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What Has ASA Done for You Lately?

In 2007-08, your association developed and promoted solutions for bidding/negotiating better subcontract agreements, ensured that public policy decision makers heard the voice of subcontractors nationally and at the state level, and educated members on timely issues critical to their businesses. Following are some of ASA's major accomplishments on your behalf since July 1, 2007.

See the 2007-08 ASA/FASA Education Report on page 2 for details of ASA's and FASA's education activities.

Subcontract Bidding/Negotiating Tools

- ASA and its partners introduced the ConsensusDOCS family of model contracts and forms in September 2007. This suite of 70+ model contract documents and forms reflect best practices and proper risk allocation. The editorial in the Sept. 19, 2007, issue of *Engineering News-Record* said that this initiative "may go a long way to cutting down the mountain of modified standard paperwork that has bogged down many projects and choked courts, arbitrators, mediators and disputes review boards." [Get nearly 20 percent off the documents at www.consensusdocs.org using partner code ASA and promotion code 200.]
- ASA updated the *ASA Subcontractor Bid Proposal*, *ASA Addendum to Subcontract*, and *ASA Short-Form Addendum to Subcontract*, acknowledging the ConsensusDOCS documents as the new gold standard for contract language and removing the subcontractor's obligation to participate in controlled, or "wrap-up," insurance programs.

- ASA introduced the *ASA Contract Offer Terms for Projects Using Wrap-up Insurance (2008)* and *ASA Addendum to Subcontract – Project-Specific Insurance (2008)* to help members that choose to bid/negotiate projects with wrap-up insurance.

ASA: Your Voice in the Nation's Capital

- ASA worked with Rep. Paul Kanjorski, D-Pa., and his staff to address specialty trade contractors' concerns related to bid shopping through introduction of the federal Construction Quality Assurance Act of 2007 (H.R. 3854) on Oct. 16, 2007. The legislation would require prime contractors that bid on federal construction contracts in excess of \$1 million to list each subcontractor whose work on such projects is valued at greater than \$100,000.
- ASA opposed the U.S. Department of Homeland Security's (DHS) no-match rule, which would impose additional compliance burdens on employers as a method of enforcing federal immigration law. A federal court suspended the rule and told DHS to revise it. After DHS modified the rule with a minimum of changes, ASA submitted comments on April 25, 2008, pointing out that the rule grossly misrepresents the costs and burdens on employers.
- ASA called on Congress to repeal the federal 3 percent tax withholding requirement established by the Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109-222). ASA advanced legislation (H.R. 5719) in Congress to delay the requirement's effective date by one year until Jan. 1, 2012. The bill passed the House of Representatives on April 15 and ASA is pushing for speedy passage in the Senate. When the Internal Revenue Service asked for input on how to implement the law, ASA submitted comments telling the agency that the law does not apply to subcontractors.

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2007-08 ASA/FASA Education Report

In 2007-08, ASA and the Foundation of ASA (FASA) educated members and nonmembers about the strategies they need to survive and thrive as businesses operating in today's changing construction industry. ASA/FASA workshops (produced in both traditional and nontraditional formats) and resources offered subcontractor-focused guidance on contract negotiation and other business management topics. Several ASA/FASA programs focused on bidding and negotiating contracts using the new, ASA-endorsed ConsensusDOCS documents and updated ASA contract tools. Following are some of the major education accomplishments of ASA/FASA in 2007-08:

- ASA produced the ASA Business Forum and Convention 2008 in Charleston, S.C. This exciting event provided dozens of learning opportunities on different facets of running a subcontracting firm. General session speakers included Thomas M. Sullivan, chief counsel for advocacy of the U.S. Small Business Administration's Office of Advocacy; Julie Pace, Esq., Ballard Spahr Andrews & Ingersoll, LLP, in Phoenix, Ariz.; and Matt Stevens, author of *Managing a Construction Firm on Just 24 Hours a Day*.

