



The VOICE 2020 Southeastern

The official publication of the Southeastern Construction Owners and Associates Roundtable



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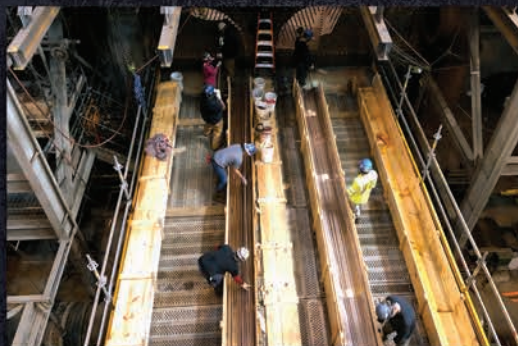
Inside:

Early Contractor Involvement

A Year to Remember

Force Majeure and COVID-19

And more!



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(813) 621-0121
(561) 285-3050
(870) 224-0006
(901) 775-1043

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A large industrial crane is lifting a massive, glowing, conical metal component, likely a turbine casing, at a power plant at night. The scene is illuminated by the plant's lights, creating a dramatic effect against the dark sky. The crane's lattice structure is visible, and the component being lifted has a bright, orange-gold glow.

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There are a number of career and technical education partnerships with SCOAR members. These partnerships, like ones formed between Performance Technical Services and local institutions, benefit not only SCOAR members but also the entire industry.

Photo credit: Lily Grace Photography and Ashkan Forouzani on Unsplash



Published For: **THE SOUTHEAST CONSTRUCTION OWNERS & ASSOCIATES ROUNDTABLE**

501 Old Greenville Highway
Suite 8 PMB 393
Clemson, South Carolina
(864) 633-4883
Email: staff@scoar.org
Web: www.scoar.org

Published By:
Matrix Group Publishing Inc.
Please return undeliverable addresses to:
5605 Riggins Court, Second Floor
PO Box 41270
Reno, NV 89504
Toll-free: (866) 999-1299
Toll-free fax: (866) 244-2544
www.matrixgroupinc.net

President & CEO
Jack Address

Operations Manager
Shoshana Weinberg
sweinberg@matrixgroupinc.net

Publishers
Jessica Potter, Julie Welsh

Editor-in-Chief
Shannon Savory
ssavory@matrixgroupinc.net

Senior Editor
Alexandra Kozub
akozub@matrixgroupinc.net

Editors
Jenna Collignon, Kaitlin Vitt

Finance/Administration
Lloyd Weinberg, Nathan Redekop
accounting@matrixgroupinc.net

Director of Circulation & Distribution
Lloyd Weinberg
distribution@matrixgroupinc.net

Sales Manager - Winnipeg
Neil Gottfred

Sales Manager - Hamilton
Jeff Cash

Sales Team Leader
Jim Hamilton

Account Executives
Adam Marlor, Albert Brydges, Andrew Lee, Bonnie Petrovsky (in memoriam), Brenda McPhee, Brian MacIntyre, Cheryl Klassen, Colleen Bell, Frank Kenyeres, Jon Beroud, Marilyn Beek, Rob Gibson, Sandra Kirby, Tanina Di Piazza, Tenisha Myke

Advertising Design
James Robinson

Layout & Design
Cody Chomiak

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This has certainly been an unusual year due to the onset of the COVID-19 pandemic. Our responses to this pandemic across the globe, in the U.S., and by the SCOAR membership was to develop caring, cautious, and creative solutions to mitigate the spread of the virus and protect our workers.

Unfortunately, the pandemic prevented us from holding our May meeting at Long Boat Key, Florida. A special thanks to our Executive Director's team, Steve and Diane Greene, who promptly responded to the pandemic with a timely communication to the SCOAR members. The team then successfully facilitated a virtual meeting in late July with approximately 90 members in attendance.

The Long Boat Key conferences are certainly a SCOAR highlight for the year; however, our July virtual meeting provided an opportunity to hear some short- and long-term predictions on the economy and construction activities related to the impact of the pandemic. There was also a very engaged panel discussion among our members who shared best practices to respond to the pandemic. Construction practices, including masks, contact tracing, temperature scanning, staggered start, break and lunch times, and quarantine practices, were just a few of the topics reviewed. Thanks to all who were able to attend and participate, and we look forward to returning to Long Boat Key in January.

Our October 2020 meeting will be held in Savannah, Georgia, with a very full agenda. Activities include a tour of the Mitsubishi Hitachi Gas Turbine manufacturing facility, the TOPS safety awards dinner, a sporting clays fundraiser, SCOAR committee meetings, an owner's forum, and a full program agenda that includes nominations for the SCOAR Board of Directors. We hope to see not only the current SCOAR members but also non-members who are interested in joining this unique industry organization.

