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[www.constructioncorps.org](http://www.constructioncorps.org)



**This Week**

Monday, January 17, 2022

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## Seminars & Events

**Legal Toolkit 2022**

*"Postponed Due to Health Concerns  
 – New Date To Be Announced".*

Cost \$50 in-person NCBE members  
 or \$25 via Zoom NCBE members

**Martin Luther King Jr Day**

**Monday, January 17<sup>th</sup>**

NCBE will be **closed** in  
 observance of the holiday.

**CPR/First Aid Training**

**Tuesday, January 25<sup>th</sup>**

9 – 12 P.M.

Cost \$95 NCBE members

**Forklift Operator Training**

**Tuesday, January 25<sup>th</sup>**

1 – 4 P.M.

Cost \$150 NCBE members

**Fall Protection –  
Competent Person**

**Thursday, February 10<sup>th</sup>**

3 – 5 P.M.

Cost \$50 NCBE members

**Construction Training Center**

1030 Apollo Way, Santa Rosa (707) 542-9502 • [www.ncbeonline.com](http://www.ncbeonline.com)

Seminar registration: Contact [Accounting@ncbeonline.com](mailto:Accounting@ncbeonline.com)



## Construction Management Certificate

**Info Session**

**Tuesday, January 25 @ 7–8pm**

Online via Zoom

RSVP to receive your Zoom join link:

[sonoma.education/ncbeinfo22s](https://sonoma.education/ncbeinfo22s)

**Spring 2022 Virtual Classes Start**

**Tuesday, February 8**

- Construction Management Health and Safety/OSHA
- Overview of California Building Codes
- Construction Project Management

**For more info:** [sonoma.education/CM](https://sonoma.education/CM) • 707.664.2394

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**NEWSLINE****Release Number: 2022-05****Date: January 11, 2022****DWC Announces return to virtual hearings**

The Division of Workers' Compensation (DWC) announced today that as of January 12, 2022, all hearings will be heard virtually. Until further notice, DWC will telephonically hear all trials, lien trials, expedited hearings, and special adjudication unit (SAU) trials. In addition, mandatory settlement conferences, priority conferences, status conferences, SAU conferences, and lien conferences will continue to be held on the individually assigned judges' conference lines as announced in Newslines issued on April 3, April 28, May 28, August 12, September 9, 2020, and Sept. 1, 2021.

The division acknowledges that due to the recent surge in COVID-19 cases, a pause of in-person hearings is necessary at this time. The pause will continue through the end of the month and will be reevaluated at that time. DWC hearing notices will not change but parties should be aware that as of January 12, 2022, if a trial, expedited hearing, lien trial or SAU trial is set at a district office, all parties should call the judges' assigned conference line and not appear in person. The judges' assigned conference lines may be found on the DWC webpage. All division offices will remain open during this time.

If a party to a DWC hearing has a question on a specific case, they may contact the DWC call center at (909) 383-4522.

The California Department of Industrial Relations, established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the Labor & Workforce Development Agency

**NCBE Annual  
Open Enrollment**

**Our Annual Open Enrollment is taking place now – January 17<sup>th</sup>, 2022.** This is a once-a-year opportunity to make changes to your health plans. During this time, NCBE members may join our insurance program which offers Medical, Dental, Vision (VSP or Anthem) and Life plans through our carriers, Anthem Blue Cross and Kaiser. If you are already enrolled, it's time to review your plan status and/or enroll employees, terminate, or make changes to your plans. Employees may also add or remove dependents from their current plans. These changes will be effective 2/1/2022.

Once Open Enrollment has ended, members will not be able to make any changes to their benefits until next year's Open Enrollment, except in the case of a Qualifying Life Event.

If you are interested in our insurance program or have questions regarding your current plans, please contact Cindy Womack, NCBE Insurance Customer Service Director, at (707)542.9502 or email [Cindy@ncbeonline.com](mailto:Cindy@ncbeonline.com)

Once again Thank you for being a member of the North Coast Builders Exchange.

# CPR+FIRST AID

**Tuesday, January 25<sup>th</sup>**

**9 A.M. – 12 P.M.**

**NCBE Construction Training Center  
1030 Apollo Way, Santa Rosa**



Learn how to save a life in a positive, interactive and practical manner while gaining invaluable certificated instruction in the basics of CPR and First Aid.

Did you know that Section 1512 of the Cal/OSHA regulations states that "Each employer shall ensure the availability of a suitable number of appropriately trained persons to render first aid"?

**Class instruction includes:**

- CPR training
- Treatment for shock
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- Bone & muscle injuries
- Emergency procedures
- Treatment for bleeding
- Caring for burns, bites & stings

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**NCBE Members \$95 • Non-member \$190**

*(Price is per person)*



*Eric Peterson, Owner/Instructor for Mill Creek Safety*

Eric has been involved in safety training for companies for more than 20 years.

**REGISTRATION FORM – CPR/FIRST AID TRAINING • TUESDAY, JANUARY 25, 2022**

Register for this seminar by completing and faxing this registration form to 542-2027 or email to: [accounting@ncbeonline.com](mailto:accounting@ncbeonline.com)

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Price is per person. Billing address, zip code and 3 digit security code (last 3 digits on back of card) required for processing.

Cancellations must be received 24 hours prior to the seminar to avoid being billed the full price.



# How to overcome safety complacency in the workplace

**Training supervisors and frontline employees to ask effective questions at strategic moments can help trigger critical thinking and situational awareness.**

*By Sharon Lipinski*

Successfully combatting complacency starts by understanding that the root cause of complacency is how the brain handles repetitive behavior. In other words, complacency is a byproduct of habit. In casual conversation, people often talk about habit as a behavior. But that's not quite right. A habit is a behavior that results from a neural pathway.

