</tr>
<tr>
<td>Nebraska</td>
<td>2,474</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,303</td>
</tr>
<tr>
<td>Illinois</td>
<td>2,244</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,184</td>
</tr>
<tr>
<td>North Carolina</td>
<td>2,085</td>
</tr>
<tr>
<td>California</td>
<td>2,009</td>
</tr>
</tbody>
</table>

**STATES WITH THE FEWEST STRUCTURALLY DEFICIENT BRIDGES**

<table>
<thead>
<tr>
<th>STATE</th>
<th># OF BRIDGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utah</td>
<td>95</td>
</tr>
<tr>
<td>Hawaii</td>
<td>60</td>
</tr>
<tr>
<td>Delaware</td>
<td>48</td>
</tr>
<tr>
<td>Nevada</td>
<td>35</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>10</td>
</tr>
</tbody>
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Mark Holan is ARTBA editorial director: mholan@artba.org.
Americans drove a record 3.148 trillion miles in 2015, roaring past the previous annual high of 3.049 trillion miles set in 2007, according to the U.S. Department of Transportation’s (U.S. DOT) Federal Highway Administration (FHWA). The estimate includes passenger vehicle, bus, and truck travel. It includes more than 264 billion miles driven in December 2015 as Congress passed and President Obama signed the “Fixing America’s Surface Transportation (FAST) Act,” which includes $226 billion for roads and bridges over the next five years.

The seasonally-adjusted vehicle miles traveled (VMT) for December was 268.5 billion miles, a new monthly record for seasonally-adjusted data. December 2015 VMT increased by 4 percent compared to December 2014, and by 1.4 percent compared with the seasonally-adjusted total for November 2015.

Here’s the annual mileage totals since 1999.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>YEAR-TO-DATE</th>
<th>YEAR</th>
<th>YEAR-TO-DATE</th>
</tr>
</thead>
<tbody>
<tr>
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<td>2,992,705</td>
<td>2015</td>
<td>3,147,848</td>
</tr>
<tr>
<td>2009</td>
<td>2,975,804</td>
<td>2016</td>
<td>3,072,485</td>
</tr>
<tr>
<td>2010</td>
<td>2,988,854</td>
<td>2017</td>
<td>3,087,510</td>
</tr>
<tr>
<td>2011</td>
<td>2,968,990</td>
<td>2018</td>
<td>3,092,641</td>
</tr>
<tr>
<td>2012</td>
<td>2,988,021</td>
<td>2019</td>
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</tr>
<tr>
<td>2013</td>
<td>3,006,911</td>
<td>2020</td>
<td>3,092,641</td>
</tr>
<tr>
<td>2014</td>
<td>3,025,656</td>
<td>2021</td>
<td>3,100,392</td>
</tr>
<tr>
<td>2015</td>
<td>3,147,848</td>
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The map above shows the December 2015 mileage totals in billions of miles for five regions of the country, and the percentage increase from December 2014.

**DECEMBER 2015 MILEAGE TOTALS**

- **WEST**: 61.6 billion miles, 6.9% increase since 2014
- **NORTH CENTRAL**: 58.5 billion miles, 3.0% increase since 2014
- **SOUTH ATLANTIC**: 54.9 billion miles, 4.4% increase since 2014
- **SOUTH GULF**: 50.5 billion miles, 3.0% increase since 2014
- **NORtheast**: 38.7 billion miles, 3.0% increase since 2014

Source: FHWA’s Highway Statistics
For the past seven years, ARTBA's annual Transportation Construction Law and Regulatory Forum has educated contractors, designers and suppliers about major issues that they could face on a project. Presenters include top construction attorneys and transportation professionals from around the country. In recent years, ARTBA has also put out a “Call for Presentations” so that members have the opportunity to help shape the topics on the forum's agenda.

Unlike other law related events, the presenters meet in a discussion-oriented forum and break down the legal language into real world talk. Attendees ask questions and engage in an interactive discussion throughout the program.

To broaden the reach of last year’s program, and get ready for this year’s event in June, Transportation Builder’s editorial staff asked the forum’s speakers to write columns summarizing the key points in their presentations.*

On the following pages, you will find pieces from: Chad Theriot and Neal Sweeney of Jones Walker LLP on “Managing Projects with Funding Concerns”; Mark Berry and Jesse Keene of Peckar & Abramson, and Pat McGeehin of FTI Consulting, on “Contractor Certifications: What Am I Signing and Why Can It Get Me in Trouble”; Steve Henderson of Stites & Harbison on “OSHA Issued Your Company A Citation: Now What?”; Lorraine D’Angelo of LDA Compliance Consulting on “DBE Compliance”; and Joe McGowan of Rogers, Joseph & O’Donnell on “Brand Name or Equal Contract Clauses: A Contractor's Risks and Rights.”