The SCOAR organization's membership represents a complete construction

We plan to hold three conferences each year to provide a valuable opportunity for networking and developing new business relationships while also maintaining ongoing relationships.

project supply chain from owner companies, EPC (engineering, procurement, and construction), general contractors, specialty contractors, and material suppliers. We plan to hold three conferences each year to provide a valuable opportunity for networking and developing new business relationships while also maintaining ongoing relationships.

The SCOAR committees representing workforce development, safety, marketing, and fundraising continue to advance the construction industry through education, scholarships, and recognition awards. While the pandemic has required us to conduct our networking activities virtually over the past several months, I am excited about what the organization has planned in the coming year.

Please reach out to me or any of our Board of Directors with questions or clarifications about the organization, activities, committees and initiatives.

From the President



Steve Immel
President
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Duke Energy
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Dan Snead
Mosaic
dan.snead@mosaicco.com

What a challenging yet somber year 2020 has been for our nation and the construction industry!

But we are delighted with the support that the SCOAR Board of Directors and our 90 member organizations have provided to us in our first year. SCOAR held a successful fall meeting and TopGolf event in September of 2019 in Greenville, S.C., with over 120 attendees.

This was followed by a winter meeting in Jupiter Beach, Fla., with a record 130 members in attendance at the casino night and dinner and program meeting. Unfortunately, we had to postpone and ultimately cancel our ever-popular spring meeting that was to take place in Longboat Key, Fla.

As such, we were able to hold a successful virtual SCOAR Meeting in July, hosted by SCOAR owner-member DEWALT. There were four wonderful presentations from eight great speakers over the course of the three-hour Zoom meeting. Following these presentations, participants were provided with a special promotional offer by DEWALT! You can view the entire virtual meeting in the "members only" portion of the website.

Our current plans are to reconvene in-person meetings beginning this fall in Savannah, Ga. As the health and safety of our members and guests is our utmost priority, we will be taking enhanced health and safety measures to make future events as safe as possible for all.

We are closely monitoring all COVID-19 information and updates from the Centers for Disease Control and Prevention and other federal, state and local authorities. Following these recommendations, additional precautionary measures to support the health and safety of attendees at meetings and events will be adopted. Please continue to visit the SCOAR website for the latest information.

Last fall, the SCOAR Board of Directors made the decision to change our fiscal year to November 1 through October 31 to coincide with the end of

the last meeting of the year. Therefore, the SCOAR 2021 year will begin on November 1st.

We began planning for next year in April of 2020. Next year's schedule of meetings includes a winter meeting to be held Tuesday, January 26 through Thursday, January 28 at the Resort at Longboat Key Club in Sarasota, Fla. Our spring meeting will be held Monday, May 17 through Wednesday, May 19 in Charleston, S.C. And our fall meeting will be held in late September or early October.

We are finalizing contractual details for a couple of different southeastern cities to provide for a meaningful program with sensational networking opportunities for members.

This summer SCOAR launched its new website at www.scoar.org. The website has enhanced features and functionality with a clean and crisp look. The site includes many member resources, most of which can only be accessed through the Member Portal, such as the Member Directory, committee information, a Presentation Library from past meetings, Discussion Forum and Special Promotions. This portal will provide secure access to individual employees of every member organization but it will require that each SCOAR member establish their own password to enter.

SCOAR continues to utilize donations and net revenue from operations to fund craft training grants, technical trades scholarships and college/university construction engineering and management scholarships. This year SCOAR members donated over \$28,000 for these programs. These were made possible through the generous contributions of Graycor Southern, Fluor, NCCER/BYF, Worley,

From the Executive Director



Steve Greene
Executive Director
SCOAR

Southeastern Construction and Maintenance, Ironworkers/IMPACT, PTS Group and the Southern States Millwright Regional Council.

Diane and I are excited about the opportunities that each of you have provided, and the potential for growth with SCOAR. Please continue to provide us with ideas for improvement and recommendations for potential new members. We look forward to serving each of you in 2021!

The Benefits of Early Contractor Involvement

By Shawn Buchanan and Brian Gallagher, Graycor Southern



As complexities continue to increase for capital projects, traditional approaches to project delivery may not ensure successful project outcomes for the owner. The design-bid-build project delivery method, a linear process in which the architect completes a design before contractors bid and well before work commences, may not disappear any time soon. It is a familiar process to most industry members; moreover, it is suitable for straightforward types of construction where few changes are expected to occur as construction progresses. The problem is that most construction projects aren't that simple.

Industrial, process and power projects are logistically complex. A variety of other factors facing the construction industry only add to that complexity. For example, new technologies are being adopted at a fast rate, global supply chains create more steps in the procurement process, and the industry faces a chronic labor shortage. Environmental regulations bring an additional layer of requirements to any project.

So how can a project team address these challenges? The answer is planning, planning, planning. And the only way to plan well is to have as much up-front knowledge and information as possible. Early consultation with contractors—a project delivery approach known as early contractor involvement, or ECI—is one way to gain up-front knowledge. This method brings a heightened attention to detail early in the design process.