Advances in neuroscience have revealed that habit results from the collaboration of two parts of the brain. The first is the prefrontal cortex (PFC) which sits above the eyes. It's responsible for advanced executive functions such as paying attention, predicting outcomes and prioritizing information. The PFC is critical to activities such as planning a critical lift, having interactive job briefs or taking a site walk.

The second is the Striatum. The Striatum is about the size of a walnut and sits on top of the brain stem. It's the habit center, reward center and goal-motivated behavior center.

When the brain is doing something new, a communication loop fires up between these two parts in the brain, and all the neurons during the activity fire. However, the brain is a quick learner. The next time it repeats that action, it's a little more familiar. Fewer neurons fire.

As this process is repeated, the action gets easier and easier and fewer and fewer neurons fire. When something has been repeated often enough to become a habit, the PFC does not need to be involved, and it's not all the neurons during this activity. It's just the ones at the beginning and the end.

## **Repetition is the Mother of Habit**

In a nutshell, repetition is the mother of habit. By repeating an action over and over, the brain carves a deep neural pathway that requires very little work in order to operate.

[MORE ON PAGE 6](#)




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## How to overcome safety complacency in the workplace

### FROM PAGE 5

In many ways this is a good thing, because the brain must process an unquantifiable amount of information. This includes everything from our own autonomic nervous systems (internal temperature, heart rate, eye blinking, and more) to taking in external stimuli (colors, shapes, locations, movement, and more) to just doing our jobs.

Unfortunately, the processing capacity of the brain is limited. There is so much information to process that the brain needs to prioritize, and it uses shortcuts to accomplish as much as possible. There are many different types of shortcuts, but the one applicable to our topic here is habit.

A habit is a neurological shortcut the brain can use when engaged in a repetitive task. The range of repetitive tasks is quite large. Not only does it include actions like brushing your teeth and wearing PPE, but also behaviors like asking for help, reacting calmly in stressful situations, and problem solving. Beyond behaviors, people have created habits to process emotions, thoughts, decisions, and actions.

Habits are a double-edged sword. They provide human beings with the ability to learn rapidly and perform repetitive tasks with as little energy and effort as possible, freeing up those cognitive resources which can be used for other tasks. But there is a price exacted when habits are triggered: the PFC is often no longer actively involved in brain processing. When the PFC is not engaging, then we have lost an important safety resource.

Based on this understanding of the biological process of the human brain, we can offer a more accurate definition of complacency that opens the door to more effective strategies.

Complacency is a state of decreased external awareness and reduced sensitivity to hazards caused by the brain's ability to activate neural pathways that require less PFC activity.

This definition reflects the current neurobiological assessment of what happens in the brain when habits are established, and it reveals that complacency is a physical state. It's a byproduct of the part of the brain people can use by virtue of the fact they've done an activity so many times.

Now the solution becomes clear. The solution to complacency is to move the brain activity and reengage the PFC. While we've identified several different practices

### MORE ON PAGE 7

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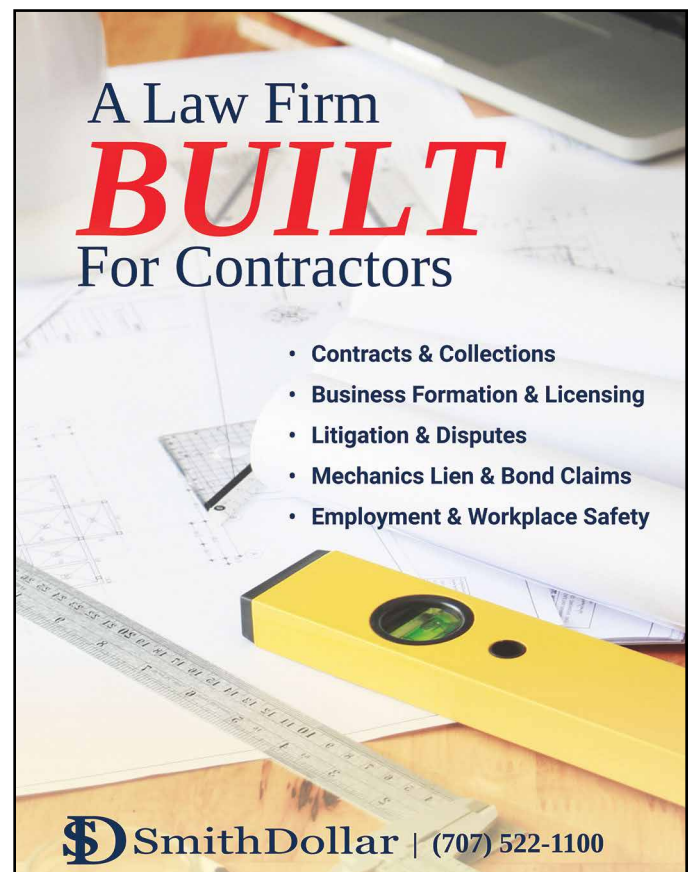
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## How to overcome safety complacency in the workplace

[FROM PAGE 6](#)

that can accomplish this task, one of our favorites is asking good questions. A good question can only be answered by the PFC.

Another reason asking questions is such a powerful strategy is that it can be used to short circuit complacency in ourselves and in others. Any individual can ask themselves a question that will reengage their PFC, but also safety professionals can use questions as they're doing their audits or site walks. Plus, supervisors can ask questions as their teams are starting a job or in the middle of their work.

