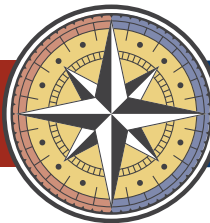


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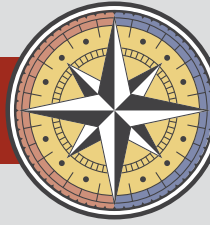
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THE CONTRACTOR'S COMPASS



EDITORIAL PURPOSE

The Contractor's Compass is the monthly educational journal of the Foundation of the American Subcontractors Association, Inc. (FASA) and part of FASA's Contractors' Knowledge Network. The journal is designed to equip construction subcontractors with the ideas, tools and tactics they need to thrive.

The views expressed by contributors to *The Contractor's Compass* do not necessarily represent the opinions of FASA or the American Subcontractors Association, Inc. (ASA).

MISSION

FASA was established in 1987 as a 501(c)(3) tax-exempt entity to support research, education and public awareness. Through its Contractors' Knowledge Network, FASA is committed to forging and exploring the critical issues shaping subcontractors and specialty trade contractors in the construction industry. FASA provides subcontractors and specialty trade contractors with the tools, techniques, practices, attitude and confidence they need to thrive and excel in the construction industry.

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Contributing authors are encouraged to submit a brief abstract of their article idea before providing a full-length feature article. Feature articles should be no longer than 1,500 words and comply with The Associated Press style guidelines. Article submissions become the property of ASA and FASA. The editor reserves the right to edit all accepted editorial submissions for length, style, clarity, spelling and punctuation. Send abstracts and submissions for *The Contractor's Compass* to communications@asa-hq.com.

ABOUT ASA

ASA is a nonprofit trade association of union and non-union subcontractors and suppliers. Through a nationwide network of local and state ASA associations, members receive information and education on relevant business issues and work together to protect their rights as an integral part of the construction team. For more information about becoming an ASA member, contact ASA at 1004 Duke St., Alexandria, VA 22314-3588, (703) 684-3450, membership@asa-hq.com, or visit the ASA Web site, www.asaonline.com.

LAYOUT

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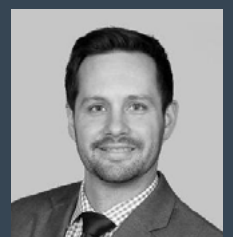
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PRESIDENT'S LETTER

Dear ASA Members:

I have always appreciated the start of a new year and the incredible opportunity it gives us to make new beginnings, fresh starts, and important upgrades in not only our own lives but in everything around us. I challenge each of you to make every day in 2021 better than the one before it, and I am confident that together we will accomplish amazing feats.

Advocacy continues to be at the forefront of all that we do at ASA. Fighting for the needs of the subcontracting community is, and will always be, one of the most important things we do as an organization. I want to offer my sincere congratulations to ASA's Government Relations Committee for their successful advocacy efforts on many legislative and regulatory victories. These achievements will definitely have ASA in the driver seat as we enter the 117th Congress.

Before we embrace the start of the 117th Congress, however, we must recognize the last two legislative achievements we accomplished prior to the end of the 116th Congress regarding the ban of reverse auctions in construction services and unfair competition. On December 17, 2020, Reps. Huizenga (R-MI) and Brooks (R-AL) introduced the Small Business Protection Act, which would modify the authority of the Federal



Prison Industries (FPI) to eliminate their unfair competitive practice of mandatory sourcing of government contracts and small business set asides. Additionally, the legislation would require the Small Business Administration, the Department of Labor, and the Attorney General to submit a report to Congress on the FPI's manufacturing items or providing professional services solely made or offered overseas.

On December 27, 2020, President Trump signed the FY21 Omnibus Appropriations / COVID-19 Package, which included the prohibition of reverse auctions in federal construction services. This has been a long-standing ASA legislative issue. This procurement method often favors businesses offering the lowest price, rather than those that are most qualified, which will compromise

quality, overlook small businesses, or even require a new bidding process down the road, eliminating any initial savings. Reverse auctions are ultimately inappropriate platforms for design-build contracts, which require design concepts, key personnel, and technical solutions to be incorporated into any successful final decision. Additionally, on December 7, 2020, the Defense Department, the General Services Administration, and NASA proposed to amend the Federal Acquisition Regulation (FAR) to provide guidance on the use of reverse auctions. ASA plans to submit comments on this guidance.

I hope you are all as excited for 2021 as I am. While 2020 was a year that saw struggles we will never forget, I truly believe that it all made us stronger than we've ever been. That confidence makes me incredibly hopeful for the future, and I can't wait to see where it takes us.

Stay safe, stay healthy, and stay strong.

God Bless,

Brian Cooper
ASA President 2020-2021



CONTRACTOR COMMUNITY

Want a Crystal Ball for Construction?

The Architecture Billings Index, published by the American Institute of Architects (AIA), is an economic indicator for nonresidential construction activity, with a lead time of approximately 9–12 months. Investment groups like Wells Fargo, media outlets, firms of all sizes, and business leaders rely on this leading monthly economic indicator to assess business conditions and predict and track the market.

ABI December 2020: Architecture firm billings end the year on a sour note



2020 firm profitability averaged 6.7 percent. Business conditions at architecture firms backslid in December, ending a tough year on a disappointing note. The AIA's Architecture Billings Index (ABI) score declined to 42.6 for the month, indicating that more firms saw declining billings in December than in November. However, firms do remain relatively optimistic about 2021, and the indicators of future work tend to support that. Inquiries into new projects at firms increased for the fifth month in a row in December, and while the pace of growth was slower than in September and October, it still means that most firms are having project discussions with potential clients.

By region of the country, business conditions remained softest at firms located in the Northeast in December. The decline in firm billings was slightly less serious at firms located in the South, while conditions softened further at firms located in the Midwest and West.

Want more insight like this? Keep the AIA in mind.

Independent Contractor Rule

On January 6, 2021, the U.S. Department of Labor announced a final rule clarifying the standard for employee versus independent contractor status under the Fair Labor Standards Act (FLSA). ASA responded to this rule and per the rule it would do the following:

- Reaffirms an “economic reality” test to determine whether an individual is in business for him or herself (independent contractor) or is economically dependent on a potential employer for work (FLSA employee).
- Identifies and explains two “core factors” that are most probative to the question of whether a worker is economically dependent on someone else’s business or is in business for him or herself:
 - The nature and degree of control over the work.
 - The worker’s opportunity for profit or loss based on initiative and/or investment.

SUDS FOR SUBS!

SLDF

Private Virtual Beer Tasting Fundraiser

Thursday, February 18, 2021 | 6:30pm EST
\$250 per person contribution

Join ASA supporters throughout the nation on the same evening to enjoy an expert-led tasting experience in a virtual format.

All proceeds will benefit the Subcontractor Legal Defense Fund.
A curated selection of four craft beers will be shipped directly to you in advance of the evening, so reservations are **required by February 7th!**



REGISTER TODAY!



- Identifies three other factors that may serve as additional guideposts in the analysis, particularly when the two core factors do not point to the same classification. The factors are:
 - The amount of skill required for the work.
 - The degree of permanence of the working relationship between the worker and the potential employer.
 - Whether the work is part of an integrated unit of production.
- The actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible.
- Provides six fact-specific examples applying the factors.

The rule should take effect 60 days after publication on the Federal Register, on March 8, 2021; however this rule will be frozen by the traditional Inauguration Day memo on regulations blocking this rule from proceeding.

Small Business Administration (SBA) Obsoletes Non Deductible PPP Loan Expenses

On January 11, 2021, Charles Jeane (SBA Office of Advocacy) informed ASA that Revenue Ruling 2021-2 obsoletes IRS Notice 2020-32 and Revenue Ruling 2020-27, which provided that taxpayers could not deduct otherwise deductible business expenses that were paid with forgiven or forgivable PPP loans. So your legislative efforts have gotten the attention of the regulators!

ASA's Subcontractor Legal Defense Fund Needs Your Support...in Order to Support YOU!

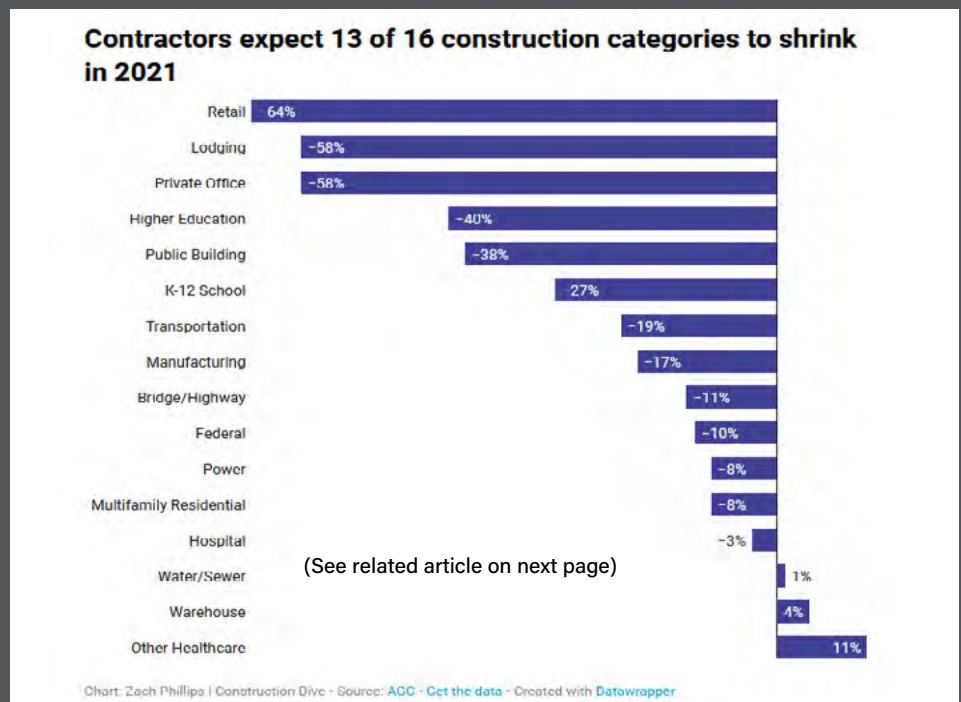
[Donate to the Subcontractors Legal Defense Fund Today!](#)

Every year, the American Subcontractors Association's Subcontractors Legal Defense Fund (SLDF) supports critical legal activities on behalf of its membership, submitting substantive legal arguments in precedent-setting appeals defending subcontractor rights. We need your help to keep that work going!