- ASA produced the inaugural ASA Champions Academy Oct. 6-9, 2007, in the nation's capital. Chapter leaders and staff learned strategies for strengthening their chapters. The event culminated with a visit to Capitol Hill, where ASA leaders spoke with their federal legislators about key legislation to protect subcontractors' rights.

- ASA produced eight webinars. These programs examined the new ConsensusDOCS forms 200 and 750; changes in the 2007 editions of the American Institute of Architects' A201 and A401 documents; the revised ASA model contract documents; managing the contractual risks associated with BIM; negotiating strategies; and professional liability insurance. FASA's Contractors' Knowledge Depot added CD-ROM recordings of these webinars to its education lineup.

- ASA produced its monthly "Payment and the 2007 ConsensusDOCS and AIA Documents" audio teleconference series. The series, presented by ASA

General Counsel Kegler, Brown, Hill & Ritter, Columbus, Ohio, compared the two families of contract documents on specific topics.

- FASA and NASBP commissioned, and research has started on, a new Contractors' Knowledge Quest study on subcontractor default insurance — an insurance product that has been marketed to construction owners and general contractors as an alternative to bonds but that does not provide payment assurances for subcontractors and suppliers and requires disclosure of sensitive financial information to clients.

- ASA educated chapter leaders and staff about chapter leadership and management topics through the Leadership Learning Series, a series of monthly audio teleconferences.

- ASA made resources available to members, including:

1. An updated chart on "Prompt Payment for Commercial Construction" laws in the 50 states and the District of Columbia.

2. A model delay notice letter.

3. A "Model Memorandum to Managers/ Supervisors Relating to Work Authorization Issues."

- FASA facilitated ongoing research on the Contractors' Knowledge Quest study, *Online Reverse Bid Auctions for Construction Contractors and Subcontractors*, which was commissioned and is funded by FASA, the Associated General Contractors Education and Research Foundation, and several other construction trade associations.

- ASA and FASA hosted a booth at CONEXPO - CON/AGG 2008, representing and educating subcontractors. ASA Immediate Past President (2006-07) Stephen Rohrbach, CPC, F.A. Rohrbach Inc., Allentown, Pa., co-presented the CONEXPO workshop "Contract Documents 101" emphasizing the value of the ConsensusDOCS documents.

- ASA and FASA hosted a booth at the 2008 North American Steel Conference, representing and educating subcontractors. ASA sponsored the four-hour workshop "ConsensusDOCS: How the New Gold Standard in Contract Documents Is Different" led by former ASA General Counsel David Hendrick, Hendrick, Phillips, Salzman & Flatt, Atlanta, Ga.

- ASA and FASA hosted a booth at the 2008 North American Steel Conference, representing and educating subcontractors. ASA sponsored the four-hour workshop "ConsensusDOCS: How the New Gold Standard in Contract Documents Is Different" led by former ASA General Counsel David Hendrick, Hendrick, Phillips, Salzman & Flatt, Atlanta, Ga.

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National ASA Officers/ Directors Take Office July 1

At the March 7, 2008, Annual Meeting at the ASA Business Forum & Convention 2008 in Charleston, S.C., ASA confirmed the results of its national election of officers and directors for 2008-09. ASA members elected ASA's president, vice president, treasurer and secretary, and a slate of five national directors to serve second terms or fill seats vacated by retiring directors. (Directors are limited to two three-year terms.) The following national ASA officers will take office on July 1, 2008:

2008-09 President

William J. Olmo III

Fedco Construction, Santa Rosa, Calif.

2008-09 Vice President

Darlene Aitken

Holes Incorporated, Houston, Texas

2008-09 Treasurer

Timmy McLaughlin

Austin Construction Company Inc., Summerville, S.C.

2008-09 Secretary

Kerrick Whisenant

Cornerstone Detention Products Inc., Tanner, Ala.

ASA will welcome the following individuals to the national board of directors on July 1:

Robert Abney

F.L. Crane & Sons, Inc., Southaven, Miss.