### Good Times to Ask Questions

There are at least four good times to be asking questions. First, when a group is starting the day or a task together. Second, when an individual is starting a task or switching to a different task. Third, when there is some type of pressure element such as time, visibility, or interpersonal conflict. The human brain under pressure is much more likely to use

existing neural pathways, so these are prime opportunities for a strategic pause to reengage the PFC. Fourth, when people are engaged in repetitive work.

**Our research has identified at least five different types of questions that accomplish different goals:**

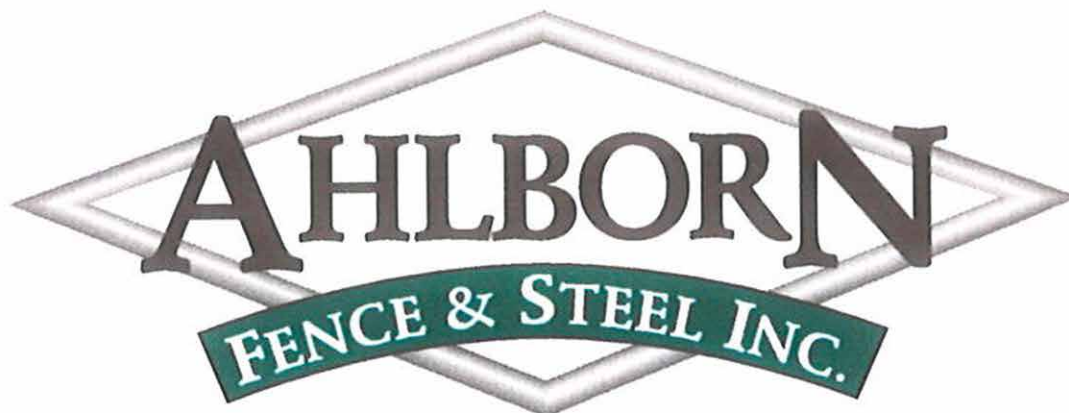
#### 1. Planning

People will often naturally start here as they think about how to do a task. Pre-job planning checklists often include a number of planning questions that may not be formed as questions, but nevertheless serve the same purpose. For example, when a team member is filling out the tool section of the checklist, the implied question is, "What tools do we need? Do we need a grinder? Yes." Check. "Do we need fall protection? No."

#### 2. Perceiving

The purpose of these questions is to gather information using the senses. What do I see, hear, smell, and how does that compare to my past experiences and what the job aids tell me about potential hazards I might encounter? Many of these questions can also be systemized into a pre-job planning checklist.

[MORE ON PAGE 8](#)



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## How to overcome safety complacency in the workplace

FROM PAGE 7

### 3. Predicting

These are questions that play the movie forward and imagine what the future looks like if things continue on this path. Or they might play the movie backward. If this is where we want to go, what are the steps that will take us there? What unexpected events could interfere with that?

### 4. Perspective Changing

These ask people to put themselves in someone else's shoes or look at the situation from a different angle. These are often closely related to predicting questions, because answering them often involves imagining what will happen as the movie plays forward from that point of view.

### 5. Prioritizing

In any given situation, there is a lot of information. Your employees have to sift through it very quickly to identify what's most important and what applies to the situation versus what's just noise and can be ignored. The more experience people

have, the more intuitively they'll be able to prioritize. To accelerate learning, leaders and senior staff should be explicit about what they're seeing and why they're paying attention to specific items.

You can think of these categories as forming a circle. Typically, employees start with planning questions. Then they ask perceiving questions to gather more information. Then they play the movie forward to predict what could potentially happen and then look at the situation from a different point of view. With that additional information, they then prioritize to get clear on what's most important and what needs to happen first. Finally, they return to planning questions to incorporate the insights they've gained.

Proceeding through these different categories of questions should occur regularly, but may not happen in order. For example, after the initial planning phase, perceiving questions may reveal hazards or a problem with equipment that requires them to return immediately to the planning phase.

Training supervisors and frontline employees to ask effective questions at strategic moments can reengage the PFC which triggers critical thinking and situational awareness. It's a powerful strategy to combat the ever-present hazard of complacency.

**Sharon Lipinski** is the Habit SuperHero and CEO of Habit Mastery Consulting, which helps organizations increase their targeted safety behavior by up to 150%.

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# LEGAL TOOLKIT 2022

## THE RULES YOU LIVE BY HAVE CHANGED!

Learn how to **protect you and your company** from changes in the laws that impact the North Bay construction industry. In this 90 minute seminar you will learn:

- New employment laws and legal cases that dramatically impact construction businesses
- COVID and how to protect your team and the business
- Learn how to make OSHA work for you!
- Prevailing Wage/Skilled Workforce considerations

### PLUS

PLUS Learn the importance of reviewing (and possibly revising) your important business documents and procedures:

- Contract Review
- Back office procedures
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Moderated by Glenn Smith, Partner Smith Dollar PC

#### Guest Speakers:

Dave Leonard, Smith Dollar PC  
Diane Acqui, Smith Dollar PC  
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# Special Alert: Déjà Vu in 2022

By: [Astrid Servin, HR Director](#)

## Return to Work, Boosters, & Face Mask Update

It may be a New Year, but it seems like Déjà Vu as uncertainty remains for California employers who seek clarity on COVID-19 guidance. On December 30, 2021, the California Department of Public Health (CDPH) announced new guidance on COVID-19 isolation and quarantine periods based on vaccination status.