Our efforts in the *Crosno Construction v. Travelers Casualty & Surety* pay when paid case in the California Court of Appeals highlight the importance of the Fund's work for subcontractors. The case involves delayed subcontractor payment for undisputed work on a public works project following a dispute between the owner and the general contractor. In its amicus brief, ASA encouraged the Court to affirm an earlier ruling providing meaningful security for payment of parties in

public and private construction, arguing that the approach taken by the Surety would unreasonably impair a subcontractor's payment bond rights. Earlier this year, the Court agreed and ruled in favor of subcontractors to limit enforcement of pay when paid clauses that could indefinitely delay payments to subcontractors. **This case was a big win for our community in California and beyond due to the precedent set by the decision.**

Work on this case and so many like it is funded entirely by contributions from **SUPPORTERS LIKE YOU**, who understand the wide-reaching implications of these legal cases on your business. To keep our costs as streamlined as possible, we operate under strict guidelines for only the most winnable cases with attorneys who accept agreements well under their usual rates to write the legal briefs for each case. We need your help to keep this Fund active and thriving. Because our fundraising declined during the previous year due to pandemic pressures, more than ever before, we need your help to continue this important work.



To learn more and support the Subcontractors Legal Defense Fund, you can text 'SLDF' to 243725 or visit www.sldf.net and click "Donate" to give online. We have also organized a unique virtual experience fundraiser that you may wish to participate in on February 18, 2021. Details on this event are below and on the SLDF website, so we hope that you can join us.

Every dollar goes to ensuring YOUR rights are safeguarded. **Please lend us your support for this critical work TODAY!**

Thirteen Construction Sectors Contractors Expect to Shrink in 2021

Contractors also don't anticipate the business environment to return to pre-pandemic levels at least until the

second half of the year, according to the Associated General Contractors of America's [2021 Construction Hiring and Business Outlook](#). The results of the survey underscore how much work remains before contractors will see any return to "normal" in construction.

This content originally appeared in [Construction Dive](#). Click [here](#) to read the entire article.

Reporting Incidents of Work-Related COVID-19 Fatalities and Hospitalizations

From [ConsensusDocs](#)

On September 30, 2020, the Occupational Safety and Health Administration (OSHA) issued new regulatory guidance to clarify employer reporting requirements of COVID-19 related work incidents that lead to either

an employee fatality or hospitalization. The reporting requirement for fatalities from a work-related COVID-19 infection is triggered when an employee dies within 30 days of being exposed to COVID-19 while at work. The employer then has eight hours from the time it learns of the death and knows that the cause of death was a work-related case of COVID-19, to report the incident to OSHA. Employers are also required to report incidents where an employee has been hospitalized as a result of COVID-19 within 24 hours of learning of it, but only if such in-patient hospitalization occurred within 24 hours of the work-related exposure to the virus.

But when and how do employers determine if the exposure is "work-related", requiring them to report?

Click [here](#) to read the full article.

SBA's Surety Bond Guarantee Program Teams Up with ASA



The **U.S. Small Business Administration** (SBA) offers guarantees on contract surety bonds to help small businesses in the construction, supply, and service sectors to better compete for contracting and subcontracting jobs.

SBA's Office of Surety Guarantees (OSG) has provided growth opportunities to small businesses for over 50 years. In 1970, the Surety Bond Guarantee (SBG) Program was established by the Housing and Urban Development Act. In its first year of operations, the program guaranteed seven final bonds with a contract value of approximately \$315,000. In FY20, the program guaranteed over 11,000 bonds, totaling over \$7 billion.

SBA is collaborating with the American Subcontractors Association (ASA) to ensure its small business

members are aware of growth benefits available to them through SBA's SBG Program. Members can look forward to SBA's participation in bonding webinars and events with ASA this year. Even if you can't attend an event with SBA, we encourage small businesses to learn about the benefits of the SBG Program on www.sba.gov/osg today.

Grow Your Business

Surety bonds help small businesses secure contracts by providing a customer with a guarantee that the work will be completed according to contract terms and conditions. Through SBA, subcontractors can obtain bonds with reasonable terms and higher limits. SBA-guaranteed surety bonds are often an ideal option for:

- Subcontractors with a desire to establish independent bonding credit.

- Small businesses that want to increase their current bonding limits.
- Startups and firms in business for less than three years.
- Small businesses with credit issues or internally prepared financial statements.
- Small businesses being required to supply collateral or funds control in order to secure surety bonds through regular commercial channels.

For eligible contracts under \$400,000, the application process is streamlined using the SBA's QuickApp - an easy online application submitted to SBA-authorized agents. These applications do not require financials, and applications are quickly assessed and approved. Finally, all bond guarantee applications submitted to SBA are underwritten in less than two days.

Are you interested in surety bonds? Learn more about the SBA advantage at www.sba/osg.



ASA Government Relations 2020 Recap

As members of the ASA family made their way to Las Vegas, NV for SUBExcel 2020, few could have imagined the havoc COVID-19 was about to unleash on our country. Despite the disruption in normal industry activities, the ASA Government Relations Team wanted to briefly update you on our 2020 legislative successes. Though 2020 proved to be challenging, we offer thanks to our Government Affairs Committee (GAC) for their tireless efforts in advocating for our members and industry as we worked to address COVID-19 related issues along with our 2020 Legislative Priorities.

The ASA's 2020 Legislative Priorities included:

- H.R. 2344: Change Orders
- S. 1434/H.R. 5644: Reverse Auction
- Federal Prisons Industry Legislative Language
- H.R. 6359: P3 Bonding requirements on Transportation Projects
- H.R. 5329: Freedom from Government Competition Act
- H.R. 5247: SUBS Act (Bid Listing)
- S. 4203: The American Infrastructure Bonds Act
- H.R. 6776: JOBS Credit Act
- Creation of the Congressional Construction Procurement Caucus

In 2020, the ASA was successful in securing the language of H.R. 2344, the Small Business Payment Performance Act, which addresses change orders in the House version of the National Defense Authorization Bill (NDAB). The ASA appreciates Rep. Golden (D-ME) for sponsoring our amendment.

Though the final NDAB Conference Report excluded our amendment, the momentum is on our side to get this important legislation across the finish line in the new Congress! The ASA also made important strides in advancing H.R. 6359, which would revise the transportation infrastructure finance and innovation program to require the Department of Transportation to ensure that the design and construction of a project carried out under the program must have appropriate payment and performance security, regardless of whether the obligor is a state, local government, agency, or instrumentality of a state or local government, public authority, or private party. Thanks to our efforts, Rep. Lynch (D-MA), the prime sponsor of this legislation, secured 7 bipartisan co-sponsors.

At the request of ASA Past President Kerrick Whisenant, the ASA is working with Reps. Brooks (R-AL) and Huizenga (R-MI), to address unfair competition issues in the federal prison industry by offering suggested legislative language for the elimination of mandatory sourcing for government contracts along with small business set-asides for federal prisons, and a report to Congress on the extent of which domestic markets Federal Prison Industries compete with domestic capacity in the private sector, including small business, and identify new markets overseas for Federal Prison Industries to begin to compete for, in which there is no domestic capacity in the private sector, including small business. The ASA's partnership with Rep. Brooks on this issue led to his visit of Claborn Manufacturing's new, state-of-the-art facility located in Tanner, AL. The tour was led by Kerrick, who is the President of Limestone Building Group,

the constructor of the Industrial Park where the facility is located.

In the wake of COVID-19, the ASA was on the front lines working with a coalition of other construction associations to ensure our industry remained essential across the country. In consultation with the GAC, the ASA drafted a Gubernatorial Statement on keeping the construction industry an essential service as governors issued shutdown orders. The ASA ran a VoterVoice advocacy campaign and 1,399 members sent the Gubernatorial Statement to 38 governors across the country.

Throughout the pandemic, we have worked diligently to ensure members are aware of major federal regulations and relief opportunities through the creation of our COVID-19 web page. In consultation with the Attorneys Council, the ASA also created the following resources: a COVID-19 Employer Guide, Attorneys Council Legal Guidance, Families First Coronavirus Response Act Leave Provisions Guide, and a Small Business Administration Loan Program Summary. Through our membership to the Construction Industry Safety Coalition (CISC), ASA members also have access to a COVID-19 Exposure Prevention Preparedness, and Response Plan as well. As Congress considers new programs to address the pandemic along with the extension of federal programs to support small businesses and families impacted by the virus, the ASA Government Relations Team will provide timely analysis and resources to support our members.

Much of Congress' focus in 2020 was related to addressing COVID-19 and the ASA has been at the forefront

of advocacy efforts to support the construction industry during these difficult times. The ASA has signed onto the following letters related to COVID-19:

- A coalition letter to Congressional Leadership requesting their continued support for Fixing America's Surface Transportation (FAST) Act, expiring on September 30, 2020. This legislation provides a one-year extension for current surface transportation law with increased investment levels, along with \$37 billion for state departments of transportation and \$32 billion for public transit agencies.
- A letter in conjunction with the AGC, the International Franchise Association, and more in sending a letter to congressional leadership requesting the expansion of "second draw" Paycheck Protection Program (PPP) loans for small businesses.
- A Small Business Legislative Council (SBLC) letter to Congressional Leadership conveying business-focused proposals to be included in a new round of COVID-19 relief.
- An SBLC letter supporting the Small Business Expense Protection Act, which would ensure that small businesses can deduct eligible expenses paid with a forgiven Paycheck Protection Program (PPP) loan from their taxes.
- A Construction Industry Safety Coalition (CISC) letter to the Senate Health, Education, Labor, and Pension (HELP) Committee leadership expressing concern for proposals to compel OSHA to issue an emergency temporary for infectious diseases
- An SBLC letter to Congressional Leadership urging them to take action to modify the PPP loan program

- A coalition letter urging President Trump to support investments in infrastructure in the wake of COVID-19
- ASA spearheaded a letter signed by 15 organizations to the Attorney General recommending the Department of Justice temporarily suspend operations by the Federal Prison Industries.
- A CISC letter seeking OSHA guidance on the reportability of COVID-19 cases and recommending an approach to social distancing and face coverings in construction.
- An SLBC letter urging Congress to allocate additional funds to the PPP program and EIDL Program along with extending eligibility to 501c6 organizations
- A SFAA-NASBP letter to Congressional Leadership on the need for emergency action regarding the acceptance of electronic bonds.
- A CISC letter encouraging the issuance of exemptions for operations and maintenance of essential infrastructure during COVID-19.