While it is closely related to design-build project delivery, ECI brings contractors to the table even earlier in the process, at the design concept or schematic phase. Because the contractor is brought in before the design phase is complete—making costs still an unknown—they are typically hired for a fixed fee and perform the role of a consultant. The contract may be for pre-construction services only, or it may include additional project stages.

ECI is focused on execution, not merely contractual arrangements. Establishing accountability is certainly an important priority for everyone on a team, but when the focus is on legalities instead of on the project itself, quality suffers. Ironically, by allowing more problems than necessary to develop on the jobsite, the original intent of traditional delivery models to limit liability is undermined.

Early input from contractors provides owners and design teams an experienced viewpoint on a project's constructability. Contractor knowledge can influence:

- **Estimating and procurement:** A wider selection of products may be considered, and items with long lead times can be ordered early, resulting in improvements in both cost and scheduling. Accuracy of estimates is also improved.
- **Scope and scheduling:** Project schedules should be coordinated with engineering and procurement timelines. Doing so can shave months off the construction schedule.
- **Value engineering:** Creative solutions can be sought to bring costs under control. Contractors brought on as consultants can identify cost-saving opportunities associated with prefabrication, modularization and more.
- **Risk identification:** Pinpointing risk areas early can improve risk management and mitigation throughout project execution.

A key advantage to ECI is that it facilitates work-breakdown structure

(WBS). WBS begins with a bird's-eye view that's focused on deliverables then breaks a project down into manageable components. Having experts at the table who collectively understand all job components leads to more accurate breakdowns.

Better outcomes

By commencing a project using ECI, owners will quickly gain insights that help determine if a project is viable or not. As the project progresses, the owner retains greater control than with traditional delivery methods, since the decisions that were made up-front tend to "stick" and require fewer alterations.

The ECI process, in addition to tapping into a broader array of expertise, entails greater transparency in trade and subcontractor pricing. Costs invested in bringing contractors on as consultants are mitigated by the fact that the contractors don't have to cushion their price as they would with traditional bid models. When done properly, ECI can reduce friction among the various stakeholders and harness collaborative attitudes.

Proven outcomes for ECI include faster permitting, fewer change orders and better regulatory compliance. Timeliness of completion is improved because, even though the tendering period may go on longer than it would with design-bid-build project delivery, the construction period itself is shortened. Investing in a pre-construction process results in more efficient use of funds; combined with the shorter construction schedule achieved, projects are delivered on budget.

Industry adoption


While alternative project delivery methods have become common in the private sector, public sector adoption has been slower. Several factors have caused this; for example, some states require separate contractors for each aspect of a project and some stipulate that a project be awarded to the lowest bidder.


However, many states are passing legislation to remove these barriers.

It stands to reason that decisions made upstream can prevent downstream problems. Upstream decisions can be overly general and vague, but pre-construction tasks bring an action-oriented level of detail. When specific tasks and alternative solutions are identified early, delays, rework and extra costs are eliminated. The goal for everyone on the team is the same: safe, timely, quality completion. Therefore, adopting practices that streamline and coordinate the process is mostly a matter of changing existing habits and mindsets. **I**

Shawn Buchanan, Graycor Southern Vice President and General Manager, has over 20 years of experience in the petrochemical, process and power markets, including multimillion-dollar capital construction, maintenance and turnaround projects. He holds degrees in construction management technology from the University of Houston and environmental design from Texas A&M University.

Brian Gallagher, CPSM, is the Graycor Southern Vice President, Corporate Development. He has served in strategic, marketing, sales and technology leadership positions with architecture, engineering and construction organizations. Gallagher holds a bachelor degree in marketing from Towson University and an MBA from Loyola College. He also has served as an adjunct professor at Loyola College and in leadership roles for the Associated Builders and Contractors Carolinas, the American Concrete Institute and the Concrete Industry Management program.






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A Year to Remember—But Better to Forget

By Anirban Basu, Associated Builders and Contractors

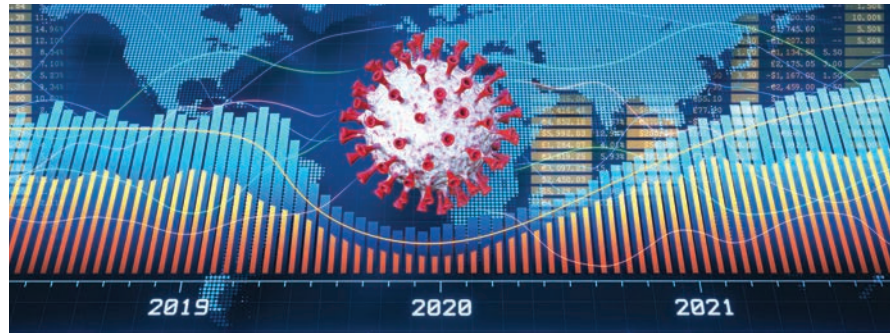
On June 8, 2020, the National Bureau of Economic Research made it official. The economy had entered recession in February, ending the longest economic expansion in modern history. But by that point, one could argue that the recession was already over, replaced by a rather robust economic rebound then in place.