On January 6, 2022, Cal/OSHA updated their website regarding return to work criteria, clarifying that the updated ETS, which becomes effective on January 14, 2022, would follow the Governor's executive order. This executive order provides that the CDPH rules become effective when their exclusion rules are shorter or less stringent than Cal/OSHA.

### What Does all of This Mean?

California employers should follow the new guidelines as detailed by [Cal/OSHA's FAQs](#) on or before January 14, 2022. The new guidelines, which can reduce time away from work by a few days, factor in criteria such as symptoms, vaccination, and booster status. Members may access our full updated "COVID-19 Exposure Response" Tool kit here.

### Boosters May Be Good For Employees & Employers

While employers are not mandated to check booster status, it may be in everyone's best interest to do so with

the new guidelines. Why? Because the new return to work criteria will reduce and in some situations eliminate quarantine times altogether, when an employee is booster eligible and gets the booster. Important information for employees, who may go unpaid if they miss work, and for employers who don't want to find themselves short staffed.

Verification of the booster shot is required to implement these [new quarantine guidelines](#). Employers can verify booster status in the same manner used to verify previous vaccination status (attestation form, etc.) and update their CPP accordingly. CEA has a free Self-Certification Booster form for employers on our [COVID-19 Resource page](#).

### Face Mask Update

California's indoor facemask mandate remains in place through February 15 for all individuals, including employees. As a reminder, all employers are required to provide facemasks to employees when requested, regardless of vaccination status. Furthermore, LA County employers will have to provide employees working indoors with "high quality" masks such as KN95 or N95 masks. This requirement is effective January 17, 2022.

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# Forklift Operator Training



**Tuesday, January 25<sup>th</sup>**

**1 P.M. – 4 P.M.**

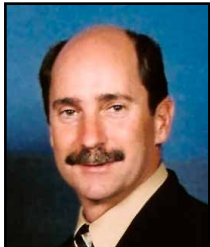
**NCBE Construction Training Center  
1030 Apollo Way, Santa Rosa**

## Training class includes:

- Duties of Employers/Employees
- Cal/OSHA Regulations
- Written Test
- Pre-Operational Inspections
- Forklift Site Evaluations
- Driver Proficiency Test
- Training Manual
- Equipment Inspections

Attendees will receive a training manual and a Forklift Operator License ID Card. You must be 18 years or older and read and write English for the written test.

The 1.5 hours of the class will be held in the classroom. The hands-on training and practical exercise will be held at Aaction Rents, 257 Dutton Avenue, Santa Rosa.



**\$150 NCBE Members • \$200 Non-Members**

(Price is per person)

*Eric Peterson, Owner/Instructor for Mill Creek Safety. Eric has been involved in safety training for companies for more than 20 years.*

## REGISTRATION FORM

### **FORKLIFT OPERATOR TRAINING • TUESDAY, JANUARY 25, 2022**

Register for this seminar by completing and faxing this registration form to 542-2027 or email to: [Accounting@ncbeonline.com](mailto:Accounting@ncbeonline.com)

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Signature _____	Date _____	_____

Price is per person. Billing address, zip code and 3 digit security code (last 3 digits on back of card) required for processing.  
Cancellations must be received 24 hours prior to the seminar to avoid being billed the full price.



## Ask Ed: How do I find public works projects to bid on?

One of the most common complaints we hear from small construction companies is: *"I just don't know where to find any public works projects to bid on."* It is a valid concern but one that can be addressed.

This issue is one that the more experienced contractors solved long ago in that they tapped into networks of owners and/or primes which kept them in the loop. However, with the advent of the internet, finding projects has become much simpler because every public agency now has a website.

On that website there will be a tab that says *"Public Works"* or something similar. Drilling down on that tab will eventually reveal if that agency has any upcoming projects for bid. Following that process is much better than finding out about a project at the last minute, thereby making your bidding process more difficult.

Whether you are a general contractor bidding as prime, or a subcontractor bidding to multiple primes, the process is less stressful if you establish a bid calendar. If set up properly and

updated weekly, it organizes your estimating department with efficiency and enables you to meet bid deadlines.

Additionally, you can also find projects that are out to bid from industry newsletter services or from Builders Exchanges. Such services are not free, but in most cases the cost is well worthwhile. If you are a small subcontractor construction company, you should not depend on getting email invitations from primes who might be doing their outreach in hopes of meeting SBE/DBE/WBE goals that are required in the Notice to Contractors.

Those emails often come at the last minute and may or may not identify a project that is suitable for your company's capabilities. That is why establishing your own bid calendar that lists projects you have reviewed is a great way to bid on public works.

For a sample bid calendar, contact Norcal PTAC Construction & Public Works Specialist, Ed Duarte at [Ed@norcalptac.org](mailto:Ed@norcalptac.org).



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# 10 Tips for contracting success in 2022

*By NORCAL PTAC*

Congratulations! You've made it through the past couple of years (which were tumultuous for many) and into 2022! This is a great time to pat yourself on the back for how far you've come, or maybe for just getting started.

It's also a good time to develop new goals and aspirations for what you want your business to accomplish over the next year.

To assist with your New Year's (business) resolutions, our team of expert Procurement Specialists have come up with 10 tips that will help take your business to the next level in 2022.

**1. Look for partners.** Agencies like to contract with firms that have credible past performance. Partnering with experienced small or large businesses can help your business successfully penetrate the government marketplace. Sites that allow you to search for potential partners include [USASpending.gov](https://USASpending.gov) and the Dynamic Small Business Search tool.