As you digest these articles, we encourage you to consider attending the 2016 forum, scheduled for June 1-2 at the ARTBA Building in our Nation’s Capital. Please contact me if you have questions, at aklein@artba.org, or 202.289.4434.

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Alison Klein is ARTBA vice president of member services and manages all aspects of ARTBA’s annual law and regulatory forum: aklein@artba.org.
MANAGING PROJECTS WITH FUNDING CONCERNS

by Neal J. Sweeney and Chad V. Theriot

Projects with funding constraints—like those created by the ongoing Highway Trust Fund crisis—carry additional risk for general contractors. One way general contractors account for that risk is to manage their subcontractors’ performance in the field. Another is to mitigate risks before work begins.

Subcontractors often perform a significant part of work on infrastructure projects, and other project participants are dependent on their work. A poor performing subcontractor, or one who defaults because of insufficient working capital, can bring a myriad of problems both before and after the actual default. For example, slow deliveries of materials as suppliers grow concerned about the subcontractor’s ability to pay can have a “ripple” effect.

Therefore, it is even more critical that a general contractor in an environment of limited—or even disruptive—funding do its due diligence before engaging a subcontractor. Here are three preventative measures a general contractor can take before starting its work.

First, a general contractor can avoid numerous headaches simply by investigating the subcontractor’s past performance record, rather than looking solely at its bid price. Unreliable subcontractors may initially be weeded out by dealing with reputable individuals who have a proven ability to perform, by running credit checks, and by inquiring about the experiences of other general contractors.

Even a cursory investigation can yield important clues. For example, engaging a subcontractor with a reputation for shoddy or defective work may result in the general contractor having to cash-flow and remedy unsatisfactory work. A litigious subcontractor may refuse to negotiate if a dispute arises, forcing the general contractor into costly arbitration or litigation.

Second, a general contractor must consider the subcontractor’s occupational licensing. State and local law generally prevent incompetent and inexperienced subcontractors from engaging in work that effect public health and safety. This is particularly true with the skilled trades—electrical, mechanical, etc. A general contractor may, however, benefit from additional investigation of a subcontractor’s experience on a particular type of project. For example, an interstate project likely requires different experience than that for an airport runway.

A general contractor must satisfy itself that the subcontractor fully understands the licensing laws and can do the required work.

Third, general contractors can insist that their subcontractors furnish payment and performance bonds. A general contractor, like an owner, needs reassurance that a subcontractor’s portion of the project will be timely and properly completed.

A performance bond is a financial guarantee that the subcontractor will perform the subcontract. It usually means that if the subcontractor defaults and fails to complete the project, the surety will complete performance or pay damages up to the limit of the penal sum of the bond.

A payment bond is a financial guarantee that the subcontractor will pay its sub-subcontractors and suppliers. This is particularly important where funding is a concern. If the subcontractor cannot adequately pay its suppliers, there is a risk the project could come to a grinding halt if materials are no longer delivered. A payment bond provides added assurance that sub-subcontractors and suppliers will continue to perform even if the subcontractor fails to pay since the surety will step in and pay for materials and sub-subcontractors up to the limit of the penal sum of the bond.

General contractors should consider separate payment and performance bonds from subcontractors. The premium for two separate bonds is generally no more than the premium for a single “payment and performance” bond. Also, the penal sum of the bonds—which provides the maximum liability of the surety—may be lower if the payment and performance bonds are not separate.

The choice of selecting a particular subcontractor may ultimately determine the project’s success or failure. Fortunately, a general contractor can avoid pitfalls with some up-front due diligence. By dealing with reputable individuals, by running credit checks, by inquiring about prior experiences, and by requiring separate bonds, unreliable subcontractors may be avoided at the outset, thereby minimizing owner-funding impacts to your project.

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CONTRACT CERTIFICATIONS: WHAT AM I SIGNING AND HOW CAN IT GET ME INTO TROUBLE?

by Pat McGeehin, Mark R. Berry and Jesse S. Keene

The U.S. Department of Justice is investigating and prosecuting more cases of alleged fraud against the federal government. Attorney General Loretta Lynch has a history of focusing on fraud in the construction industry. In 2014, the government’s fraud collections reached $5.69 billion, including hundreds of millions of dollars in federal procurement and construction fraud penalties.