It may be difficult to remember, but 2020 started out in sweet fashion. At that time, economic momentum appeared unassailable. At the heart of America's story was a strong labor market, with abundant and sufficiently appealing job openings continuing to draw more people into the workforce.

Five years ago, in July 2015, the U.S. labor force participation rate stood at 62.6 percent. By 2020's initial month, it had risen to 63.4 percent despite the ongoing retirement of baby boomers in large numbers; a pace of retirement accelerated in part by booming U.S. equity markets.

Despite an expansion in the number of jobseekers, the U.S. economy was able to pick up the slack, keeping the nation's official rate of unemployment rate pinned at a 50-year low of 3.5 percent as the year began. With available workers scant, employers responded by raising wages in an effort to recruit and retain.

The strong labor market fueled consumer spending, which represents two-thirds of the economy. Strong demand for goods and services in turn fueled business investment, including in America's burgeoning energy sector, itself fueled by a shale revolution that had positioned the United States to be the largest producer of both natural gas and oil. As a result, in January 2020, the nation added 214,000 jobs. In February, it added another 251,000 jobs.



As the pandemic began to gain people's complete attention, there were some economists who believed and publicly stated that the economic expansion could persist through the public health crisis. The notion was that the economy was an irresistible force. But that irresistible force met with an immovable object known as COVID-19, and the immovable object won.

Major shifts

In March, the United States along with much of the rest of the world buckled down and made the tough decision to shut down a significant fraction of its economy in an attempt to flatten the curve of infection. This was done to prevent the emergence of overwhelmed medical systems.

Though the economy began 2020 well, GDP shrunk five percent during the year's initial quarter, largely a reflection of the economic horror show that transpired during March's final three weeks. That horror show continued into April. The nation lost nearly 1.4 million jobs in March and followed that up with the unimaginable loss of 20.8 million positions in April.

In just two months, America had given up all the job gains registered during a prior 113-month period during which jobs were added each month without interruption. That represented

the lengthiest winning streak in American labor market history, a signature element of the lengthiest economic expansion the nation had ever enjoyed.

Things improved—then fell apart

In late April, economies around the nation began to reopen, with the American southeast leading the way. After being shuttered in place for the better part of two months, many Americans ventured back into the economy—one associated with pent-up demand, low interest rates, low gasoline prices and renewed opportunities to spend money, including money received in the form of stimulus checks.

The result was a partial economic bounce back that commenced in stunning fashion. While economists were busily predicting that May would be associated with a loss of eight million jobs nationally, Americans had other ideas.

By reengaging the economy more willingly than many thought possible, America ended up creating 2.7 million net new jobs in May and then followed that up with 4.8 million new jobs in June. In just two months, the United States has recovered about a third of the jobs lost due to the spring shutdown. The unemployment rate, which peaked at 14.7 percent in April, fell to 11.1 percent by June. America's period of growing economic stress was over.

Or so it seemed. Just when it appeared safe to get back into the proverbial water, the virus reemerged. By lingering largely in the American north in epicenters like New York, Detroit, Chicago and Seattle during its early days, the virus engaged in the equivalent of a head fake. Its surreptitious inclinations may have convinced some southern leaders that reopening economies made sense in late April even as certain northern governors continued to urge restraint.

People will debate for years whether or not certain governors reopened their economies too quickly, but at the end of the day the infection epicenters migrated from north to south, enveloping cities such as Miami and Atlanta. Accordingly, while southern communities fared better economically during the early stages of the crisis, that is far less likely to be the case during the balance of 2020.

But even the northern states will struggle to continue to recovery rapidly during the months ahead. The spread of infections in the south raises the probability of aggressive viral spread elsewhere going forward, especially as colder temperatures begin to arrive.

Moreover, certain aspects of the economy can't recover without full southern participation, including business travel, hospitality, conventions and in-person attendance at sporting events.

Construction feels it, too

The second quarter of 2020 will go down as the worst quarter of our economic lives. The Bureau of Economic Analysis's initial GDP estimate indicates that during the second quarter, America's economic output shrank 9.5 percent during the second quarter relative to the first, which translates into an annualized pace of economic decline approaching 33 percent. To put this into context, during 2008's final quarter, economic growth shrank 8.4 percent on an annualized basis.