Walter Bazan, Jr.

Bazan Painting Company, St. Louis, Mo.

Joe Dohony

Melvin Benhoff Sons Inc., Baltimore, Md.

Brian Johnson

Soil Consultants Inc., Charleston, S.C.

Mike Jones (*continuing*)

M.L. Jones Acoustics Inc., Tulsa, Okla.

James "Chip" Rohrbach

F.A. Rohrbach, Allentown, Pa.

ASA officers serve one-year terms, while directors serve three-year terms unless appointed to fill vacancies.

ASA invites members to become leaders in the association by volunteering for its committees, councils, and task forces for 2008-09. There are 11 options to fit the wide variety of interests, availability and skills of eager volunteers. Visit the Involvement in ASA page online for more information. ■

2008-09 FASA Board of Directors

The Foundation of ASA has elected the following volunteers to its 2008-09 Board of Directors. These individuals will take office on July 1, 2008.

2008-09 FASA President

Richard Wanner

Wanner Metal Worx, Inc., Delaware, Ohio

2008-09 FASA Vice President:

David H. Bradbury

Precision Concrete Construction, Inc., Alpharetta, Ga.

2008-09 FASA Secretary-Treasurer

Timmy McLaughlin

Austin Construction Company, Inc., Summerville, S.C.
(*ex officio* as ASA treasurer)

Darlene Aitken

Holes Incorporated, Houston, Texas
(*ex officio* as ASA vice president)

Philip Duvic

Architectural Woodwork Institute, Potomac Falls, Va.

Yilmaz H. Karasulu, Ph.D.

Texas A&M University Department of Construction Science, College Station, Texas

E. Colette Nelson

American Subcontractors Association, Inc., Alexandria, Va. (*ex officio* as ASA executive vice president)

Kerrick Whisenant

Cornerstone Detention Products, Inc., Tanner, Ala.
(*ex officio* as ASA secretary)

Anne Bigane Wilson, PE, CPC

Bigane Paving Company, Chicago, Ill.

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- ASA submitted comments on Feb. 28, 2008, to the Occupational Safety and Health Administration citing redundancy, confusing language, and the high costs of compliance in its proposed Confined Spaces in Construction Rule. A general industry standard addressing confined spaces already exists.
- ASA released a fact sheet to help members comply with an OSHA rule on personal protective equipment standards that took effect on May 15, 2008. The fact sheet answered some basic questions for employers, such as the types of protective equipment for which a company should pay.
- The Construction Industry Employer Coalition (CIEC), of which ASA is a member, led an appeal to the American National Standards Institute (ANSI) Board of Standards Review arguing against a controversial new standard designed to address musculoskeletal problems in construction.

ASA: Your Voice in the State Capitals

- ASA revealed a major trend in new state laws limiting the practice of retainage, including ASA of New Mexico's achievement in making that state the first to effectively prohibit retainage. On Oct. 8, 2007, ASA released the fourth edition of *The ASA Report: The Policy Environment in the States*, an annual report that scores each state in individual policy areas such as prompt payment and anti-"bid shopping" policies, and uses the scores to assign an overall score and grade to each state.
- ASA of Illinois celebrated a new prompt pay law setting time frames for payment from owner to prime contractor and from contractor to subcontractor.
- ASA of Baltimore and the D.C. Metropolitan Subcontractors Association prevailed in their long struggle to regulate Maryland's private retainage system with the enactment of legislation reducing net retainage.
- ASA - Greater Kansas City saw four years of effort pay off when historic legislation closing the additional insured loophole was signed on May 13, 2008.
- ASA of the Carolinas' campaign for retainage reform succeeded with a new North Carolina law prohibiting retainage on public projects under \$100,000, limiting retainage to 5 percent on other public construction projects, and requiring the full release of retainage within 60 days of substantial completion or occupancy.
- ASA educated members about the states' enforcement of immigration law after the federal government failed to adopt comprehensive immigration

reform. ASA reported on harsh new immigration laws, and produced a "State Immigration Checklist" to help members assess, and explain to public policy decision-makers, the impact of such laws on their businesses.