So it’s important for ARTBA members to pay attention to government regulations in order to avoid allegations of false claims. This article focuses on a few key certifications made daily on government construction projects. These include:

False Claims Act Summary
The False Claims Act (FCA) prohibits government contractors from, among other things, “knowingly presenting a false or fraudulent claim for payment or approval” to the federal government. More than 30 states also have their own version of the Act.

Under the FCA, the government may assess fines of up to $11,000 per false claim and recover three times the government’s actual damage. The FCA can also result in administrative penalties such as suspension, debarment, or contract termination. And, perhaps most seriously, the FCA allows for criminal prosecution and imprisonment for up to five years for submission of a false claim.

The FCA and courts interpreting it have broadly defined a “claim” as any demand for money or property made directly or indirectly to the federal government.

Progress Payment Applications
Progress payment applications are one of the more commonly submitted “claims” which can trigger the FCA. The certifications contained in a payment application contain fertile ground for potential FCA violations. In particular, the government has recently prosecuted contractors who falsely certified that they made all payments due to subcontractors from previous payments received from the government.

In In The Liquidating Trustee Ester Duval of KI Liquidation, Inc. v. United States, 116 Fed. Cl. 338 (2014), the contractor had a firm-fixed price contract with the government. The contractor paid money it received from progress payments to subcontractors and suppliers, but not all were paid in full. After contract termination, the government brought and prevailed on claims that the contractor falsely certified that subcontractors and suppliers were fully paid.

The rule is clear: the contractor has a duty to examine its records to determine what the government already has paid and whether payments are owed to subcontractors or suppliers. Failure to make a minimal examination of records constitutes deliberate ignorance or reckless disregard.

Takeaway: Review your payments to subcontractors and suppliers as part of your payment application process and ensure their accuracy.

Certified Payrolls
Public projects generally require prevailing wages and submission of certified payrolls showing who worked on the project and how much they were paid. Accordingly, the contractor must certify that the payroll is correct and complete, the wage rates are not less than required, and the classification for each laborer is correct.

In United States ex rel. Wall v. Circle K Construction, LLC, 697 F.3d 345 (6th Cir. 2012), a contractor did not collect certified payrolls from a subcontractor for two years, despite certifying that all the subcontractor’s laborers were paid correctly.

When it finally collected the subcontractor’s payrolls, the contractor simply submitted them to the government without prior review. The payrolls were inaccurate, incomplete, and showed the subcontractor underpaid its workers. The contractor was held liable for not submitting payrolls from its subcontractor, and not reviewing them before submission.

Key takeaways include:
- filling out certified payrolls accurately;
- reviewing certified payrolls for errors before submission;
- correcting any errors;
- noting in your certified payrolls any information that you do not have which, if not disclosed, would make your payroll inaccurate; and
- spot checking your subcontractors’ payrolls to ensure accuracy and completeness.

Subcontractor Pass-Through Claims
Because subcontractors cannot bring claims directly against the government, most subcontracts contain a provision under which the contractor agrees to “pass-through” subcontractor claims. A contractor cannot, however, be a mere rubber stamp. Rather, the Federal Acquisition Requirements (FAR) require the contractor to certify “in good faith” that the subcontractor’s claim is “accurate and complete” and that the contractor “believes the government is liable.” Contractors must make a minimal examination of the underlying records, reasonable under the circumstances.

Importantly, this does not mean that the contractor “believe the subcontractor’s claim to be certain.” It does, however, require belief that there are ”good grounds” for the claim—i.e., made in good faith and not frivolously.

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PRACTICAL TIPS FOR MANAGING OSHA INSPECTIONS & CONGESTING CITATIONS

by Steven M. Henderson, P.E., Esq.

Sooner or later, all construction companies will be faced with a visit from an Occupational Safety and Health Administration (OSHA) inspector.

Whether this visit is expected or a surprise, it is imperative for your company to have a plan in place for OSHA inspections and possible citations. It also is critical to communicate the plan protocols to appropriate personnel so that everyone understands their responsibilities.

Here is an overview of what you should expect during an OSHA inspection and practical steps you should take if your company receives a citation.

The Inspector Arrives
When an inspector arrives on your project, he or she should present his or her credentials and request to meet with the supervisor who is responsible for the jobsite.

The inspector should advise you of the purpose of the inspection such as whether it is a scheduled inspection or the result of a complaint. You have the right to refuse the inspection; however, it is usually not in your best interest to do so because this will prompt the inspector to obtain an inspection warrant or a subpoena for your records.