**2. Keep your business info current.** Remember, the IRS, State of California, Dun and Bradstreet, and the System for Award Management (SAM) all communicate with each other. Your company name and address must be the same in all of those systems or you will start to have rejection/access errors. If you change your address, follow the process and make the same change in all of the systems. Be kind, be patient, and be

gentle with yourself and each other.

**3. Take compliance seriously.** Government contracting compliance can make or break a business. Compliance is the ability to meet the various terms and conditions that are embedded in the actual contract document. These compliance requirements are included in the contract clauses that are presented to you by either full text or incorporated by reference. It is a crucial requirement for any potential government contractor to fully read and understand all of the clauses, terms, and conditions.

**4. Develop relationships with buyers.** Relationships are key to successful government contracting. Knowing upcoming buying needs and the relevant decision makers can make all the difference in the world to a firm seeking leverage in a very competitive marketplace. In 2022, commit to researching your target agencies' needs, speaking with their contracting officers, and understanding their concerns. This extra step can be the difference between receiving a contract and losing it to your competitors.

**5. Do your market research.** Now is a good time to conduct market research to determine which agencies purchase what you sell. You can do this by searching databases that contain procurement data. These databases

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## 10 Tips for Contracting Success in 2022

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include FPDS-NG.gov, USAspending.gov, Data.gov, and SAM.gov (Contract Opportunities).

**6. Renew your registrations and certifications.** System for Award Management (SAM) requires recertification each year. Before your renewal date, take the time to go in and update your information and re-certify representation. While you are at it, check your state registrations and certifications too. It's helpful to track all your renewal dates via calendar so you have ample time for the process.

**7. Update your capability statement (or SOQ).** At the beginning of a new year is a great time to dust off your capability statement (or SOQ) and make sure all the information is still correct. Add any new performance information, products or services, or update pictures and refresh the look. Once you have updated your CS, send it to Small Business Specialists in the federal or state agencies you wish to target.

**8. Perfect your elevator speech.** We like to call this your power speech! This is critical to how you present yourself and the first impression you make. Your power speech should be a 45 second version of your capability statement and should communicate your value, key clients, and differentiators (what makes you different from your competitors). Don't use overly generalized language like, "*we are the best company since sliced bread!*" – trust us, they've heard that before.

Root your speech in facts that demonstrate how your business will solve a problem or fill a need.


**9. Prepare your 2022 Strategic Marketing Plan.** A sound marketing plan allows an entity to grow its market share which results in more revenue and profits. Start by understanding your market competition and your prospects. Here are some components to consider: outline the current position of your company by examining your strengths, weaknesses, opportunities, and threats (SWOT); list your company's marketing goals and strategies to be implemented; identify emerging or existing marketing opportunities; define target market for your products and services; and allocate a realistic budget for marketing resources.

**10. Practice good virtual etiquette.** For better or worse, as we head into 2022, a lot of business is still being done virtually. When meeting with someone via Zoom or other virtual platforms it is important to be on time, well dressed, and use an appropriate or professional background image. Always test your technology prior to an important meeting so you don't waste someone's time by having to troubleshoot an issue live. Similarly to an in-person meeting, you should seem engaged and attentive by looking straight into the camera and taking notes.

Accomplishing new goals is easier said than done – especially when you run a small business with limited time and resources. If you would like assistance with these tips, or anything related to government contracting, please reach out to your PTAC Procurement Specialist.

*Written by: The Norcal PTAC Team*

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## Winning attorney fees in litigation as a California construction contractor or subcontractor

*William L. Porter Founder & President, Porter Law Group*

### The General Rule in California: The Winner Does NOT Receive Attorney Fees and Costs:

There is a common misconception that court decisions require the loser in a lawsuit to reimburse the winner for the fees and costs incurred during the lawsuit. Reliance on this misconception in developing a legal strategy for dealing with disputes is a serious strategic error. Where the legal issue is, for example, “*breach of contract*,” the general rule in California is that there are only two methods by which the winning litigant will be awarded the attorney fees and costs incurred in bringing or defending the lawsuit. The first of these is if the contract in question contains an effective attorney fee clause specifically providing that the prevailing party will recover their attorney fees and costs. The second is if there is a statute on point which provides that the prevailing party will be awarded those fees and costs. The

general rule in California is that each party pays their own attorney fees and costs, unless there is an independent legal basis that provides otherwise. This is known as the “*American Rule*,” used throughout most of the country.

### The Issue is Important Because Spending More Money Than You Can Be Awarded is a Losing Strategy:

The importance of whether the prevailing party in a lawsuit will be awarded their fees and costs cannot be underestimated. The party contemplating whether to bring a lawsuit must seriously consider whether it is even worth the trouble. In many cases, unless the one bringing the lawsuit (the “*plaintiff*”) is entitled to be reimbursed for the considerable attorney fees and costs incurred in bringing the case, it is just not worth doing so. There is no point spending \$50,000 on attorneys on a \$40,000 claim unless the plaintiff can be awarded both the \$40,000 and the \$50,000 if the plaintiff wins. Unless fees and costs are awarded, the plaintiff will still be out \$10,000 in the very best of cases. For a party sued (the “*defendant*”) a similar situation arises in that the defendant faces the reality that it may be less expensive to just pay on a frivolous or false claim than to fight it. Either scenario is unsatisfactory. On the whole, it is beneficial to have an attorney fee clause

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## Winning attorney fees in litigation as a California construction contractor or subcontractor

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in a contract when either a plaintiff or a defendant must vindicate its rights. Both deserve to be fully compensated to achieve justice. It is also beneficial to have an attorney fee clause in a contract to encourage the one who is at fault to resolve the case rather than risk paying the fees and costs of the other party who is likely to win the case. In either case, the presence of an attorney fee clause facilitates the party in the right and encourages resolution outside of litigation. These are admirable societal goals.