- ASA provided members with a new tool to keep tabs on state legislation that could impact their businesses. Accessible through the State Advocacy page of ASA's Web site, ASA's new state legislative tracking system provides weekly updates of state legislation on critical issues like prompt payment and indemnification.

ASA and its Subcontractors Legal Defense Fund: Your Voice in the Courts

- ASA and ASA of Colorado's legal efforts, supported by the SLDF, ended in a historic victory when a Colorado court for the first time agreed that exceptions ought to be allowed to no-damage-for-delay clauses.
- Florida and Texas subcontractors can have more confidence in the scope of insurance coverage provided on projects where defective construction causes damage thanks to ASA, ASA of Florida, and ASA of Texas. ASA and ASA of Texas filed an SLDF brief with the Texas Supreme Court, which answered "no" to an insurer that argued that a home builder's CGL policy doesn't cover accidental property damage caused by a subcontractor's defective work. ASA and ASA of Florida prevailed in a nearly identical case with an SLDF brief filed with the Florida Supreme Court.
- ASA filed an SLDF brief to help a subcontractor in Ohio whose right to payment for installation work under a time-and-materials contract is being blocked with arbitrary procedural hurdles.
- ASA filed an SLDF brief in a Texas appeal arguing that a bankruptcy trustee should not be able to reach back and take the funds paid to a subcontractor after the lien filing deadline.
- ASA filed an SLDF brief with the Texas Supreme Court arguing that the protections of the Trust Funds Act are independent of the payment bond required by the McGregor Act.
- Through Arizona Employers for Immigration Reform, ASA of Arizona went to court over a new law that revokes the business licenses of employers that hire unauthorized workers, and helped clarify that the law does not apply retroactively to employees.
- ASA of the Carolinas secured a major legal victory when the South Carolina Supreme Court ruled that a subcontractor that has not been paid for its work on a public project can recover damages directly from a governmental entity.

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ASA/FASA Circle Club Celebrates Success With 309 Members in Inaugural Year

ASA and the Foundation of ASA launched the ASA/FASA Circle Club on Oct. 8, 2007, the purpose of which is to recognize companies and individuals who have made a special commitment to fund the programs that preserve the progress made by ASA and FASA. The first year saw 309 members join Circle Club ranks. Some advanced in the Circles during the year with additional contributions. ASA and FASA are very grateful for the generosity of all these companies and individuals.

Membership in the Circle Club is automatic for contributors to the:

- Subcontractors Legal Defense Fund.
- Cornerstone Club.
- Chapter Scholarship Fund.
- ASA-Political Action Committee.
- ASA-Political Action Committee Administrative Fund.
- FASA General Fund.
- FASA Contractors' Knowledge Quest.

As a donor's combined support of these programs increases throughout the year, the donor can move from the Bronze Circle (Below \$500), to Silver (\$500 to \$2,499), Palladium (\$2,500 to \$4,999), Gold (\$5,000 to \$9,999) and finally Platinum (\$10,000 and above).

The club will start anew for 2008-09 on July 1, 2008, when the list will be wiped clean. ■

Your Official Invitation ... Mark Your Calendar!



You're Invited to
ASA's
Champions
Academy
in the Nation's Capital
 Sept. 13-16, 2008

Are You Ready To Learn What It Takes To Transform Your Company, Your Industry, and Your Association?

Then You're Ready To Be a Champion

At ASA's Champions Academy, choose the learning path that's most useful to you, and gain hands-on experience, from educational programming on:

- State advocacy training.
- Federal advocacy training, including visits to Capitol Hill.
- State and local volunteer training.
- State and local staff training.
- Peer networking events.
- ASA council meetings.