You should take a reasonable time to gather your safety director, managers and other appropriate personnel to attend the opening conference with the inspector.

The Opening Conference
During the opening conference, your appointed representatives should take good notes and ask about the purpose and scope of the visit. If there has been a complaint regarding imminent danger, a fatality, or a catastrophe, the opening conference will probably be cut short, and the inspector will want to proceed directly to the scene of the accident. If the inspection is the result of a complaint, you are entitled to see it and should ask for a copy prior to going forward with the inspection.

Inspections are not always triggered by a complaint. They could be the result of referrals from other government agencies, programmed inspections, follow-up or abatement inspections, or monitoring inspections. Knowing the purpose and scope of the visit will help you determine the scope of the walk-around inspection. Since OSHA inspectors maintain the right to interview employees and review relevant safety documents, it is important during the opening conference to ask whether they plan to do so.

The Walk Around Inspection
After the opening conference has concluded and you have determined the scope of the inspection, lead the inspector directly to those areas that he or she wants to see.

Listen carefully to the inspector’s comments and take detailed notes of any specific remarks. Your company’s safety director or a manager should accompany the OSHA inspector, and duplicate every measurement, photo and/or video taken during the inspection.

Consult Your Lawyer
As soon as you learn that OSHA will conduct an inspection and you believe they may want to interview your employees as part of that inspection, ask your lawyer about any notes or reports that you will need to gather and prepare.

Notes or reports that your attorney directs you to prepare may be covered by the work product and attorney-client privileges. Any notes or reports that are created outside of the direction of your lawyer may be subject to production to OSHA.

Employee Interviews
OSHA inspectors will almost always ask to interview your employees. If so, you should advise your employees to tell the truth, provide only basic facts and avoid speculation and guessing.

Keep in mind these rights and tips for talking with the OSHA inspector:

- Employees have the right to refuse the interview, though OSHA may proceed to get a subpoena to compel the interview.
- Employee interviews are generally conducted in private; however, employees can request a manager or their own personal lawyer to attend the interview. The interview should be rescheduled to accommodate this request.
- A company representative has a right to be present for interviews of managers and can end the interview at any time.
- The company can request signed or written statements that are given to the inspector.
- If time permits before the interview, ask your employees (without influencing their answers) about what they know, heard, and saw prior, during and after the accident.
- After your employees speak with an OSHA inspector, you should also interview them to learn what questions were asked, their responses to those questions, and whether they signed any written statements. This information will be very valuable to your attorney in contesting a citation if one is issued.
Records Review and Accident Reports
While on the project, the inspector may ask to see certain records such as the OSHA 300 logs, safety manuals, first aid and medical records, training records, safety meeting minutes, inspection records, and accident reports. Keep a log of the documents requested by the inspector, and how and when they are provided to OSHA.

Accident reports should be reviewed by your attorney prior to providing them to the inspector. Accident reports should be limited to the facts and should not contain any speculative theories or guesses as to why an accident occurred or who was at fault. If your attorney has directed the preparation of the accident report, that report may be privileged and should not be produced to the inspector without consulting your attorney.

Closing Conference
After the walk-around and employee interviews have concluded, the OSHA inspector will hold a closing conference. Depending on the nature of the investigation, the closing conference may not take place for several weeks until OSHA has concluded its investigation. Your safety director and appropriate management personnel should attend this meeting and take notes on what was conveyed. During this meeting, the inspector may provide a preliminary indication of potential citations that may be issued to your company.

Immediate Steps After Receipt of a Citation
If you receive a citation with penalties from OSHA, you need to quickly decide to accept the citation and penalties or contest the citation, the penalty amounts, or both. There are many reasons you may want to contest the citation, including:

• your company did not violate the regulation cited;
• the multi-citation employer policy was improperly applied to your company (i.e., you are cited as an exposing employer when your own employers were not exposed to a hazard or you are cited as a creating employer when your company did not create the hazardous condition);
• the penalties are unreasonably high;
• the risk of a repeat citation is high given the regulation cited; or
• your company has a valid affirmative defense (i.e., employee misconduct defense, the citation is covered by the jurisdiction of another federal agency, you did not have fair notice that OSHA would interpret the regulation in the manner contained in the citation, or you are cited under the general duty clause and a specific standard applies).