Though many have emphasized construction's status as an essential industry, the industry did not escape the wrath of COVID-19. Survey data from various sources indicate that an easy majority of contractors suffered some form of interruption to their activities during the second quarter, whether due to a lack of available inputs as global supply chains

Exhibit 1: Southeastern States: Employment, June 2020

	12-Month Net Change	12-Month % Change
Mississippi	-56,600	-4.9%
Tennessee	-154,000	-4.9%
Georgia	-239,800	-5.2%
Alabama	-114,600	-5.5%
South Carolina	-126,100	-5.8%
Florida	-541,800	-6.1%
North Carolina	-340,400	-7.4%
U.S.	-12,957,000	-8.6%

Source: U.S. Bureau of Labor Statistics

Exhibit 2: Southeastern States: Construction Employment, June 2020

	12-Month Net Change	12-Month % Change
South Carolina	1,800	1.7%
Florida	4,600	0.8%
Alabama	300	0.3%
Georgia	-4,400	-2.1%
Tennessee	-4,200	-3.1%
North Carolina	-11,200	-4.8%
Mississippi	-4,700	-10.5%
U.S.	-330,000	-4.4%

Source: U.S. Bureau of Labor Statistics

buckled, project postponements or cancellations, job-site workforce issues or state and local government mandates.

While there was relatively greater damage done to industries like retail and hospitality during the second quarter, construction activity also fell dramatically. A number of key construction segments, including lodging, commercial, and office, were especially hard hit by the economic forces unleashed by the pandemic.

Many of these projects remain on contractor backlogs but the possibility of outright cancellation remains elevated in these and other segments as project financing becomes more challenging to obtain and as the crisis leaves many vacated office suites and empty storefronts in its wake.

GDP data indicate that investment in nonresidential structures swooned during the second quarter. Investment in nonresidential fixed structures was down 34.9 percent for the quarter despite the industry's "essential" designation.

Employment data also reveals how difficult circumstances have been. Nationally, the construction industry lost nearly 1.1 million jobs in March and April combined. During the subsequent two months, however, the industry recovered 611,000 jobs, or more than 50 percent of what had been lost. Still, a heavily damaged commercial real estate sector suggests that many segments will remain weak in terms of construction spending on new projects for years.

Looking ahead

While the office, lodging and retail construction markets have been negatively impacted by the pandemic over both the short and long terms, other construction segments stand to be beneficiaries. With so much economic activity shifted online, e-commerce related segments such as fulfillment and data centers stand to be major generators of demand for construction services going forward.

There will be more demand to reorient functionality and space within existing structures, including in the form of HVAC and other investments designed to curtail viral spread through air handling systems and/or excessive proximity among workers and customers. Contractors often shift from a focus on new construction to remodeling of existing properties during periods of economic stress, but the migration from new to existing may be even more profound this time around.

There are other segments that stand to generate additional demand for construction services going forward. The combination of buckling global supply chains and trade disputes will result in more reshoring of manufacturing to America, resulting in additional investment in industrial facilities. Low energy prices in North America will help fuel (literally) this activity.

Healthcare also stands to be a major generator of construction work, especially once major medical systems have had some time to heal themselves financially after a period of massive care provision and reduced revenues from elective surgeries, postponed wellness checks and so on. ■

Anirban Basu is the Chief Economist for Associated Builders and Contractors as well as the Chairman and CEO of Sage Policy Group.

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Performance Technical Services is a family-run electrical, instrumentation and controls company dedicated to connecting educational institutions to the construction industry.

As with all skilled trades, the construction industry relies on education partnerships to develop workers. While students get the opportunity to try out different skills to find a good career fit and build their resumé, companies can provide input on what school curriculums should focus on.

Performance Technical Services (PTS) in Bradenton, Fla., is one of those companies. The company has partnerships with local educational institutions, and PTS President Ron Cobb says he sees the two-way benefit.

"We're giving back to the industry in a lot of ways, but it's a win-win situation," says Ron, who is a member of the MTC Advanced Manufacturing and Production Advisory Committee. "We can pull from the cream of the crop and bring them in on our projects."

PTS employees sit on multiple advisory committees at Manatee Technical College (MTC). This allows people working in the industry to provide feedback on what students are learning. In 2019, PTS helped the college secure a grant through the Southeastern Construction Owners and Associates Roundtable (SCOAR) and SkillsUSA. With this grant, MTC purchased an instrumentation trainer, which has been and will continue to be invaluable in students' learning journeys.

This technology allows for all parameters in instrumentation (flow,

temperature, level and pressure), meaning students get well-rounded hands-on training. Ryan Cobb, Ron's son and an electrical engineer at PTS, says this trainer alone can help students get jobs.

"By using this trainer, students get valuable experience that can place them in a job right upon graduation," says Ryan, who is the chairperson of the MTC Electrical/Instrumentation Technology Advisory Committee.

"It helps build a relationship between the college and us," he adds. "We've hired a couple people who have been through the program. They have worked with us on a project, and the experience looks good on a resumé."

Thanks to these partnerships between industry and institutions, up-and-comers get a head start in advancing their career. Last year, two MTC students also received Skilled Trades Scholarships, presented by SCOAR, valued at \$500 each.