The ongoing pandemic did not slow down ASA Government Relations Director Mike Oscar this year in visiting with chapters across the country. October 2020 was Chapter Engagement Month as Mike visited with seven Chapters in-person and virtually, to provide our members with a federal legislative, regulatory, and political update. Each of these Chapter visits provided a tremendous opportunity to brief members about ASA's efforts to advance subcontracting issues nation-wide, while also highlighting individual Chapters. Mike's visit to ASA of Greater Baton Rouge featured Rep. Graves (R-LA), who addressed chapter members on his legislative efforts in Congress dealing with COVID-19 and the construction industry. In 2020, Mike met with the following chapters:

- Carolinas (Charleston and Midland)
- Greater Baton Rouge
- Idaho
- Southwest Florida
- Alabama
- North Texas (Virtual)
- New Jersey (Virtual)
- Colorado (Virtual)
- Washington State (Virtual)

Our Attorneys' Council has been (virtually) active throughout 2020! Through the course of three (one in person, two virtual) annual meetings this year, the Council has produced content and resources to fill four issue-specific webinars, one educational return to work COVID seminar, and the updating of several member resources, including a 2020 Subcontract Document Suite and revised Negotiating Tips and Retainage Law manuals. Our Contract Documents Task Force has reviewed and approved document suites covering Lean Design-Build Addendums, Performance Bonds and Prefab Contract documents. Finally, our Subcontractor Legal Defense Fund has continued its vital work on our behalf of our community with another year of appellate advocacy, covering cases dealing with prompt payment, lien and bond claims and Miller Act law throughout the country. The Fund needs your support more than ever, so please consider contributing by visiting www.sldf.net.

Our social media presence increased with 1,418 people liking the ASA Facebook page, an increase from 1,312 likes from September 2019 and 1,943 people followed the page up from 1,773 followers in September 2019. On Twitter, 3,248 followers, an increase from 2,307 in September of 2019.

Finally, the ASA looks forward to 2021, where we will build on the momentum of this year's advocacy achievements and use our voice to continue to advance our legislative priorities.

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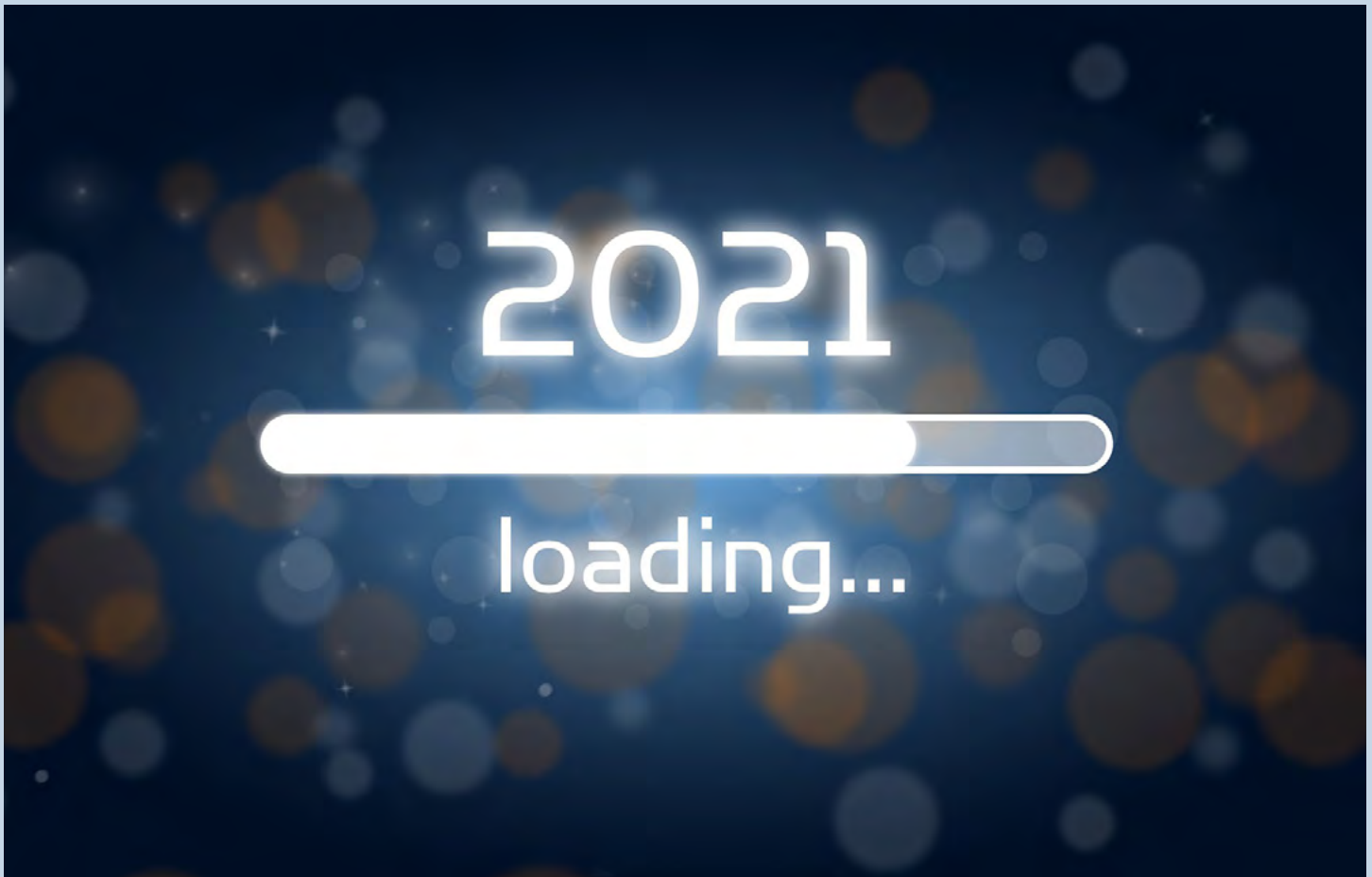


FEATURE

2021 – The Year of (Insert Pleasant Adjective Here)

Creating a sense of excitement and optimism for the New Year in the Built World

by Gregg Schoppman, FMI



Well, here we are. It is probably premature to look at 2021 and simply say “Well, it certainly can’t be as bad as 2020, right?!” There is no shortage of natural disasters, diseases, world shattering events, etc. that could easily pop up like Cousin Eddie showing up on Christmas Eve saying, “Did you call for me?” However, it has been interesting to see the construction world maintain it’s “cool” in the face of a tremendous headwind. When one compares the current economic climate to that of the previous recession in 2008, there is appears to be a balance of cautious optimism and ingenuity that is emboldening construction organizations

across North America. By no means are contractors taunting the karma police, screaming “Bring it on!” like a petulant teenager, but the best of class firms are referring to their playbook and strategic plans, defaulting to the scenarios these plans were created for in the first place.

Consider the previous recession – too many firms “hunkered down” in an attempt to weather a storm that seemingly had no end. Ironically, in stark contrast to those dark times, firms are playing a calculated offense on many fronts. For instance, construction organizations are aggressively pursuing new markets and opportunities in the

short term while understanding that their future success will be in developing their current talent pool. VUCA, a term coined by the United States Army War College, is as relevant today as it was a decade ago. Volatility, uncertainty, complex and ambiguity is in large supply right now. But consider this for one moment – even if it wasn’t COVID-19, an election, civil unrest, etc. there will always be something. The best leaders understand that they are not defined by those externalities but rather an organization that is grounded with a solid vision, agile operations, nimble market focus and deep cultural buy-in.

Business Development, Estimating and Operations

Construction organizations have had to learn creative business and client development. COVID-19 created a unique environment where traditional client relations cannot be conducted. Reaching the customers on a platform that both takes into consideration the client's needs while also being efficient enough on already taxed schedules requires real strategy. Everyone would love to reengage with traditional client dinners or sporting events to develop rapport, but in the absence of any sports, firms are having to engage with a flair that is both creative and innovative. For instance, firms are realizing that marketing messages must be direct and customized. Simply blasting social media with messages of "We're the best contractor" will not suffice. Rather, firms targeting potential clients with specific messaging that speaks directly to them:

- *Focus on Schedule*—Firms are communicating their ability to control the supply chain better than their competition as well as appealing to the connective tissue.
- *Focus on COVID-19 Controls*—Everyone is concerned about virus ramifications as well as the appearance of control. Contractors are reinforcing the message of "We have got this" in their best practices.
- *Focus on the Client*—In the end, clients want to work with firms that really listen to their needs. With so many distractions occurring simultaneously, it is imperative that contractors talk less and listen more.

Comparatively, there are many contractors that do not have a reliance on business development from a relationship standpoint. Bottom line, for many contractors it comes down to price. Best of class firms understand that there should not be a race to the bottom, chasing a rabbit that only provides risk laden work that is dirt cheap with little upside. Rather, firms are focusing on controlling the right variables:

- *Methods and Means*—Firms are developing real project strategies that are examining all of the variables that could affect a project.

- *Options and Outs*—With constrained supply chains and the ever-present risk of partner default, firms are crafting scenario plans that provide safety nets.
- *Productivity and Efficiency*—The focus is on crew blend and real productivity rates – more importantly firms are more frequently linking the estimating function back to operations to provide real time feedback on performance.

Market Shifts and Competitive Discovery

There continues to be a tectonic shift in all of the markets. Will the American Mall survive? What will happen in the medical world? How many more millions of square feet will distribution channels need? Will the residential market remain a darling in the New Year? No one has the Magic Eight Ball but the encouraging sign can be summed in one word: activity. There are opportunities in the recovery but it is requiring firms discover, investigate, and research new sectors. Put another way, firms are proactively sending "exploratory missions" in the new sectors as well as new geographies. Once again, compared to previous economic downturns where firms appeared reluctant to leave their traditional body of work, today's construction firms were extremely quick to pivot to potentials.

However, this migration to new markets, niches and geographies has an alternate consequence – increased competition. With all of the pageantry of a Discovery Channel "Wild Animals" documentary, locals are seeing new predators prowling the landscape, which creates an interesting dichotomy in style – playing aggressive offensive while also defending the home market. Contractors are not taking this for granted and they are investigating new players with the diligence of a football team scrutinizing next week's opponent:

- *Experience*—What does this new competitor bring to the market? Are they following a client and using that as their entry point?
- *Talent*—How will a competitor staff their new operation/project? Will

this competitor make a push for our people? How secure are we in our employee loyalty?

- *Vendor Loyalty*—What will our trade partners think of an outsider? How do we stack up in our vendors' minds?
- *Customer Loyalty*—How secure are we with our customers? Are we ripe for a "takeover"? Will our customers view this as an opportunity to keep us "honest"?

The keys to success will be a multi-faceted strategy that balances a strong offensive push to find the "next big thing" while also playing an aggressive defense to protect profitable market share.

The most encouraging aspect of these tenets for 2021 is that they are both realistic with a disciplined focus and happening real time. VUCA may be unsettling for some but the construction community is resilient, and the best-of-class firms are developing real proactive strategies. 2021 may provide a renaissance, giving way to a "Year of Hope" – just no jinxes.