If you want to contest the citation, a Notice of Contest must be filed within 15 business days after receipt of a citation or you will be deemed to have accepted the citations and penalties. The Notice should identify whether you are contesting specific citations, all citations, specific penalties, and/or all penalties. It is very important that you follow the regulations applicable in the jurisdiction that issues the citation.

When you receive a citation you will be given the option of scheduling an Informal Conference, which gives you an opportunity to ask questions about the citation and explain facts that the inspector misunderstood or did not previously have in an attempt to either eliminate or reduce the citations and penalties. But scheduling an Informal Conference does not extend the time you have to file a Notice of Contest. So schedule the Informal Conference early enough to file the Notice of Contest within 15 business days from the receipt of the citation if necessary.

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ARE YOU COMPLYING WITH THE DBE REGULATIONS?

by Lorraine D’Angelo

One of the biggest challenges facing the construction industry is complying with requirements of the U.S. Department of Transportation’s Disadvantaged Business Enterprise (DBE) program.

Agencies such as the Federal Highway Administration, Federal Transit Administration and Federal Aviation Administration require a fixed percentage of the total contract value of a federally assisted project to be awarded to certified DBE firms. Such businesses are generally at least 51 percent owned and controlled by one or more minority persons, either African American, Hispanic American, Asian American, Native American, a woman or a disabled person.

The government expects contractors working on projects financed in whole or in part with taxpayer dollars to take all necessary and reasonable steps to ensure that DBE firms have an opportunity to compete and participate and that they meet the goal or prove their “good faith efforts.” The government knows that contractors may pay more money to use DBE firms, but has made the social policy goal of eliminating discrimination and leveling the playing field a top priority.

But it isn’t enough just to hire a DBE firm to reach the percentage of participation established by the federal agency for the contract. The DBE firm must provide a “commercially useful function,” an additional requirement of the regulations. DBE firms must perform, manage, and supervise a distinct element of the project using their own resources. A DBE firm does not provide a commercially useful function if their role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of participation.

In recent years, the government has stepped up its efforts to detect and punish contractors who commit fraud in this area, often filing a civil or criminal action under the False Claims Act. Transportation Department Inspector General Calvin Scovel III has said that 29 percent of his staff attorneys’ time is spent investigating DBE fraud cases. Major contractors have paid millions of dollars to resolve DBE fraud complaints. A corporation accused of DBE fraud or who has paid a fine, with or without admitting liability, must continually prove it is acting responsibly to avoid suspension or debarment from government contracting work.

Suspension and debarment proceedings against companies have increased since 2009 under legislative pressure for the government to work only with those firms that exhibit integrity in their business practices. The U.S. Department of Justice is using civil and criminal prosecutions of individual corporate officers to “deliver the message” to private industry that they will be held accountable for illegal corporate activity. In addition, as part of a settlement, many corporations are required to implement compliance programs subject to third party scrutiny, hire additional compliance staff, or retain an independent monitor to review future corporate activities. All this adds to the company’s overhead.

It’s rare that a contractor uses a firm that is not on the government’s certified DBE list. Most trouble is related to monitoring a certified firm’s performance to make sure that amounts claimed to participation/attainment are in conformance with the regulation. Given the high level of scrutiny by law enforcement agencies on DBE programs, it is worth remembering Benjamin Franklin’s adage, “An ounce of prevention is worth a pound of cure.”

Here are some “best practice” measures to avoid problems:

• Review internal procedures and controls. Have a written DBE Compliance Program that specifies the company process in areas such as outreach, good faith efforts, verification, assurance reviews, commercially useful function and modifications to utilization plans.

• Understand the rules for what can or cannot be claimed for participation. Engage in training and education.

• Assign accountability and responsibility within your organization.

• Determine the capacity/capability of DBE firms in advance.

• Recruit aggressively for the DBE goal and avoid a “check the box” exercise.

• Engage agency representatives in the process. Be transparent.

• Monitor project performance and address any concerns or issues as they are noticed.

• Document your efforts. Remember, if you cannot show what you did, it didn’t happen.

• Consider retaining a neutral third party to provide an objective analysis of your current process and procedures. It could help to avoid big problems.

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Freedom of choice may not always be a good thing.

Contractors bidding transportation contracts these days are more frequently encountering “brand name or equal” clauses, giving bidders the choice of providing either the specified name brand product or service, or an “equal” product or service in place of the name brand.

Owners are inserting such brand name or equal clauses in specifications for products, materials and proprietary services, including work generally performed by subcontractors such as ground stabilization techniques and dewatering methods. Under federal and state laws, contracts specifying a particular brand name product or service, generally, must permit bidders to substitute the brand name with an “equal” product or service, subject to approval of this product or method by the project owner and engineer.