Visit the ASA Web site at www.asaonline.com for details.



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ASA: Your Voice in the Construction Industry

- ASA continued its long-term relationships with AGC and ASC in two industry liaison meetings focused on preparing new guidelines for inclusion in the *Guidelines for a Successful Construction Project* (www.constructionguidelines.org). The groups also discussed collaborative project delivery, immigration reform, precedent-setting court cases, and emerging contractual issues related to building information modeling (BIM).
- ASA provided guidance to the American Arbitration Association's (AAA) construction dispute avoidance, management and resolution services through AAA's National Construction Dispute Resolution Committee. This included providing input into the AAA's new rules for construction arbitration, as well as implementing a pilot program to provide parties with the ability to choose from a menu of services rather than having to choose full service and case administration.
- ASA officers met with officers of the National Association of Surety Bond Producers to identify and address common concerns with subcontractor default insurance, model payment bond forms, unregulated/unlicensed surety, and immigration reform.

Other ASA Activities

- ASA honored Walt Bazan Jr., Bazan Painting Company, St. Louis, Mo., with the John H. Hampshire Distinguished Lifetime Service Award on March 6. Presented to the individual who shares the vision of ASA's early leaders and dedicates his or her lifetime working to achieve that vision, the John H. Hampshire Award is ASA's highest honor.
- ASA presented its 2006-07 ASA Chapter and Individual Awards on Oct. 8, 2007, at the inaugural ASA Champions Academy in Alexandria, Va. The awards were presented to highly accomplished chapters and individuals, each of whom consistently demonstrated a commitment to building a better business environment for subcontractors throughout the past year.
- 2007-08 ASA President David Bradbury, Precision Concrete Construction Inc., Alpharetta, Ga., honored Richard Usher, Hill & Usher LLC, Phoenix, Ariz., with the ASA President's Award, which is presented to the individual who most supports the ASA president during his or her term.
- ASA surveyed a cross-section of members through a Member Needs Assessment conducted in the fall of 2007. ASA gauged members' business issues and concerns and their satisfaction with ASA services.
- ASA surveyed a cross-section of members and

nonmembers about their reasons for joining, or not joining, ASA.

- ASA conducted its first-ever Green Building Survey in December 2007, asking 500 randomly selected members about the impact of, and their participation in, the green construction market. ■

ASA 2008-09 Webinars Aim To Empower

Subcontractors from across the country will get new energy and ideas for their businesses through ASA's Subcontractor Empowerment Webinar Series in 2008-09. Through Aug. 29, 2008, register for any five of these webinars for the price of four. The schedule for the webinar series is:

- Sept. 9, 2008: Cashing In on the ConsensusDOCS
- Oct. 14, 2008: Getting Paid on Federal Construction
- Nov. 18, 2008: Default and Denial: Questions You Should Ask About Surety Bonding and SDI
- Dec. 9, 2008: Evaluating and Bidding Wrap-Up Projects
- Jan. 13, 2009: Getting the Right Customers
- Feb. 10, 2009: Negotiating Green Building Projects
- April 14, 2009: Hold Harmless or Hold Harmful? Limiting Your Liability for Others' Mistakes
- May 12, 2009: Getting Final Payment: Strategies That Work

Each of the webinars can be viewed at an individual computer station or experienced as a group with a computer plus speakers and a projector in a conference or training room. Attorneys and other professional advisors will deliver the presentations in an interactive format that allows users to submit questions over the phone or in writing through "chat" technology.

The live programs will start at 11:30 a.m. Eastern/8:30 a.m. Pacific time and last approximately two hours. The registration fee is \$199 for members and \$279 for nonmembers. All that's needed to access the event is a phone and a computer with an Internet browser and 56Kbps dial-up connection or better.

In addition to access to the live event, each registrant will receive a multimedia recording of the webinar on CD-ROM and an ASA Certificate of Completion. The certificate of completion can be printed out for each participant who completes the program at a registered location. ■