About the Author



As a principal with FMI, Gregg specializes in the areas of productivity and project management. He also leads FMI's project management consulting practice. He has completed

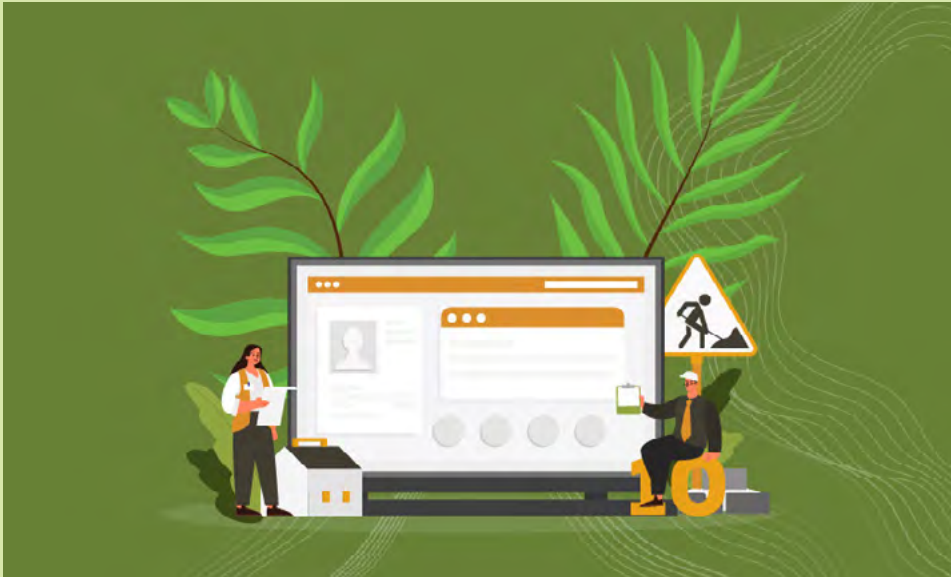
complex and sophisticated construction projects in the several different niches and geographic markets. He has also worked as a construction manager and managed direct labor. FMI is a unique and fast-growing firm of professionals passionate about creating a better future for engineering and construction, infrastructure and the built environment throughout North America and around the world. For more information on FMI, please visit www.fminet.com or contact Schoppman by email at gschoppman@fminet.com.



FEATURE

Ten Proven Ways to Increase Your Construction Leads

by Eve Bacarrisas, Thrive Agency



With the highly competitive online marketplace growing more saturated by the day, standing out online and convincing customers you are the right construction company to take on their projects can be challenging.

Construction marketing efforts should not only be consistent, but they should also -- more importantly -- be strategic and targeted if you want to acquire quality leads and improve your conversion rate. These days, paying for TV commercials or billboard ads won't guarantee an increase in customers. However, because many of your customers browse the web, it makes perfect sense to invest in online construction marketing.

While you have the option to develop your own in-house lead generation strategies, many companies choose to partner with professional agencies offering full-service digital marketing services, from search engine optimization (SEO) to managing construction company reviews. Backed by years of experience and equipped with the latest tools, these agencies are able to guarantee results.

But that doesn't mean you can't implement a couple of lead generation

techniques yourself. Let's have a look at some of the best **construction marketing** ideas that can generate quality construction leads -- those individuals and businesses whose projects can give your company the greatest returns.

Maximize Local SEO

Getting listed in local directories is an effective way of letting people and businesses in your region know more about your company. Because you're targeting leads in your immediate area, you won't be expecting irrelevant leads with whom you can't close a deal, such as customers from other countries. This is a real time-saver.

Here are ways to elevate your local SEO game:

- **Update directory listings.** This makes it easier for your customers to find your company and contact you. There are apps that can search the web and let you know every website, social media site or review page that your company appears in. Review and update all the contact information indicated on those posts or pages.

- **Include location pages in your site.** Have a dedicated page for each of your office locations. Publish your work hours and service offerings per location.
- **Offer premium local content.** Your customers might want to know about local building codes, standards and requirements. Post content that informs your potential clients and answers any location-specific inquiries to improve your local SEO ranking.

Amp Up Construction SEO Efforts

Unique and valuable content drives qualified traffic. Understanding your users' search intent and researching the most effective keywords are among the construction SEO techniques you'll want to use. Whether these are articles or videos, engaging and informative content inspires people to click the link and go to your site.

Aside from establishing brand awareness, quality content encourages backlinks from other sites and mentions from key players. These help improve your construction SEO search rankings.

Optimize Your Website

Your website speaks volumes about your company, so invest in good web design. Optimize your website and ensure all links are working. Focus your efforts on conversion using these tools:

- **Call-to-action (CTA) buttons**—Most companies place CTA buttons on every page to make it more convenient for site visitors to request a quote, schedule a call or purchase from the site.
- **Content offers**—Perhaps your potential customers are still researching and are not yet ready to make a decision. Offer white papers or any useful content that site visitors can access after they

fill out the contact form. Store their information and use this for your other marketing campaigns.

- **Chatbots**—Chatbots don't only convert visitors to leads by providing valuable information; they enable companies to collect contact information too. Chatbots can also help filter the qualified leads from the non-qualified ones and send their information to the sales team for a future follow-up.

Search Engine Marketing and Social Media Marketing

Paid advertising, when done intuitively, is a very effective construction lead generation strategy. Pay-per-click (PPC) search ads and social media advertising are able to generate construction leads faster than organic efforts.

Firms on a budget should consider search engine marketing for construction companies simply because of the success companies have had with this strategy. There should be a clear focus on conversion. It is helpful to bid on keywords that indicate high purchase intent and focus on the quality of leads, not just on the quantity.

Email Marketing

Email marketing for construction companies may involve sending newsletters, case studies, promotions, or follow-up emails. The sales cycle for construction is longer because of it being a major investment, meaning it is vital to stay in contact with your prospective clients. This makes email marketing one of the most effective construction marketing ideas.

You'll want to store your leads' contact information and send them valuable content in a way that does not make you seem intrusive. Send them the information they need and the relevant offer they might like so they won't unsubscribe from your mailing list.

Social Media Marketing

Social media marketing for construction companies offers potential customers an ocular of completed projects. With more people glued to their social media accounts, this is one of the

construction marketing ideas that should not be overlooked.

Facebook, Instagram and LinkedIn are great sites to display the splendid buildings your company has constructed.

Companies have the option to create a company profile, upload content and advertise via Facebook Business. This platform can provide companies access to highly advanced ad targeting features, making this a highly effective construction lead generation tool.

Online Reputation Management

Negative construction company reviews may affect brand perception and impact lead generation and conversion rates. Your online reputation tells your prospective customers what your company is about and what they can expect from the partnership should they decide to pursue it.

Most clients trust customer ratings. A company that only has a few ratings or negative feedback may not seem as reliable as companies with multiple high customer ratings. This is why many businesses are carefully managing all **construction company reviews** posted online.

You can use email marketing strategies to ask your customers to leave their reviews. Monitor all reviews posted online and reach out to those who posted poor ratings so you can resolve their issues. Potential clients not only look at the reviews but also how the company handles feedback. While negative reviews may be unavoidable, it is reassuring to see a company that is proactive enough to help a distressed client.

You can also invest in reputation management software that monitors all reviews and brand mentions online.

Launch a Referral Program

Word-of-mouth is a powerful construction marketing idea because clients are likely to trust their friends' and families' recommendations. Design a referral program that rewards satisfied clients who bring in more business.

Have a referral page on your website

where people can conveniently input their referrals whom your sales team can reach out to. You can also send these referrals an email inviting them to reach out to you for questions or to send you details about their projects. This helps you determine their position in the sales funnel.

Professional Digital Marketing Agency

Companies who understand the importance of digital marketing but don't know where to start can greatly benefit from hiring a professional agency to take care of all their construction marketing needs.

These seasoned professionals can customize data-driven solutions aimed at construction lead generation and conversion. They can also take care of running competitive market research to help the company improve existing strategies and processes based on research findings.

Full-service digital marketing agencies can monitor all launched campaigns and strategize so that your company achieves your desired results.

Conclusion

These construction lead generation strategies have helped many businesses in the digital world. It is important to determine your business goals first and design a strategy focused on achieving these targets. Selecting the appropriate strategy and implementing it properly can tremendously help in generating quality leads that convert to revenue-generating clients.

About the Author

*Eve is a Content Specialist for Thrive Internet Marketing Agency in Arlington, Texas. She has more than 10 years of experience in writing content for different industries. A lifelong learner, Eve enjoys reading, learning and exploring. She spends most of her free time working out, training Brazilian Jiu Jitsu and freediving. **Thrive Internet Marketing Agency** is a full-service digital marketing agency. Attract, Impress, and Convert more leads online and get results with Thrive.*



The Executive's Role in Business Development

by Dan Doyon, Maxim Consulting Group

Your business development strategy can be key to the success or failure of your company. Many executives lean on their business development team with the message of, "Sell more!" or "Sell larger projects!" These directives are just unclear messages with no strategy of where to put their sales efforts. When profit is down, an executive's initial instinct is to cut costs on IT, overhead, training, etc. and bid on "everything." However, the goal should be to create a strategy and associated plan that can drive the entire company to new levels of growth and profitability.

It is critical to develop a structured sales strategy and business development processes to significantly drive sales and margins higher. As the delivery methods in the construction industry evolve, so does our need to be highly skilled at selling our work. There are many pitfalls on the sales side of construction that can be avoided with a defined strategic approach. For business development to be focused, measurable, and well supported, there are steps that should be taken to ensure its success.

Define the Strategy

Opportunity

Most executives are familiar with the term Strategic Planning, but what does it mean in connection to business development? A company must first establish a strategy of which vertical markets, which customers, what job sizes, etc. that it wants to pursue. That is done through strategic planning and data analysis. What we see frequently from the management consulting lens is a directive for business development staff to simply "Go sell some more work." While we can understand the goal of those giving the instruction, it demonstrates that some basic steps in definition may have been overlooked. The first step of defining the type of work you are seeking. To accomplish this, a straightforward data analysis of past completed projects is necessary.

When conducting an analysis of current business operations, it is critical that the organization have a clear picture of what type of work they do well and why, as well as what work they are challenged by and the reasoning for that, also.

As an example, you can create two simple charts of Revenue and Profit Margin based on historical data.

This type of data analysis shows the Total Annual Revenue and Total Annual Margin percentages by the vertical market. In this example, there is some significant information to review when defining where to focus business development efforts. If you review the total revenue of retail work versus the total margin on that same work, retail comprises 20% of the company's revenue, but generates 33% of the company's margin. This would certainly warrant further investigation as to the reason why this is so successful, who the work is performed for, where the margin gain or fade is coming from, etc. Conversely, if you review the hospital sector, it comprises 23% of the revenue, but produces only 6% of the margin for the organization. Again, this should be analyzed further as to why this may not be a more profitable area for the company, and whether there is either improvement that can occur, or whether this is a market to continue to pursue.