While these clauses are essential to maintain fair competition on government funded projects, the clauses also pose risks to both prime contractors and the suppliers and subcontractors that offer substitute products or services. To successfully perform a contract with one or more brand name or equal clause, parties must understand the risks, challenges and, perhaps most importantly, the rights of a contractor to substitute for a brand name, despite reluctance by owners representatives.

The public policy of brand name or equal clauses is to increase competition for government contracts. Federal laws such as the Competition in Contracting Act (“CICA,” 10 USC 2304(a); 41 USC 235(a)), federal regulations applying to transportation projects, and many state laws are intended to decrease government costs by allowing more competition between suppliers and subcontractors.

As one court wrote, “(t)he framers of the clause obviously thought that it was in the national interest to widen the area of competition, and to bar local procurement officials from choosing a particular source either out of favoritism or because of an honest preference.” Wismer & Becker Contracting Engineers DOTCAB No. 76-24, 1978 WL 1870.

There are exceptions to the brand name or equal rule. Sole sourcing to a particular entity or brand name is often allowed, depending upon the jurisdiction, where a designated matching product is necessary for technical reasons, testing purposes, or in the case of an emergency.

Even where brand name or equal clauses are expressly written into the contract, however, many owners arbitrarily deny requests for substitution. Contractors should bear in mind that such clauses are intended to allow contractors the legal right to supply a product other than the brand name specified. Contractors must fight to enforce this right to substitute a lower cost or better substitute product in the same way that contractors enforce their rights to additional compensation or additional time for additional work.

Perhaps the most common misperception by contractors bidding contracts is the belief that the term “equal” (in brand name or equal) means identical. If this were the case, owners would have the right to reject almost any substitute subcontractors or suppliers; particularly where the item or service specified is covered by a patent or other proprietary right. Substitute products do not need to be identical: they merely must provide the so-called “salient characteristics” of the brand name product.

In plain language, “meeting the salient characteristics” means that the substitute product or service must be the functional equivalent of the name brand specified in the project. What
is the functional equivalent, however, depends in large part upon the intended use of the brand name product or service. For instance, the mere appearance of a name brand product is generally not considered a “salient characteristic” where the product is underground or otherwise not visible. On the other hand, the appearance of an item installed for aesthetic reasons would be critical to the item’s purpose, and the government would, therefore, have the right to demand a product with an appearance matching the brand name or equal.

In federal contracts, the government is required to explicitly identify the “salient characteristics” in the specifications so that bidders will know exactly which characteristics of the name brand product or service must be met, and which characteristics are insignificant details. Even where required, however, the government often does a poor job of identifying said “salient characteristics.” In requesting a substitution, be prepared to make an argument as to which elements the name brand are salient characteristics (that must be met), and which elements are mere inconsequential details. This task should not be treated lightly.

When you consider requesting a substitution, you should look for timing restrictions and other formal requirements set forth in the specifications. In California, for instance, Public Contract Code section 3400(b) allows the owner to specify in the instructions to bidder a time frame to request substitution either before or after the project bid and award. If no date is specified, the request can be submitted within 35 days of the award of the contract. A contractor who misses such a deadline for submitting a request for substitution would be left to the mercy of the owner in requesting relief from such a requirement.

It is also important to provide documentary evidence that your desired substitute meets the salient requirements. FAR section 52.211-6 requires that the request for substitution identify the brand name, make and model of the substitute item, as well as descriptive literature such as drawings and prior use of the requested substitute. One of my clients went so far as to provide a scientific paper comparing a specified proprietary method with a more generic substitute procedure. At the very least, a qualified expert should attest to the capabilities of the substitute product. The type of documentation to be included in your submittal depends in large part upon the type of item.

The contractor requesting the substitution is better off putting its maximum effort into the initial submittal requesting the substitution, as owners tend to have their positions after rejecting the submittal. You may be prevented from submitting such evidence in a later claim or court proceeding if you do not submit documentation in your original request.

Do not give up if your initial request for substitution is rejected. Many times the owner’s representatives do not understand the contractor’s rights to substitute where its substitute meets the salient characteristics of the specified brand name. Such contracting officers may need to consult with their attorney to understand their discretion is limited. The contractor should be prepared to file a notice of intent to claim within the time frame specified for such claims.