These scholarships are part of the more than \$200,000 that has been donated by SCOAR members for technical trades scholarships, craft training grants and college and university construction engineering and management scholarships over the past eight years.

For four years, PTS has been a link between MTC and Bradenton Christian School. PTS offers National Center for Construction Education and

Research (NCCER) Core Curriculum as an introduction to construction class at the high school, and these credits can be transferred to the college. Ron's middle son, Aaron, is the NCCER master trainer and sponsor representative/instructor for the class.

Besides technical skills learned in the class, students become trained in operational health and safety (OSHA) and receive their OSHA 10-hour safety card. Also, their parents learn more about the construction industry as a whole and what a career in the trades can look like.

"Parents' and students' eyes light up when you tell them how much you can make and that you don't need to go into student debt to make a good living," Ryan says.

PTS is more than 30 years old and is a third-generation electrical, instrumentation and controls company, with its main market share in power generation. Ron's late father, Glenn Cobb (1933-2020), who was a mechanical engineer out of Georgia Tech and worked for Florida Power and Light for 33 years, founded PTS, and today Ron's wife, Denise, is the majority owner.

The three sons, Stuart, Aaron and Ryan, all went to school at Bradenton Christian School and graduated from the University of Florida. In addition to Ron and Ryan holding positions on MTC advisory boards, Stuart and Aaron do as well. They both are members of the MTC Electrical Advisory Committee and have a bachelor of science in construction management from the M.E. Rinker, Sr. School of Construction Management.

As the Cobbs understand, connecting industry leaders with educational institutions benefits everyone involved. The leaders ensure school curriculums focus on what students need to know upon graduation, the students learn from seasoned professionals and receive financial and educational support, and the industry stays current, ready to improve the world around us. **I**

Force Majeure and COVID-19: Did Anyone See It Coming?

By Fred Lyon, The Lyon Firm

As divisive and diverse as the domestic and international response has been to the COVID-19 pandemic, on certain things we can agree: it is unprecedented, it is continuing, and it has and will impact construction contract performance. This issue is most implicated in the operation of a contractual force majeure clause, the subject of this article.

March 11—the day that the NBA shut down, that Tom Hanks contracted the disease and Trump gave a nationally televised address from the White House—was when it all got real for most Americans. Companies immediately began reviewing their existing contracts to determine the likely impact of the disease on their performance obligations. The first place they likely turned was to the force majeure (or excusable delay) provision.

Force majeure clauses are intended to say what happens upon acts of God, when something beyond the control of either party that could not have been anticipated (and thus baked into the price) actually occurs. Most but not all force majeure clauses would include epidemics or pandemics within their scope of unpredictable acts of God. Even if a pandemic is not specifically enumerated as a force majeure event, it is likely to fall under the general definition of force majeure as beyond the control of either party.

As to whether COVID-19—the worst pandemic in over 100 years—meets either definition, the answer is a resounding yes. While surely there will be those who disagree, fighting the battle of the impact of COVID-19 on this front makes little sense. COVID-19 should be considered a force majeure event. But that in and of itself does not mean that it will provide remedies to issues of performance. That requires additional contract-specific inquiry along other lines.



Virtually all force majeure clauses contain a notice provision that requires written timely notification of the event from the time it occurs. Without such notice, relief is usually not available. Although these clauses are not always strictly enforced, the first inquiry in assessing the viability of a force majeure event is whether notice was given, it was timely and it was in the proper form.

Perhaps the key force majeure issues are proof of actual impact of the force majeure event on performance. Merely saying something is force majeure does not automatically give rise to relief. The claiming party has to prove how it actually impacted its performance.

Was a supply chain actually disrupted resulting in provable late delivery? Were craft workers not available as a direct result of the pandemic, not simply because of craft shortages that predated COVID-19? Did the pandemic cause a shortage of materials? For a claiming party to avail itself of the force majeure clause, it will need to provide very specific, credible proof of exact impact, or relief may be denied.

The claiming party will still have a duty to mitigate the impact of the force majeure event. Identifying alternative sources of supply, labor and material will be essential before force majeure is recognized.

But even if notice is given and proof of impact is established, there is the question of remedy. Most force majeure clauses stipulate that in the event of timely, provable force majeure events, the provisional relief is a time extension only, with no increase in costs. Thus, if materials are not available, the contractor will be entitled to a time extension until they are.

But what if as a result of COVID-19 the contractor's costs of performance substantially increase? This is a very real possibility given shortages and disrupted supply chains. Or what about the impact of social distancing requirements on productivity? Unless the clause allocates this risk of price increase proportionally between the owner and contractor, the contractor is likely to bear the entire burden of the increased dollars. No amount of time in the world is likely to lessen the sting of these potential escalations.

Economic hardship historically has been addressed pursuant to the doctrine of frustration of purpose. A party will claim that it has become commercially impossible (or impracticable) to perform the contract under the original terms.