If you are a subcontractor, the same analysis should be done by the contractor to understand who your company does business with and what the rewards and profits are from each of those relationships. Many times, this will be a surprising result, showing much time is being spent with contractors on numerous projects that yield relatively small total margins. There are easily dozens of other metrics that can and should be analyzed to narrow the focus of business development efforts. These revenue and margin analyses should be run on an annual basis for all closed projects. These could be further subdivided into division, by trade, job size, customer, contractor,

contract delivery method, geographic region, etc. Margin gain and fade analyses can also be run with these same types of differentiators to identify where overbidding or underbidding may be occurring, or if most of the profit comes from change orders. Based on this analysis, the basis of a strategic plan for business development can be started. This strategic plan will provide the guard rails and for the business development efforts. This will define:

- Which markets do you wish to pursue
- What job size is optimal for the organization
- What geographic region do you wish to pursue work
- When do you need that work to begin
- Which specific customers are likely to have that work, in those markets, and in those time frames

Additionally, given the recent pandemic and political impacts, further analysis of the economic environment is also needed to predict market swings. As we know, the market cycles locally between residential, commercial, industrial, and public work. Many studies are available and are published by construction and financial organizations. These should be used as a strong resource during the strategic planning process.

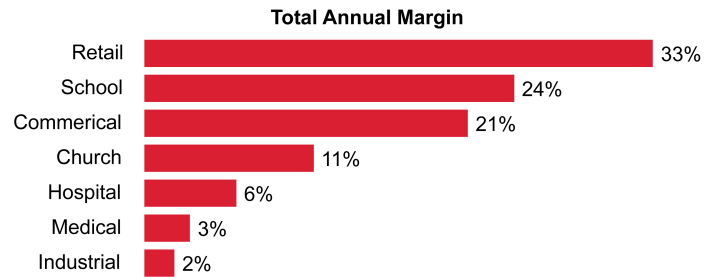
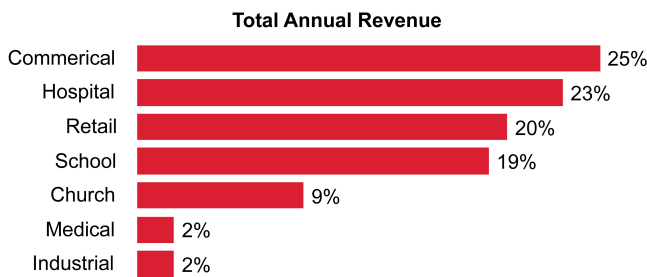
Assessment of Organizational Structure

Once the market, customer and revenue targets have been established, business development efforts will be futile without an examination of the existing company structure. Companies should examine the existing staffing, tools, and technology being utilized to perform our work in order to determine how growth would affect it.

As an example, if expanding an industrial special projects group was a defined strategic opportunity, an investigation as to the current staffing, structure, and workload of the group including stratification of executives, project managers, and project administrators is recommended. Also, there would most likely need to migrate to a specialist versus generalist model to create the most value for the customers. Next,



Total Annual Revenue and Margin by Vertical Sector



process mapping could take place to ensure that the entire workflow from order to cash was defined, including the technology, tools, and equipment necessary to do the work. This mapping of each deliverable necessary for this department to function optimally could identify the gaps and most immediate issues requiring resolution to support the growth of this group. This will place a solid foundation upon which to develop the area.

Business Development

There are many in the industry who believe that business development is a vague, undefined process where actual progress toward a goal is difficult to measure. This is simply not the case. The premise behind great business development begins with the strategic target development, then progresses through a sales process where those targets are evaluated every step of the way. The example discussed previously about telling the business development team to, "Go sell some more work," is where the confusion begins. Business development efforts should not target hundreds of companies at one time. Business development should strategically identify a small number of opportunities and develop a plan to land a large percentage of those targets, as opposed to a large amount of effort spread over many targets, resulting in a very low win rate.

Once a list of target companies has been established to pursue, a screening process must take place to ensure that these companies fall into alignment with the types of firms that align to the company strategy. These qualifications should include financial, operational, and cultural metrics to ensure that their acceptable characteristics outweigh their unacceptable attributes. This will narrow down the target list to those who would be the best fit for the company.

Next, identify who the buyers are within the target organization. Large companies will have multiple people involved in the purchasing process. Identifying those

individuals and assigning an appropriate point of contact for each of them will be critical to the success of opening discussions. Utilize your vendor and contractor contacts for this information can significantly streamline the process.

Additionally, find out what your potential customers want from your company. Understanding your buyer's needs by utilizing customer surveys, relationships, and personal contact ensures that you are well prepared to discuss how your company can fulfill those needs. During this process, it will become necessary to also establish what the target company has concerns about. This would be the reason that they might hesitate in granting you the work in favor of one of your competitors. Understanding this will be an additional point of preparation in ensuring that you can respond and blunt this potential point of reasoning. Companies should take the perspective of the customer to stand out among the competition.

Ensure that the company staff, at all levels of the business development process, are well versed in the presentation steps. Remember, it will not only be your sales staff in front of the client, but any of the subject matter experts needed that were identified during the needs assessment. If one of their requirements is strong project management, then ensure that the strongest PM would be involved in the sale, bringing comfort to that specific concern and discussing how they propose to manage the project to its success.

Lastly, use dashboards to evaluate on a regular basis the status of the target client. These measurements include using defined milestones to ensure there is positive, predictable progress being made. This will also shed light on those targets that are underperforming, so that those efforts can be redirected elsewhere. This will easily show transparency of performance for each of the potential clients and the staff assigned to the different levels of contact within that client.

Developing a strategy around the business development process can reduce

the frustration and false starts that occur so frequently in sales and produce predictable, more profitable results for the company. It also allows a focused utilization of limited business development resources and channels them in the direction that creates the greatest benefit for the company. To accomplish this, companies must determine which markets they wish to grow in and why. Then, they will make structural and organizational improvements inside of our organizations to ensure successful delivery of those new projects. From there, companies can define which customers work in those markets and assess which firms are the right fit. Once targets are identified, team members are assigned to determine the needs and concerns of the client to provide the critical information to formulate the presentation. Finally, track the progress of each of the target clients to ensure that the acceptable amount of forward momentum is occurring. By following a strategic approach to business development, it can significantly increase the company's chances of landing the right customer with the right type of project, at the right time and resources to ensure the project's profitable success and create long-term client relationships.

About the Author

*Dan Doyon is a Director at **Maxim Consulting Group** and is responsible for the assessment, evaluation, and implementation of client processes. Dan works with construction-related firms to solve complex business challenges to drive revenue and profitability. Dan has industry experience spanning over 30 years and with his guidance and recommendations, companies have driven over \$160B in top line sales growth and hundreds of millions in operational savings through improved processes. He is an acknowledged industry spokesperson, specializing in transformation of processes, research contributions, published articles and industry speaking engagements. Dan received his MBA from Georgetown University.*



Top Marketing Strategies for Specialty Contractors

by Michelle Turner, Procore Technologies



Most small specialty contractors have 'bootstrapped' themselves up in the industry, often learning their trade on the job before branching out on their own. That means they often tackle their own marketing programs.

Consider these seven ways to get your name out and business coming in.

Do The Website Thing (but make it professional)

Nine in 10 people research products and services online. Three-quarters of B2B buyers rely on internet searches

in the early stages of shopping for business products and services. As the pandemic drags on and people avoid face-to-face interactions, the internet is likely to figure even more prominently in the sales cycle.

"Regardless of how your website fits into your marketing, consider using complementary technologies during the pandemic."

For most specialty contractors, a website serves as their brochure. It features some of their completed projects and provides information

about the company. Maintain a professional site to get the most from your effort. Use top quality photos and text, post blog posts regularly, follow page speed guidelines, and use designs that work on all screens.

Don't forget to make it friendly for local search by **setting up a Google My Business** profile. This is especially important for contractors serving consumer markets. For instance, specialty trade contractors work in local markets, and 86% of consumers find local businesses on the internet.

If you work for general contractors or owners and want your website to work harder, plan on getting help or fast-tracking an in-house webmaster. Trade contractor transactions are much larger than those for consumer purchases, so your website needs to look the part.

The average online B2B purchase is between \$9,000 and \$31,000, while the average online consumer purchase—between \$47 and \$57. B2B transactions also require multiple decision-makers. If you want your website to land you new business, you need an informed investment in content marketing and active efforts in analytics.

Regardless of how your website fits into your marketing, consider using complementary technologies during the pandemic. Quick-start video meetings mean you can take a phone call and switch to a video call almost immediately. Build a library of short videos showing you and your crews in action so people can see your skills. Do an explainer blog post or video covering the essential steps in each of the services you offer.

Networking is Still Alive and Well in Construction

You know people who know other people. Don't overlook those valuable connections. Whether you assist your brother-in-law on a home improvement project or give your neighbor some friendly advice about handling a DIY problem, you are actually networking. And sometimes, a little time spent helping those you know can bring in new business from people they know.

Next, think about local designers and architects. If your local area has an American Institute of Architects chapter, check if they welcome guest speakers. You can then talk about your specialty from a design perspective. Many architects and designers never worked on the 'doing' side, so your view on bringing design to life can shed some light on the construction process. With these meetings now

going virtual, you can do this without leaving the house or office.

Set up your own virtual, after-work event for relaxation and socializing. These times require fresh approaches to the everyday things we've often taken for granted.

Sign up With the Local Builders Exchange

Many communities have a Virtual Builders Exchange featuring construction news and construction opportunities. The firm's staff locates, verifies and tracks local construction. The company claims that 90% of the membership renews every year.

Introduce Yourself to Local Government

While local governments expect to be challenged for funding in the coming months because of tax revenue losses from the pandemic, many aspects of municipal and county management require ongoing maintenance and repairs. Specialty trade contractors have just the skills they need. While stopping by the offices might be discouraged, you could do a mailing or phone call inviting the right person to a virtual meeting.

Local governments are also looking for solutions to problems caused by the pandemic. Cooperative purchase agreements let local governments piggyback their contracts, and you'll find these purchasing vehicles active in many states. Getting on board could give you a springboard to serving a wider geographical area and potentially a share of government business.

Share Your Expertise Publicly

Specialty contractors have the knowledge that the public craves, and serving up some of your expertise on local radio or podcasts can get your name in front of a large audience. You can escape dealing with the technical aspects by getting on shows that have an interview format.

A great avenue for sharing publicly is through social media. According to the Construction Marketing Association, social media is your greatest opportunity to differentiate yourself from your competition and build relationships with your clients, vendors, and employees. **Check out this on-demand webinar** to learn about how to use social media to grow your construction business.