A contractor’s success in obtaining the owner’s approval for a substitution of a brand name is particularly critical where approval for substitution is sought post-award. In a recent example, a prime contractor submitted a bid for a fixed price contract based upon the assumption that it could perform the soil stabilization for the project with traditional stone columns, as opposed to a proprietary method specified by name in the specifications. The difference in price between the brand name method specified and the substitute was to the tune of several million dollars. Had the owner denied the request, the prime contractor and the subcontractor who bid the substitute method potentially would have had to absorb a several million dollar loss—something that would have led to litigation between the subcontractor and the prime contractor.

For this reason, subcontractor-suppliers submitting bids with the expectation of substituting for a brand name need to clarify in their proposals which party (prime or sub) is responsible should the substitution be rejected by the owner. Prime contractors relying upon substitute subcontractor/ suppliers should make sure that the bid submitted locks the subcontractor/supplier into meeting the requirements of a particular bid item—even if the intended substitute is ultimately rejected by the owner.

Perhaps more importantly, it is essential that the prime and subcontractor seek out as much clarification as possible about the proposed substitution prior to submitting their bid. This clarification generally takes place during the pre-bid question and answer process. Ideally, the owner will issue a pre-bid addendum on the suitability of alternatives to the brand name. Once the project is awarded, the prime contractor and supplier/subcontractor need to work together to make sure that the owner respects their right to substitute.

In sum, the freedom to substitute for a brand name—besides saving the government money—potentially gives a bidder an edge in competing for a contract. Contractors who avail of such right to substitute, however, need to be extremely diligent in reviewing the requirements for requesting a substitution or an equal product or service, and in building a strong case to persuade the government to accept the substitute. Owners also need to be made aware that the right to substitute for a brand name, where stated in the contract, is a contractual right, and cannot be denied arbitrarily.

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Safety Training for the Roadway Construction Industry

ARTBA’s OSHA 10-Hour

Guideline Books

Roadway Safety+

All materials can be found at www.workzonesafety.org

This material is based upon work supported by the Federal Highway Administration under agreement DTFH61-II-H-00029. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views or policies of the U.S. Department of Transportation or the Federal Highway Administration.
While the race for the presidency dominates the news in 2016, a host of other issues on the regulatory and legal front are sure to impact the transportation construction industry. After filing over 40 sets of regulatory comments in 2015, ARTBA is working just as aggressively to protect the industry’s market interests in 2016.

On the regulatory front, the U.S. Department of Transportation (U.S. DOT) is in the unusual position of having to implement two separate surface transportation reauthorization laws. The agency is continuing its effort to apply policy changes in 2012’s “Moving Ahead for Progress in the 21st Century” (MAP-21), as well as the “Fixing America’s Surface Transportation (FAST) Act,” which President Obama signed in December. ARTBA has been active in tracking and commenting on U.S. DOT’s progress in fulfilling MAP-21, and we are accelerating the pace regarding implementation of the FAST Act.

None of MAP-21’s project delivery reforms were undone in the FAST Act. Some anti-growth groups wanted to see the FAST Act repeal portions of the earlier law that had not yet been implemented. Fortunately, the FAST Act builds on MAP-21’s goal of reducing project delivery delays.

Other regulatory agencies, such as the U.S. Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA), are also expected to be active this year. As the Obama Administration’s time in office draws to a close, agency officials are trying to complete as many regulatory goals as possible before the next president comes to power.

Silica Rule
For example, the ongoing review of OSHA’s proposed rule tightening the standards for worker exposure to crystalline silica is being reviewed by the Office of Management and Budget (OMB). A final release could come as early as March.

In a Feb. 2 meeting, ARTBA explained to OMB that OSHA used both outdated data and a faulty economic analysis in reaching the new standard. Specifically, OSHA relied on studies from 1930 to 1960 that don’t consider the success of modern technology to reduce silica exposure in work zones.

ARTBA also noted the agency may be doing more harm than good by requiring workers to wear respirators in hot environments, potentially exposing them to heat stroke and stress. By diverting significant resources to address a hazard that is minimally harmful in transportation construction operations, OSHA is reducing the resources needed to protect workers from more significant hazards, such as struck-by incidents, ARTBA said.

Finally, association staff reminded agency officials that funds for transportation come primarily from tax dollars, and that money spent complying with this standard reduces other public safety investments such as guardrail replacement and pothole repair.