#### **The Usual Situation Regarding Attorney Fees In California Construction:**

In California construction, the American Rule is followed. If there is a statute providing that the prevailing party is awarded attorney fees and costs in a particular situation, then the prevailing party is protected. However, as to the prevalence of attorney fee clauses in contracts and subcontracts, the problem is that the one signing the contract or subcontract must generally sign the contract provided by another party. Generally speaking, a “*direct contractor*” signs the contract provided by the owner of the property where the work is performed. The subcontractor signs the subcontract provided by the

direct contractor. Whether there is an attorney fee clause in either case depends on whether the one providing the contract or subcontract has decided to include an attorney fee clause in the document. There is cause for suspicion when there is no attorney fee clause in the contract or subcontract. In such a case, the party leaving out the clause may intend to leverage the absence of such a clause to their advantage when a later dispute arises. The signing party is often unable to alter the situation without additional effort and resistance. It is important that any effort to include an attorney fee clause in a contract or subcontract occur in the negotiation phase. Once the contract or subcontract is signed, the opportunity is lost.

#### **Contractual Strategies to Include Attorney Fee Clauses:**

There are several methods to be assured that you will have an attorney fee clause in your contract and ensure that you will be able to fully recover on your claim when you are in the right. Again, these are tasks to be accomplished before a party signs a contract to provide goods or services. Accomplishing these tasks before signing the contract will help establish the standards to be followed if a dispute

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arises during or after performance of the contractual obligations:

Condition all bids and proposals on the inclusion of an Attorney Fee Clause which is clearly stated in the terms of the bid or proposal. This way, if the bid is accepted, so is the attorney fee clause.

Condition all bids and proposals on incorporating the bid or proposal into any subsequently executed contract or subcontract for the project. This makes the clause a material term of the later integrated agreement.

Require, within the bid or proposal, that the bid or proposal will “control and take precedence” over any other terms contained elsewhere in the subsequently executed contract or subcontract. This will allow the term to control over conflicting terms in other contractual documents produced at a later time.

Make it clear in the bid or proposal that the one accepting the bid or proposal must not accept it unless it agrees to do so without exception or reservation. This puts the choice on the one who wants the service. It is a practical step that tends to show clear intent.

Make sure that any subsequently executed contract or subcontract clearly incorporates the bid or proposal into the contract or subcontract as an exhibit. Make sure of this before signing the agreement. This ensures that contractual technicalities are met.

There are many ways that the above tasks can be accomplished. Please consult with an attorney experienced in construction law to assist you in including the proper language in your bids, proposals, and other contractual documents.

### Helpful California Construction Statutes Providing for Attorney Fees:

As noted above, the second way in which attorney fees are awarded in a construction dispute in California is when there is a statute so providing. In California, there are a number of statutes providing that the winner of a construction dispute will be awarded attorney fees and costs. For the direct contractor, the statutes usually provide that an owner must pay the direct contractor within a very short period of time unless there is some disputed issue

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## Winning attorney fees in litigation as a California construction contractor or subcontractor

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which the owner is offsetting against the payment. The penalty for non-payment is generally up to an additional 2% interest per month, along with attorney fees and costs. For Subcontractors, there are similar statutes also providing for a penalty of up to 2% per month, along with attorney fees and costs when the contractor or a superior subcontractor is paid for the claimant subcontractor's work and does not pass that same payment on to the claimant subcontractor. In either case, the successful unpaid claimant would be entitled to possibly up to 2% per month as well as attorney fees and costs. There are some statutes which may allow for interest exceeding 2% per month.

**For direct contractors, the following statutes should be reviewed (live links as of writing provided):**

Civil Code §§8800-8802 : [https://leginfo.legislature.ca.gov/faces/codes\\_displayText](https://leginfo.legislature.ca.gov/faces/codes_displayText).

Civil Code §§8810-8822: [https://leginfo.legislature.ca.gov/faces/codes\\_displayText](https://leginfo.legislature.ca.gov/faces/codes_displayText).

Public Contract Code §7107: [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PCC&sectionNum=7107](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC&sectionNum=7107).

Public Contract Code §10261.5: [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PCC&sectionNum=10261.5](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC&sectionNum=10261.5).

Public Contract Code §20104.50: [https://leginfo.legislature.ca.gov/faces/codes\\_displayText](https://leginfo.legislature.ca.gov/faces/codes_displayText).

**For subcontractors, the following statutes should be reviewed (live links as of writing provided):**

Civil Code §§8810-8822: [https://leginfo.legislature.ca.gov/faces/codes\\_displayText](https://leginfo.legislature.ca.gov/faces/codes_displayText).

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Business and Professions Code §7108.5: [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=BPC&sectionNum=7108.5](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC&sectionNum=7108.5).




Public Contract Code §7107: [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection](https://leginfo.legislature.ca.gov/faces/codes_displaySection).


Conclusion:

When construction claimants are in the right, they should be entitled to attorney fees and costs to pursue and defend claims. When owners, contractors and subcontractors fail to pay those making legitimate claims they should be forced to pay fees and costs due to their failure to do so and should not be able to leverage their subordinate professionals to compromise for lesser sums. At the same time, contractors who must bring actions against irresponsible subcontractors who fail to perform their work or against owners who do not pay them should be able to recoup their fees and costs for having to bring an action against them. In each case, the absence of a provision for attorney fees and costs allows a wrongful party to take advantage of the party who is without fault. With a proper attorney fees and costs clause, this issue can be mitigated, and cases can be resolved before litigation becomes necessary. Hopefully, the above information will allow responsible members of the construction industry to act to protect their interests when they are in the right and resolve their differences when they are at fault.