However, courts have been reluctant to absolve one party of its obligations simply because performance has become more expensive. Generally, the grounds for using frustration as a way to get more money for a force majeure event are extremely narrow.

But extreme times can produce extreme results. The extraordinary and unprecedented nature of COVID-19, including its impact on prices, may force courts to be more liberal in the application of the doctrine of frustration of purpose, more inclined to give price relief than in the past. This result is not likely to come easily, however, and may well require substantial litigation to achieve.

As is often the case, a pragmatic, negotiated resolution may be preferable. Although an owner could insist upon strict



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adherence to contractual terms and refuse any financial relief, a consequence may prove the abandonment of the contract.

Rather than denying all relief, an owner should consider the severity of the situation, its commercial relationship with the impacted party and the impact on completion the project if the contractor is forced to absorb 100 percent of all price increases. Sharing the cost impact or flexible payment terms may keep the project on track.

COVID-19 is (hopefully) a once-in-a-generation event. It is likely to influence the structure of force majeure clauses in the future. For now, however, the counterparties to a contract are best served by recognizing the reality of the situation and negotiating the best path forward rather than the perhaps pyrrhic victory of rigid enforcement of the contract. Flexibility and practical resolution serve all best. **I**

Fred Lyon is a construction attorney and mediator with over 35 years of experience in contract drafting and dispute resolution. Learn more at www.lyonfirm.com.



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Southern Company

More than a century ago, early founders of Southern Company envisioned bringing the technology advancement of the day—electricity—to widespread areas of the Southeastern United States by harnessing the power of rivers. From those humble beginnings, Southern Company has risen to become America's premier energy company.

Serving its nine million customers, Southern Company provides clean, safe, reliable and affordable energy through electric operating companies in three states, natural gas distribution companies in four states, a competitive generation company serving wholesale customers across America, a leading distributed energy infrastructure company, a fiber optics network and telecommunications services.

With 42,000 megawatts of electric generating capacity and 1,500 billion cubic feet of combined natural gas consumption and throughput volume, Southern Company for more than a century has been building the future of energy and developing the full portfolio of energy resources. That includes carbon-free nuclear, advanced carbon capture technologies, natural gas, renewables, energy efficiency and storage technology.

Over the years, Southern Company brands have become known for excellent customer service, high reliability and affordable prices below the national average. Southern Company's corporate culture and hiring practices have been recognized nationally by the U.S. Department of Defense, *G.I. Jobs* magazine, DiversityInc, Black Enterprise, *Fortune's* "World's Most Admired Companies" list, *Forbes*, the Women's Choice Award, the Human Rights Campaign and more.

The company operates under the tenets of four core values: safety first, unquestionable trust, superior performance and total commitment. These uncompromising values ensure the company places the needs of those it serves at the center of everything it does. The



Southern Company

company governs the business to the benefit of its customers, communities and the world. How Southern Company does its work is just as important to the company as what it does. Staying true to these values is key to the business's sustained success.

Through recent projects and achievements, Southern Company has increased its investments in nuclear, renewables and natural gas and transformed itself into a low- to no-carbon enterprise.

Over the past decade, under the leadership of CEO Tom Fanning, Southern Company has undergone sweeping changes. Southern Company has made a long-term greenhouse gas (GHG) emissions reduction goal of net-zero emissions by 2050. On its way to that goal, the company set an intermediate goal of reducing GHG emissions 50 percent from 2007 levels by 2030.

Driven primarily by low natural gas prices, and through its regulators, Southern Company has rapidly transitioned its system's generation fleet. The Southern Company system's carbon emissions decreased by 44 percent through 2019, and the company now expects to achieve the 50 percent reduction well before 2030, and possibly as early as 2025. In fact, Southern Company has reduced the energy it derives from coal to 22 percent today from about 70 percent when Fanning took the helm.

Southern Company's Georgia Power subsidiary is currently building the first two new nuclear plants built in the United States in more than 30 years at the Plant Vogtle site near Augusta, Ga. Vogtle Units 3 and 4 is currently the largest jobs-producing construction project in the state of Georgia, with more than 9,000 workers currently on site, and more than 800 permanent jobs available once the units begin operating.



North America's Building Trades Unions (NABTU) members represent 7,000 craft professionals on the project's workforce. The company expects to meet the November 2021 and November 2022 regulatory-approved in-service dates for both Units 3 and 4, respectively.

In 2016, Southern Company acquired AGL Resources, a network of natural gas assets and businesses, which has become Southern Company Gas, a wholly owned subsidiary of Southern Company. Other recent key acquisitions include a 50 percent stake in the Southern and Natural Gas Pipeline (SONAT) and PowerSecure, the nation's leader in microgrid installation.

Southern Company is engaged in public policy discussions to shape national energy policy and is a driving force of job creation and personal income to make American lives better. Often referred to being "bigger than our bottom line," this strategy leads Southern Company to commit to the idea that the communities it serves will be better because it is there.