Legal Advocacy
On the litigation front, ARTBA is currently involved in two major federal cases. First, ARTBA and a coalition national trade associations are seeking to overturn EPA and the U.S. Army Corps of Engineers’ (Corps) recently-released rule that expands federal jurisdiction to all wetland areas through a new definition of “waters of the United States” (WOTUS). The new rule expands EPA and Corps jurisdiction to the point where virtually any ditch with standing water could be covered. In an encouraging sign, a federal appeals court last October temporarily blocked the rule nationwide, indicating at least some degree of judicial skepticism as to its legality.

ARTBA is also petitioning the Supreme Court to hear Dunnet Bay v. Borggren. In August, a federal appeals court ruled that Illinois highway contractor Dunnet Bay Construction Co., did not have the right to challenge the state transportation agency’s interpretation of the federal Disadvantaged Business Enterprise (DBE) rule. This dangerous precedent could deny construction firms nationwide the chance to challenge misapplications of the DBE rule or other federal regulatory requirements. A decision on whether or not the high court will hear the case is expected in June.

For questions on these and other legal or regulatory issues, please contact me at ngoldstein@artba.org.

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More than 3 million miles of roads and over 300,000 bridges in the United States are owned and maintained by local governments.

In 1982, the Federal Highway Administration established the Local Technical Assistance Program (LTAP). In 1991, the Tribal Technical Assistance Program (TTAP) was also created. LTAP and TTAP help local governments improve management of their transportation networks.

There are 58 LTAP/TTAP Centers: one in each state, one in Puerto Rico, and seven regional Centers that serve tribal governments. Most Centers are housed at colleges, universities and state departments of transportation.

The mission of LTAP/TTAP is to foster a safe, efficient, and environmentally sound surface transportation system by improving skills and increasing knowledge of the transportation workforce and decision makers.

LTAP/TTAP strives to improve safety for users on local roads, help local governments build and maintain their infrastructure, utilize the workforce efficiently, and teach road workers how to do their jobs safely.

The national program focus areas are safety, workforce development, infrastructure management and organizational excellence. LTAP/TTAP Centers help communities improve the quality and condition of their transportation network.

For more information about the LTAP and TTAP, or to get contact information for your local LTAP/TTAP Center, please visit:

www.LTAP.org
A new crowd-sourced competition will award a total of $150,000 in prizes for innovative ideas to overhaul the aging infrastructure that Americans rely upon to move people, materials, products, services and information.

The Association of Equipment Manufacturers (AEM) is sponsoring the three-phased Infrastructure Vision 2050 Challenge to address the $3.6 trillion infrastructure problem in America. The Challenge is part of an overall thought leadership initiative AEM is undertaking to elevate the conversation, and possible solutions, to a national scale.

**Competition Open to All**
AEM encourages all transportation construction professionals to participate in the challenge and to spread the word to others.

Open to everyone everywhere, the Infrastructure Vision 2050 Challenge leverages the HeroX crowdsourcing model designed to bring about radical business, technological and social innovation benefiting local and global communities, inspiring new industries and catalyzing markets.

“We need to engage innovators who we haven’t heard from before and who have the ability to imagine how people, freight, energy and information will move in the country of tomorrow—even as far out as the year 2050,” said Dennis Slater, AEM president.

The American Society of Civil Engineers’ 2013 Report Card for America’s Infrastructure gave the U.S. a combined grade of D+ for the condition of its infrastructure. The report also cites the $101 billion wasted in fuel and productivity costs due to congestion, and an estimated 240,000 annual water main breaks as examples for why rebuilding the country’s infrastructure is such a critical issue. The report further estimates that it would take a $3.6 trillion investment by 2020 to bring U.S. infrastructure up to exceptional standards.

**Check out Competition Details**
Finalists and winners of the three-phased Infrastructure Vision 2050 Challenge will be determined by a judging panel and crowd voting. The first two phases launched in mid-January. The third phase is scheduled to launch in mid-summer.

**First phase**: The “Complain Phase” will engage the public to describe the biggest infrastructure challenge facing their community.

**Total Prize**: $5,000 (10 finalists receive $250; overall winner receives $2,500)

**Deadline to enter**: March 15, 2016

**Second phase**: The “Dream Phase” will seek to solicit new thinking and solutions, especially from non-experts.

**Total Prize**: $45,000 (5 winners receive $9,000 each)

**Deadline to enter**: May 31, 2016

**Third phase**: The “Build Phase” takes the second phase a step further and solicits plans to implement those solutions on a larger scale.

**Total Prize**: $100,000 (Winner receives $100,000)

**Deadline to enter**: TBD

Judging criteria and other information can be found at the Infrastructure Vision 2050 Challenge website—https://herox.com/Infrastructure2050.

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