*Article by William L. Porter, Esq. in 2021. Mr. Porter is a principal in The Porter Law Group, Inc. in Gold River, California. He can be reached by phone at (916) 381-7868. Visit the firm's website at [www.porterlaw.com](http://www.porterlaw.com)*

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## Capitol Connection Q&A for Contractors

By Shauna Krause  
[Capitol Services, Inc](#)

Don't worry you can't be 'unsettled' when you have a great foundation! However there might be a higher price for your 'inactivity'. Complex or simple at Capitol Services I help everybody, even Smith, John Smith ...

**Q:** I sold my Contracting business and I officially retired at the beginning of this year. I was the Responsible Managing Officer (RMO) on the license which I originally obtained back in the 80's. Over the years I had added several sub-categories of licenses. I'm not sure I even need to do this, but the thought of "losing" my qualifications is just a little unsettling and I think I should obtain a Personal license in my own name and keep it on Inactive status just in case. Do you agree? How much would that cost?

**A:** If you are feeling unsettled about it I would tend to agree you should obtain a Personal license on Inactive status. The CSLB just raised their fees so the fee for that will depend on how many classifications you have (it's an additional \$150 for each classification beyond the first one). Keep in mind you keep your qualification for five years, so you have some time to put it off and not have to pay the fees since you will not be using the license anyway. Congratulations on retiring, enjoy!

**Q:** First, for the purpose of this question, we are going to pretend my last name is Smith. I have a pending application with the CLSB to change my license status from a Sole Owner to a Corporation. I have actually had the corporation set up for several years and I'm just now updating my license. My Sole Owner business name is "Smith Construction". When I set up the Corporation years ago I named it "Smith Builders Inc". I'm now realizing once I transfer the license number to the Corporation, I will need to update my existing logo on all my documents such as contracts, change orders, and advertisements. The reason I named it "Smith Builders" was because "Smith Construction Inc." was already taken at the Secretary of State. Is there any way you can think of which would allow me to use my current business name for the purpose of advertising and not needing to come up with all new templates and logos?

**A:** I know of a very simple way actually. You can simply add a "dba" (doing business as) name to your license. With the dba attached, you either work as the entire business reflected on the license, "Smith Builders Inc. dba Smith Construction", OR just the dba "Smith Construction". So, choosing the latter option accomplishes your goal.

While knowledge is power, knowing where to go for the answers is half the battle. Get expert assistance immediately when you call 866-443-0657, email [info@cutredtape.com](mailto:info@cutredtape.com), or write us at Capitol Services, Inc., 3609 Bradshaw Rd, Ste H, #343, Sacramento, CA 95827. Search past columns at [www.cutredtape.com](http://www.cutredtape.com).

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# **Classified Ad Listings – Free to NCBE members**

## **HELP WANTED**

### **ENERGY AND SUSTAINABILITY ADMINISTRATIVE COORDINATOR - ENGLISH & BILINGUAL (ENG./SP.)**

\$4,807 - \$5,842/Monthly\*. Help the County of Sonoma lead the way as an Energy and Sustainability Administrative Coordinator! Starting salary up to \$33.59/hour (\$70,106/year) plus a cash allowance of approximately \$600/month\*. An additional \$1.15/hour for the bilingual position.\* \*Salary is negotiable within the established range. For more information, including minimum qualifications, & to apply, visit, [www.yourpath2sonomacounty.org](http://www.yourpath2sonomacounty.org) or call (707) 565-2331. EOE Apply by 1/20/22

### **INTERIOR FINISH CARPENTERS**

Looking for journeyman and apprentice carpenters for interior finish carpentry - installing doors, trim, cabinets, hardware etc... Work is in Sonoma County. Wage negotiable. Contact Dave at [dhfinish@gmail.com](mailto:dhfinish@gmail.com) for more information.

### **BUILDING MECHANIC I & II**

\$5,417 - \$7,454/Monthly\* The County of Sonoma's General Services Department seeks experienced Building Mechanics. Starting salary up to \$42.86/hour (\$89,453/year) plus a cash allowance of approximately \$600/month.\* Individuals with significant Commercial HVAC Building Control experience are highly encouraged to apply! \*Salary is negotiable within the established range. For more information, including minimum qualifications, & to apply, visit, [www.yourpath2sonomacounty.org](http://www.yourpath2sonomacounty.org) or call (707) 565-2331. EOE Apply Now

### **FULL TIME CLASS A DRIVER**

General Engineering Company in Sonoma County is seeking a full time Class A Driver to haul equipment and materials. Kaiser Medical, Individual Retirement Accounts and competitive wages. Please send resume to [Rob@Damazioexcavating.com](mailto:Rob@Damazioexcavating.com) or call (707) 789-9998.