Are you a Procore user? **Join the Procore Community** to network with other construction industry professionals and build stronger connections through increased knowledge sharing.

Try Online Ads

If you've spent the time and money to get your website set up right, having it keyword optimized and tapping into local search, it might be time to try some advertising.

A well set up and well managed Google Ads campaign averages a return of \$2 for every \$1 spent. Facebook ads are also a top choice. Facebook clicks are cheaper and can yield impressive results if done correctly. How does a \$4 return for every \$1 spent sound?

About the Author

*Michelle Turner is the product marketing manager for Specialty Contractors at Procore. Over the past two years, Michelle has worked with the Preconstruction product team at Procore but recently pivoted her focus to launch Procore solutions aimed to drive success for Specialty Contractors. Procore is a leading provider of construction management software with a platform that connects every project stakeholder to solutions built specifically for the construction industry. To learn more about Procore and how you can help create a safer, more ethical jobsite, visit **procore.com/asa**. This article was originally published on **Jobsite**.*



FEATURE

Eight Effective Tips to Get Referrals from Your Existing Client Base

by Patrick Hogan, Handle.com

Word of mouth is one of the most powerful ways to broaden your client base. If more people know about how great your company is and how top-notch your services are, you are more likely to gain new clients and grow your business.

Given that, it is very important to leverage your existing client base and use a referral system as a regular marketing tool. Referrals are considered “earned advertising,” and customers have a higher chance of committing to your business if they have heard good words about your company from sources that they trust.

Not only can referral marketing help you reach and get new clients, but it can also be instrumental in letting you keep your loyal customers. Here are eight steps that you can start doing to maximize your referral marketing strategies:

Always go above and beyond

Exceeding expectations is key if you want your existing clients to put in a good word for you. Sure, you provide excellent service. However, if you want to impress your clients, you need to go beyond the minimum.

Doing way more than what you are expected to do will certainly elicit positive feedback from clients. You will not only keep your loyal clients happy, but you can also expect that they will be more than willing to give you positive referrals.

Study the market and your target clients

Having a good referral marketing strategy means knowing what type of new clients you are trying to gain. You should study everything you can know about your potential customers.

When doing your research, ask the following: how big are your potential clients business? What industries do they work in? What problems do they constantly encounter?

Identify gaps and opportunities for you to step in. It is best to put yourself out there when you know exactly how you can be of service to your potential clients.

Be ready to answer client questions

If a potential client calls you to ask questions about your services, you better be ready to answer their queries. Nothing is more embarrassing than being caught by surprise and sounding unprepared when speaking with a potential client.

It will help a lot if you have a referral template that you can pull up so you have a ready pitch for a new customer. The template should not just include basic information about the services that you offer, but should also have details on the rewards and perks that they can enjoy.

Offer incentives to existing and new clients

A reward system is a good way to keep your existing clients and attract new customers. When you offer incentives, you give your existing clients a reason to actually give you a referral.

At the same time, you also increase the chance of convincing potential clients to give your company a shot. Your rewards can be as simple as offering a bottle of wine or a free lunch, or you can also offer discounts and other reduced rate packages, especially for new customers.

Share your knowledge and expertise

One way to spread word about your business is to share content that other experts and professionals in the construction industry may be interested in. Conducting webinars on LinkedIn or holding live Q&A sessions is a good way to promote and broaden your reach, while sharing valuable information to both your existing and potential clients.

Be proactive in your approach

When asking your existing client base to give you a referral, it is always best to be proactive. Provide them with a template for writing their feedback instead of letting them write a referral from scratch. You may also email both your existing and potential client so you can connect them in one email thread. This way, you are proactive in paving the way for them to talk and discuss your services.

Be willing to give referrals too

Since you are expecting your clients to give you referrals, you should also be willing to do the same for them. Take time to write good referrals for your existing clients and make sure to also connect with their potential clients. Giving referrals to your clients is a good way to encourage them to also give referrals so they can help you grow your business further.

Accept “no” as an answer

Some clients simply do not give referrals as a matter of policy. If a client says “no” when you ask them if they can give you a referral, accept their answer without prodding further. You can instead ask them to fill out a survey or to leave a review on your website. Satisfied customers are often willing to put in a good word even in small ways.

About the Author



Patrick Hogan is the CEO of **Handle.com**, where they build software that helps contractors, subcontractors, and material suppliers with filing documents

like **preliminary notices** to avoid late payments. Handle.com also provides funding for construction businesses in the form of invoice factoring, material supply trade credit, and mechanics lien purchasing.



DATA CONTROL

Your Data. Your Way.

Data Control is a tool built for subcontractors that gives them the ability to easily and securely respond to inbound data requests. In an industry where there is an ever-increasing demand for data and risk management, you have full control over who and what is accessed through our secure method of data transfer.



Surety



Banks



Insurers



Subcontractors



Owners



General Contractor

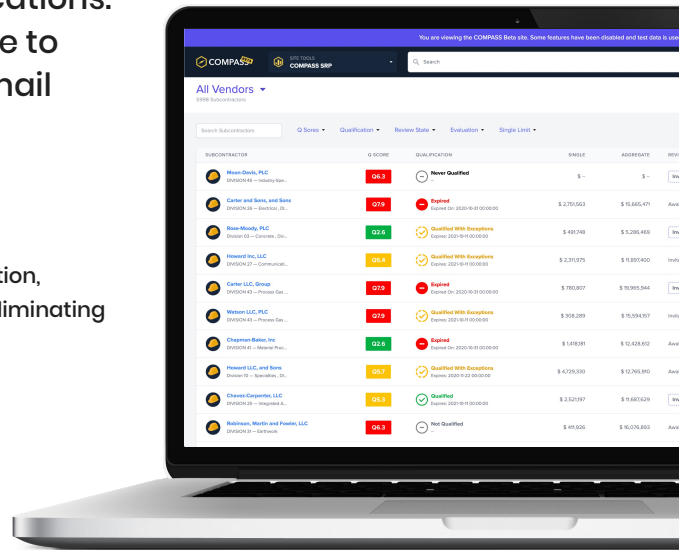
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Trademarks – What Subcontractors Need to Know to Protect their Brand

by Benjamin S. Lowenthal; Hendrick, Phillips, Salzman & Siegel

A subcontractor's reputation is often among its most valuable assets. Embodying a subcontractor's reputation is its brand. A subcontractor's brand allows a subcontractor to distinguish itself from competitors, signify the consistent quality of its work, and create important goodwill with contractors, owners, and customers. Given the importance of a subcontractor's brand, subcontractors need to work hard to protect it. However, brand protection can take a backseat to nearly every other facet of a subcontractor's business, from submitting bids to actually carrying out projects. It's easy to forget that a subcontractor's brand, including registering and protecting trademarks, is as important as the integrity of a subcontractor's work. Without registering and protecting trademarks, competitors can benefit from your name and reputation, whether inadvertently or on purpose. The first step in protecting a brand is selecting, registering, and maintaining strong and protectable trademarks.

Trademarks

A trademark is a form of intellectual property that is essentially a word, phrase, logo, name, graphic symbol, or other unique mark used to distinguish goods or services of one party from those of another. Specifically, 15 U.S.C. § 1127 defines a trademark as "any word, name, symbol, or device, or any combination thereof . . . used by a person . . . to identify and distinguish his or her goods, including unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown." Holding a trademark



gives subcontractors the exclusive right to the trademark and means subcontractors can take legal action against businesses infringing on the subcontractor's exclusive use of the trademark.

Trademark Rights

Trademark rights are acquired and maintained through the commercial use of a trademark in connection with the relevant services (think logo on the side of a truck heading to a project). Trademark rights are protected at the federal level by the Lanham Act (for trademarks used in or affecting interstate commerce) and at the state

level by state trademark statutes (as well as common law unfair competition principles). To note, a subcontractor does not need to register a trademark prior to use in commerce. Simply by using a trademark in connection with services and by displaying the trademark in the advertising of those services, a subcontractor automatically acquires some common law trademark rights. However, to best protect a brand, it is best practice to register any trademarks.

Registering Trademarks

Registering a trademark on the federal level provides a number of

significant advantages, including a legal presumption of ownership of the trademark and exclusive right to use the trademark nationwide in connection with the services listed in the registration, public notice of ownership of the trademark, and the right to use the federal registration symbol "®" with the trademark.

At the federal level, the U.S. Patent and Trademark Office ("USPTO"), an agency of the Federal Department of Commerce, issues, registers, and administers trademarks. To register trademarks at the federal level, subcontractors must file a trademark application using the USPTO's Trademark Electronic Application System ("TEAS"), which is available here: <https://www.uspto.gov/trademarks-application-process/filing-online?MURL=teas>.

However, before filing it is important to conduct a trademark search through the USPTO's Trademark Electronic Search System, which is available here: <http://tmsearch.uspto.gov/bin/gate.exe?f=tess&state=4806:pyoi9x.1.1>. Conducting a search of a trademark allows a subcontractor to identify potential problems, such as confusion with a prior registered trademark. Although not required, it is advisable to consult with an attorney to identify any potential issues and guide you through the trademark application and registration process.

For a complete application, the filer will need the trademark owner's name and entity type, address, email, depiction of the trademark (the drawing), and the business category in which the trademark will be used. Specifically for subcontractors, the business category will likely be Class 37 for "Construction and Repair Services." As the USPTO states, "Class 37 includes mainly services rendered by contractors or subcontractors in the construction or making of permanent buildings."

Protecting Trademarks

Registering trademarks is just the start. A subcontractor should also protect its brand through enforcing its trademark rights to prevent others from trading upon the subcontractor's goodwill and reputation. Given the fact that a trademark can be one of a subcontractor's most valuable assets, subcontractors should be prepared to take appropriate enforcement actions against third-party infringers.

The first step is to investigate any known infringement. A subcontractor should learn about the infringer, including the extent, duration, and geographic scope of the infringement. This can be done through online investigation. The investigation allows a subcontractor to assess the situation. Is the infringer a competitor? Is the infringement only online or is it throughout the infringer's business activities? Is it just a small player or major competing subcontractor?

In the most serious infringements, going straight to litigation and commencing a suit under the federal Lanham Act may be the most appropriate course of action to protect a subcontractor's trademark rights. However, litigation is expensive, time consuming, and should not be undertaken lightly.

In most situations, a well drafted infringement cease and desist demand letter can be an effective tool and potentially stop the infringing use, preserve the subcontractor's rights, avoid costly litigation, and set the stage for litigation if litigation is unavoidable. However, there are both benefits and risks associated with a demand letter. The potential benefits include resolving the infringement without litigation, learning the alleged basis of the infringement, providing support for enhanced damages if the infringer ignores the demand letter, and creating a record of trademark protection activities to strengthen the trademark. Alternatively, the risks

include the alleged infringer attempting to invalidate the trademark or claim superior rights to the trademark through a declaratory judgment action. Before sending any demand letter, however, it is important that a subcontractor assess, with the advice of an attorney, the infringing activity and the strength of the subcontractor's trademark infringement claim.