### **BUILDING MAINTENANCE MECHANIC I/II/III**

Please visit our website for complete job description of current openings and to apply: [www.mendocinocounty.org/government/human-resources](http://www.mendocinocounty.org/government/human-resources) EOE

### **HIRING WINDOW COVERING INSTALLATION TECHS**

Exp. is not required. Detail oriented and interest in electronics is a plus. Mon - Fri, Full-time with benefits. Please send resume to [service@heritagewcs.com](mailto:service@heritagewcs.com) or find us on Indeed. <https://www.indeed.com/>

**MORE HELP WANTEDS ON PAGE 25**

## **FOR SALE**

**WACO & SAFEWAY SCAFFOLD**, 5' x 5' Ladder-type frames \$50 each. 50 frame minimum purchase. Great shape. Call (707) 578-1160



### **2013 GMC SIERRA 3500 DENALI DIESEL 4X4- \$39,500**

Original owner with impeccable service records. Never abused, chipped or programmed, recently serviced, Denali package, Duramax Diesel, Loaded with features, back up camera, Bluetooth, Leather interior, Premium sound package, Premium wheels, Remote start, 4WD, Black interior, Remote start, Sun roof, Navigation system, trailering equipment, Infotainment system, More! Call Robert (707) 694-3773 or email [rcantu@westernbuilders.info](mailto:rcantu@westernbuilders.info)

## **APPLICATIONS FOR NCBE'S CONSTRUCTION CORPS NOW AVAILABLE**

Any of our Builders Exchange members, or their employees, who have high school seniors in the family who are interested in a career in construction, should have them visit the North Bay Construction Corps website to fill out an application and learn more about the program. The website is:

[www.constructioncorps.org](http://www.constructioncorps.org)

## **Classified Ads are FREE to NCBE Members**

Email a 35+/-word, job offer, or a link to your company job board. Ads must be construction-related and text-only. Please include the job title & a contact person. Email your ad to [deb@ncbeonline.com](mailto:deb@ncbeonline.com), by Wednesday at 5 P.M. and we'll get your ad in *Building News*.

Please note: Residential property listings may not be included in the free classified ads. We do offer our members very low ad rates for this purpose, see your weekly Building News. You'll find the ad rate/size sheet on the page following the classified ad section.



## **Classified Ad Listings – Free to NCBE members**

**Sonoma Marin Construction is an award winning Construction Company who has been in business since 1976. We serve a primarily established customer base. We are currently looking for a full-time, experienced, Estimator/Project Manager to join our team.**

### **RESPONSIBILITIES**

- Complete estimates and produce proposals
- Review purchase orders from jobs and manage any discrepancies
- Participate in job scheduling
- Review job site prior to start of job and throughout project to completion for quality
- Determine material and equipment schedule and assures delivery to job
- Maintain contact and communication with clients/client representative on the jobs
- Schedule subcontractors and follow up to assure work is done as needed, on time and to specifications
- Assure job inspections are occurring
- Coordinate job payment schedule with Accounting Dept.
- Document job changes in writing with assistance from Project Assistant
- And all other Estimating and Project Management responsibilities

### **MINIMUM QUALIFICATIONS**

- 10 years combined experience in construction estimating and project management
- 8 years construction field experience
- College or other coursework in construction management or estimating
- Must be able to meet deadlines and put in the time needed to get the job done
- Strong organizational, interpersonal skills
- Proficient on MS Office
- Clean DMV

### **BENEFITS**

We offer medical, dental, vision, 401K, company vehicle, paid vacation and sick

If you are interested in joining our team and are able to fulfill the job requirements forward your resume and salary requirements to [Trisha@SonomaMarin.com](mailto:Trisha@SonomaMarin.com).

# Building News Advertising Rates

## Display Ad

Ad Size	Ad Type	Weekly NCBE Member	Weekly Limited-Member*	Quarterly NCBE Member	Quarterly Limited-Member*
3.5" x 2"	Horizontal Business card	\$15	\$31	\$195	\$403
3.5" x 4"	Horizontal Front/Back Business card	\$30	\$61	\$390	\$806
2" x 3.5"	Vertical Business card	\$15	\$31	\$195	\$403
4" x 3.5"	Vertical Front/Back Business card	\$30	\$61	\$390	\$806
3.5" x 5"	1/4 Page Vertical	\$46	\$92	\$598	\$1,196
7.5" x 5"	1/2 Page Horizontal	\$92	\$185	\$1,196	\$2,405
7.5" x 10"	Full Page Vertical	\$185	\$370	\$2,405	\$4,810

## Sub Bid Ad

3" x 3.5"	Sub-Bid (E.O.E. ad)	\$24	\$48
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## Classified Ad (NCBE Members only)

35 words	Text only (3 week maximum)	FREE	Not available
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**Ad Deadline** – We need to receive your ad by Wednesday 5 P.M. to be included in the next publication.

**Ad Requirements** – A full-size, high-resolution (200ppi) pdf or jpeg file. We can resize your ad for you, if needed.

*Building News* is a weekly publication., emailed to its members on Monday morning.  
For any questions, please email [Deb Rourke](#) at NCBE, or call (707) 542-9502.

\* **Limited-Member ad rates** apply to all NCBE Limited Memberships, which include Worker Comp, Student & SS Limited Memberships. All advertising for Limited-memberships must be paid in advance.

**Non-Members** - May not advertise in any NCBE Member publications, including *Building News*.





## **Viewing the Plan Room section of *Building News* is reserved for members of the NCBE.**

**This section includes local construction information and plans available in NCBE's online plan room, plus:**

- City/County Notices
- Projects Out to Bid
- Septic Permits
- Building Permits
- New Projects
- Legal Notices

### **... NOT A MEMBER?**

#### ***Additional NCBE member benefits include:***

Workers' Comp Insurance      Group Health Insurance  
Safety Training      Electronic Plan Room  
Business-focused Seminars & Workshops  
Promotional Opportunities  
Networking Events & Community Service

**If you are interested in becoming a member of the North Coast Builders Exchange, please call:  
(707) 542-9502.**