As stated above, a subcontractor's reputation in the construction industry is one of its most valuable assets. It takes time and consistent quality work to distinguish itself from competitors, and create important goodwill with contractors, owners, and customers in the industry. As such, it is vital that a subcontractor protect its reputation and brand. The first step is to register any trademarks, including logos, a subcontractor may have. Once registered, a subcontractor should protect its trademark rights through cease and desist demand letters, or litigation in the most serious cases, in the event of trademark infringement.

About the Author



Benjamin S. Lowenthal is an associate with Atlanta-based law firm Hendrick, Phillips, Salzman & Siegel and is a licensed lawyer in the states of Georgia and New York. Ben's

practice includes commercial litigation, including trademark related matters, within the construction industry. Ben received his undergraduate B.S. from the University of Georgia and his J.D. and LL.M. from the Elisabeth Haub School of Law at Pace University. For more information, or to assist with any trademark infringement issues, contact the author at (404) 522-1410, bsl@hpsslaw.com or visit www.hpsslaw.com.

Building Your Digital Identity

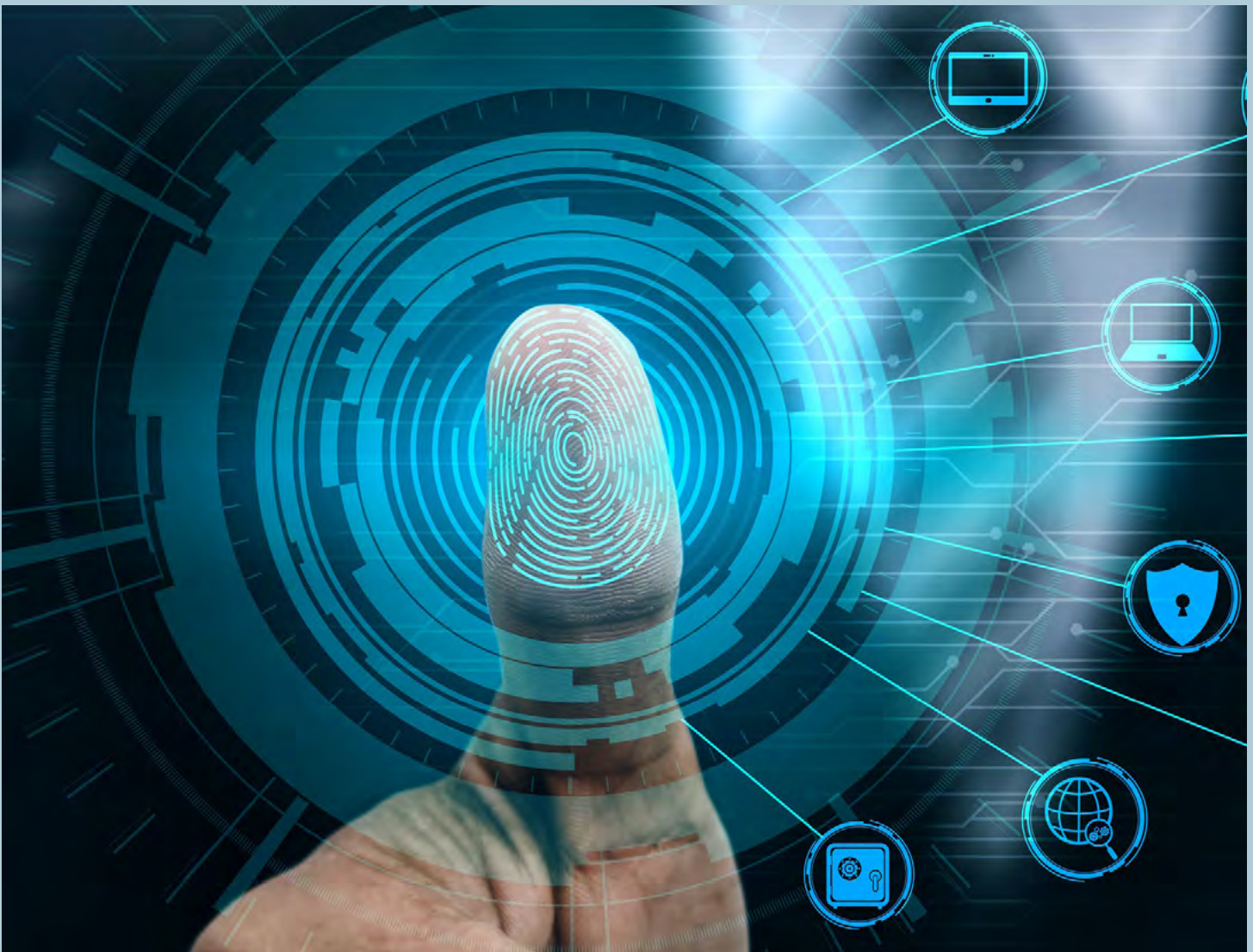
by Steve Antill, *Foundation Software and Payroll4Construction.com*

For many businesses, marketing is too often a backburner initiative — something to prioritize later on down the road or something that's expected to just naturally occur over time without a conscious effort. It's understandable considering how marketing was often conducted in the past, especially in the construction industry. Beyond taking out an ad or sending out a flyer, if a business did good work or provided a worthwhile service, clients would tell their peers

and neighbors, growing the new client pool organically. While this still occurs, the rise of digital marketing has changed the ways in which business gets its name out there. Without making a voluntary effort to create a digital presence, construction businesses will undoubtedly miss a significant portion of their prospective client base.

No matter the size of your business, digital marketing should be something

that's prioritized, and while this may sound complicated or costly, the truth is that boosting your online presence can be done with little to no financial investment — and best of all, only a minimal investment of time. Even if you're not sure where to start, you can build an online presence by providing potential customers with the answers to four basic questions about your identity.



1. Where are you?

One of the most important steps to take is to make sure potential customers know where you're located. Location is a key factor for businesses — especially for service jobs. Generally, if a customer is taking to the Internet to search for a plumber or electrician, they're trying to find one close by in order to solve a specific problem they're having. A recent survey by Uberall even goes so far as to say that 82% of users who claimed that they use their smartphone for shopping also included "near me" in their search terms. If they don't know that your business is nearby, these are potential jobs that you could be missing out on.

The first step to make sure customers can find you, and that you show up in crucial "near me" searches, is to have your business's address appear on your website. Creating an "About Us" section or a "Contact Us" section of your website that states your business's physical address will help you to establish your location. With time, search engines will eventually "crawl" your site, allowing your business, and subsequently your location, visible when potential customers perform a search.

A more specific step you can take to increase the odds of your business being found is to verify your business address through Google's "Google My Business" feature. The process is as simple as claiming your business through Google My Business, following the necessary steps for verification, and ensuring that your address and business details are correct.

If your business has social media accounts — and it should — you can include your business address in your profile and also location tags on your posts. The basic idea is that getting as much information out into the digital realm to tell customers where you're located ultimately makes it easier for them to find you.

2. Who are you?

Generally, potential customers like to know a little bit about the companies they're hiring for a job, so don't be shy about telling them your story. Detail the type of work you do and the areas you service. Even if you offer general services, detail those so customers know what it is you do. Beyond your services, explain the history of your company, your company values and what makes you unique.

Pictures also help to build trust. Let your audience see who the team members are that they'll talk to when they call. Show them who can they expect to see on the job. All of this helps to build potential clients' comfort level with your business and establish a sense of trust with your business.

It's also useful to showcase any awards or accolades your business has earned, as well as the certifications and professional accomplishments of your employees. Anything that helps to build your authority in your field and establish trust with your audience that you're the right pick for the job should be highlighted.

3. Why you?

Beyond who and where you are, it's just as important to establish what sets you apart from the competition. Specific guarantees you can make or specials you offer can help potential customers to reach out. Photos of your best jobs can help set expectations and create trust in your work.

Customer testimonials and reviews are another great way to build your presence and establish your authority. According to a recent study from SearchEngineLand, 88% of customers trust an online review as much as a personal recommendation, so encourage satisfied customers to leave reviews on Google, social media or Yelp! Not only will having your business appear on these sites increase the spread of your digital presence but it also helps increase

trust for potential customers who might be on the fence.

4. How should customers contact you?

A surprisingly common item to overlook in your digital profile is the best way to get into contact with you. Some contractors prefer to have customers fill out a form with their information or provide an email address for inquiries. Others opt exclusively for phone calls. Whatever it is that you decide is best for your business, make sure to clearly state your contact information on your site as well as when potential customers can expect a response. If potential customers have already reached the stage where they're willing to reach out, make sure it's easy for them to do so or else they'll keep looking elsewhere.

Conclusion

There is no one-size-fits-all approach to marketing, but it's worthwhile to take incremental steps to build your digital presence. Customers are out there, and they're looking for your business, so make sure they're able to find it.

About the Author

Steve Antill is the CRO at Foundation Software and Payroll4Construction.com, where he leads the charge for continual revenue growth, including new entry points into market to serve contractors. He invests much of his time building partnerships and relationships across the construction industry with contractors, CPA firms, associations and technology vendors. Over 20 years, he's led more than 1,000 software selections and implementations for contractors of numerous sizes and trades.



FEATURE

Social Media in 2021 – Yes? No? Okay...Now What?

by Mary Klett, ASA Communications Team



A vast majority of companies (91 percent, and growing) have a social media presence. But how active are you? By having a presence on social media – consciously feeding it and growing your audience – you remain top of mind. And isn't that what you want? How about companies that might want to partner with you – an expert? If you're putting yourself out there, it helps to move you higher in search rankings (SEO), and shows that you're interested in letting people know what you're up to. And it can be a low cost way of marketing.

To do it right, you need to keep at it. Diligently. And that means knowing your customers – and potential customers - and knowing which social media platforms they use. In an annual survey of marketers about their social media activities, the more experience with social media, the more sales improved. And as you've probably heard, video reigns supreme – both on Facebook and YouTube, with more than half of the 5,200 respondents in a recent survey naming those two as their "go to" video platform.

So how's the best way to engage with your followers? Keep them updated on news, respond to questions, make it a community. As with any relationship, it takes nurturing before you see major benefits.

Facebook

f We'll start with the big daddy. While still the most important platform for businesses to market themselves (59% say it's their #1), it's dropped in ranking the past two years as a company's most important platform. Companies are diversifying – heading over to Instagram, as it broadens its capabilities with direct sales and "stories." And want to keep a post current? Have clients, friends, colleagues comment and "react" to the post.

TO DO: In September 2020 Facebook launched **Facebook Business Suite**, an interface designed for small businesses to help manage Facebook and Instagram pages and profiles in one place. Right now it's just available for small businesses, but

should expand to everyone later this year. Take a look. Can it help you?

LinkedIn

in The other business social media behemoth. For companies looking to market to other companies, this is the one to focus on. Make sure you have a company page to establish your expertise, with logo and cover photo to capture the look and feel of your business. Look at the first 150 characters in your Company Description (that's what will show up in your Google preview, which might come up in SEO BEFORE your own website). Make sure the keywords, specialty areas are first.

Again – post regularly, share interesting articles and invite discussion. Attract a following.

TO DO: Look at the first 150 characters in your Company Description (that's what will show up in your Google preview, which might come up in SEO BEFORE your own website). Make sure the keywords, specialty areas are first.

YouTube

yt As the second largest search engine, it pays to have a presence. 69 percent of marketers plan to increase their YouTube video usage in the coming year and is currently used by 55% of marketers. The videos with the most views are between two and three minutes. Unlike other social media platforms, whatever you post will last and be viewed until you take it down. Make sure you review old videos and take out time stamps and dates, if they're not relevant. YouTube will "reward you" (i.e., push and promote your videos), if viewers stay and watch them. Link to similar topics (whether

your videos or not), make sure you tell people within the first few seconds what the video is about – so they'll stick around, if it's content they're interested in.

TO DO: Review videos. Are they interesting? Would YOU watch them if you were interested in the topic? Can they be trimmed of any "fluff?"

Instagram



This is a tough one. 76 percent of marketers use Instagram, but also the most mis-understood. Usage of Instagram was up for B2B (Business to Business) marketing in 2020, from 66 to 71 percent. In addition, **40 percent of the workforce in most average companies is made up of millennials!** Find topics of interest to everyone. What's the best way to install a window? How are companies using your technology? Your products? Videos, stories – and photos/graphics are key. Inspire. And note – while you can post to both Facebook and Instagram simultaneously, it pays to check and see how the post looks on both platforms. Just remember to use hashtags. You can use up to 30 hashtags for Instagram, although 12-15 work best.

TO DO: Check out two other companies using Instagram. What do you like? What would you do better?

Twitter



Sixty percent of companies use Twitter for their B2B marketing. Other than for short news bits or to communicate directly with customers, I still think Facebook beats Twitter for sending out important information that needs clarification and exposition. **Twitter internal data** shows B2B audiences are much more likely to engage on Twitter after repeat exposure to messaging. Someone who has seen a business's message four times is 335% more likely to click on a link in a Tweet by that business than

someone who has only been exposed to the message once.

TO DO: Got news? Retweet that information a few times, as tweets get buried rapidly. And again – think hashtags.

Clubhouse—the new kid on the block—moving in soon?



Clubhouse is a live audio platform, now in Beta (and invitation-only), although it already has 600,000 users as of December 2020. It's a live audio app that allows people to listen to or participate in live discussions. Nothing is recorded. No private messaging, no written comments. You can raise your hand to ask a question. It's basically a great big discussion group. When someone you follow starts speaking, you'll get a notification on your smartphone. You can listen in, join in the conversation...or ignore. By simply asking questions and getting invited up "on stage" to speak, people will check your profile and some will follow you. Big perk – you can be in your pajamas, sweats or tux. No one cares. And of course, there's already controversy. Twitter launched **Spaces** in November– where you're able to have live conversations with followers and small groups. There is no corporate branding (yet.) It's just people talking to people.

Someone compared this to the hallway conversations that take place at conferences.

TO DO: Download the app and set up your account. Reserve your username before someone else does. And wait – either for an invitation (don't hold your breath) or for the app to go mainstream.

Sure there are other incredibly popular social media apps – TikTok, SnapChat, Pinterest, to name a few. But I've focused on the ones that have the most impact on businesses, not consumers.

General guidelines for all social media

Know your customers. Who are you trying to reach? Are you following and sharing/commenting on/retweeting their posts? What are your competitors doing? What kind of advertising are they doing? How active are they?

Post regularly. There are plenty of schedulers out there, including **free templates**. And don't forget to review those schedules.

Embrace video. There are plenty of quick software tools out there. If nothing else, take out your smartphone when you're on site, take a 1-minute panorama, trim and edit on your phone, and post to Facebook with a little caption. Next step, engage a myriad of simple editing software tools, and in minutes you can add music, titles, and tidbits.

Tap into subject matter experts at your company. What knowledge can they share to your company followers?

Want to assess where you're at? Or even how to start? Check out these **great audit tools** – how tos and whys, to get a good handle on where you're at – or even how to get started.

For businesses looking into connecting locally, check out **Alignable**, a network for small businesses to support each other in the local community, and **NextDoor**, if you're looking to reach out to local consumers.

Note: My statistics come from the **2020 Social Media Marketing Industry Report**, an annual survey conducted annually by the Social Media Examiner. Published in December 2020, more than 5,200 respondents answered questions on plans and insights for their businesses. It's free – for the price of your email address.

About the Author

Mary Klett is part of the ASA communications team, and has been following the social media evolution since 2005.

SUDS FOR SUBS!

SLDF Private Virtual Beer Tasting Fundraiser

Thursday, February 18, 2021 | 6:30pm EST
\$250 per person contribution

Join ASA supporters throughout the nation on the same evening to enjoy an expert-led tasting experience in a virtual format.

All proceeds will benefit the Subcontractor Legal Defense Fund.

A curated selection of four craft beers will be shipped directly to you in advance of the evening, so reservations are **required by February 7th!**



Join us on Thursday, February 18th for a special virtual fundraising event in support of ASA's Subcontractor Legal Defense Fund. Participants will be led through four craft beers to discuss each beer style, tasting notes, suggested food pairings and insider information on the breweries. Prior to the event, Craft'd Company will curate and deliver its signature tasting kit so attendees can participate in the tasting experience from home. Have a little fun AND support our important legal work on behalf of the Subcontractor community! Questions can be directed to soscar@asa-hq.com. Thank you for your support!

Count Me In!

I can't join you on 2/18, but want to support the SLDF!





How the Subcontractor Legal Defense Fund Works

Each year, courts across the country hand down hundreds of decisions on federal and state laws, as well as court-made or “case” law, that apply to subcontractors’ businesses. Many of the decisions impacting subcontractors interpret the contract provisions of subcontract agreements—provisions like pay-if-paid, hold-harmless, duty-to-defend, and no-damages-for-delay. Some of these decisions are precedent-setting and carry significance for subcontractors across state lines.

ASA’s Subcontractors Legal Defense Fund supports ASA’s critical legal activities in precedent-setting cases to protect the interests of all subcontractors. ASA taps the SLDF to fund *amicus curiae*, or “friend-of-the-court,” briefs in appellate-level cases that would have a significant impact on subcontractor rights.

From its inception, the SLDF has been involved in many landmark decisions, starting with its first case in 1997, Wm. R. Clarke Corporation v. Safeco Ins., which prohibited pay-if-paid clauses in California. For a summary of recent cases ASA has been involved in, read ASA’s [SLDF Activity Report](#).

Know of a decision that could set a precedent impacting subcontractors, and want ASA to get involved? Send your completed [SLDF application](#) to soscar@asa-hq.com.

Think you might have a case?

The Subcontractor Legal Defense Fund Task Force and ASA National Leadership carefully vet

each application for assistance to ensure the maximum legal impact for the subcontracting industry. Approved cases are offered to ASA member law firms to serve as amicus counsel. Approved counsel accepts a capped and reduced retainer below standard rates as a service to the ASA community and in recognition of the far-reaching impact of these Appellate decisions.

Considerations:

1. Is the issue of specific interest to construction subcontractors and suppliers?
2. Are the issues focused and clearly presented?
3. Is there is a consensus among ASA members on the issue(s)?
4. Could ASA have a meaningful impact in the judicial proceedings?
5. Is the proceeding likely to result in setting favorable judicial precedent (or avoiding the setting of unfavorable judicial precedent) primarily in appellate level court proceedings or other reported formats?
6. Are the issue or forum of high visibility from a public relations standpoint?
7. Is the party seeking ASA’s intervention willing to indemnify ASA for its expenses if the case settles before a final decision on the appeal?

We can’t do it without you

In order to be as effective as we’ve been, we need your help. See the next page for a fun evening planned to:

1. Enjoy some craft beers
2. Learn a little something
3. Embrace the camaraderie of colleagues
- 4. Help the SLDF to support you!**

We would enjoy your company on **Thursday, February 18.**

If you can’t make it, please help us with a [donation](#), so we can help make our industry stronger, and fight for your rights in the courts. Thank you.

Support the SLDF

LIVE BROADCAST EVENT ASA Awards Ceremony February 25, 2021



- ASA Certificate of Excellence in Ethics
- President's Award
- Subcontractor Federal and State Advocate Awards
- Attorney's Council Awards
- ASA Chapter and Chapter Leadership Awards
- ASA Safety Award
- Innovation Award

REGISTRATION BEGINS JUNE 1, 2021

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TUESDAY, FEBRUARY 9, 2021, 12:00 PM - 1:00 PM EST

Maintaining a Healthy Margin When Your Volume Significantly Increases

How do you manage significant growth without placing your profit at risk? What are some of the secrets to maintaining good performance and what are some of the pitfalls to avoid? This presentation will be a panel discussion on the topic with ASA's own industry leaders.

[Register here.](#)

THURSDAY, FEBRUARY 25, 2021
BROADCAST TIME ~ 3:30 PM EST
Annual ASA Awards Presentation

Time to hoist (virtually), and toast (however you deem is appropriate) your colleagues and those ASA members who gave it their all in 2020 and deserve some recognition - despite the pandemic that turned the world topsy turvy. Please join us as we present the awards to celebrate the achievements of our ASA colleagues in 2020. The link to this event will be sent to all members once it's available.

For all upcoming ASA events, go to www.asaonline.com



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Coming Up

in the February 2021
Issue of ASA's



Theme:

Want to Be More Productive?

- Three Behaviors Top Teams Avoid to Excel in Struggle
- When Good Projects Go Bad
- Productivity in Construction – The Elephant in the room needs to be addressed
- Lagging or Leaping? Technology in Construction

Look for your
issue in February.

To access past issues
of *The Contractor's Compass*,
please **[click here.](#)**

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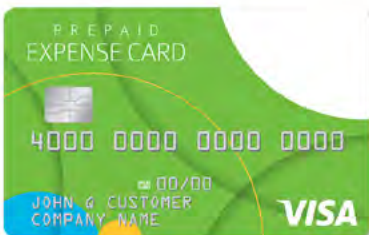
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