A company filled with history remains well-positioned for a future where it is among the industry's leaders for operational performance and customer satisfaction, as well as America's premier energy company.

IMPACT

Driving Ironworker and Contractor Success

IMPACT has built a reputation over the past two decades for creating job opportunities and providing a support structure for its participants. The company was founded in 2003 to meet the need for a stronger ironworker-contractor partnership with capacity to create job opportunities. Subsequently, Regional Advisory Boards (RABs) were established to better serve IMPACT participants in 13 geographical areas.

Today, a team of professional development training, business development, accounting, administrative, marketing, public relations and communications staff with six regional directors working in 12 RABs serve IMPACT participants. Co-Chairs Eric Dean, Iron Workers General President, and Bill Brown, Penn Services Chairman, have played a proactive role in shaping IMPACT and expanding on the original vision.

As part of their membership benefits, IMPACT participants have access to a plethora of programs, services and resources to help them succeed. IMPACT offers professional development education opportunities to support existing and future ironworking contractors who want to start or advance a business. Since 2013, nearly 6,000 participants have completed IMPACT training courses and attested to the effectiveness of them.

Training courses such as Construction Contracting Business Fundamentals Academy (BFA) have helped many startup and small business contractors stay in business and succeed. Since its inception in July 2015, 465 participants have completed the BFA course, one of the most popular IMPACT training courses, and 91 percent of the participants have reported improvement in job performance and growth.

Superior Steel Erectors in Kansas saw a significant jump in revenue after participating in IMPACT training programs. The company reported a gross revenue



increase from \$13,000 in the first year of participating in IMPACT training to \$280,000 in the second year, then nearly \$700,000 by the fifth year and \$1.1 million the following year.

"IMPACT provided us the foundation to strengthen our ability to be profitable during the early stage of the company and helped us get established firmly as a successful contractor," says President and CEO of Superior Steel Erectors Jodi Ellis.

Recently, IMPACT launched the Business Incubator Leadership Development (BILD) program to boost partner contractor success. From startups to established businesses, the BILD program combines coaching with subject matter experts to help contractors achieve greater levels of success. Although the program is still in the pilot phase, over 60 contractors in all stages of development have already benefited from its resources.

IMPACT funds safety training to increase safety performance of partner contractors in the United States and Canada. The Iron Workers Safety Director Course, Superintendent Training, Foreman Training and Ironworker Safety Supervisor Training Course are among the most innovative IMPACT-funded, cutting-edge safety training. IMPACT grants fund equipment and supplies for the 157 Iron Workers training facilities throughout the United States and Canada.

"Our ironworkers put their lives at risk every day, and they deserve the best training money can buy," says Hilton. "We work

with their employers to ensure every one of them go home safe at the end of the day."

In 2017, IMPACT spearheaded the groundbreaking Iron Workers Paid Maternity Leave Program, the first of its kind in the industry. The launch of the program made headlines in the news. The IMPACT-funded paid maternity leave program offers qualifying ironworker women up to six months of pre-delivery and six to eight weeks of post-partum paid leave. Since inception, 56 ironworker women have received the benefit.

IMPACT's business development team works diligently to secure work hours in industrial plants that historically have not worked with partner contractors. Since 2018, the IMPACT business development program has secured the following for partner contractors:

- 39 new customers;
- 109 industrial projects;
- 34,000+ ironworker hours;
- \$1,870,000 in new ironworker wages and benefits;
- 16,892 additional ironworker hours in 2020; and
- 119 projects in the pipeline, 50 of which are at the proposal stage as of June 2020.

IMPACT participates in prominent industry organizations such as American Institute of Steel Construction (AISC), Metal Building Contractors & Erectors Association, Concrete Reinforcing Steel Institute, Specialized Carriers & Rigging Association, Construction Industry Institute and Construction Users Roundtable on behalf of the Iron Workers to keep a finger on the pulse for the ironworkers and their contractors.

IMPACT assists partner contractors in obtaining industry certifications necessary to be competitive such as AISC, LEED, SME, MBE and WBE. In addition, IMPACT participants have access to marketing, advertising, public relations and communications programs to help them convey their value proposition to customers. ■

SCOAR News



Flags of Valor

At the winter meeting in February, we had a group of veterans talk about various service-related opportunities for SCOAR members to use. One of these was Flags of Valor, the United States' largest producer of wooden American flags that also offers a full line of awards and recognition gifts, food and beverage service products and other works of art.

In just over four years, they have created more than 65 veteran jobs, raising \$1,050,000 for veteran and first responder charities and delivering over 100,000 hours of veteran-powered American manufacturing labor. SCOAR supports Flags of Valor by providing donations to its organization and purchasing products for awards and gifts to SCOAR member companies.

New Members in 2020

SCOAR would like to welcome these new members!

- Accurity Industrial Contractors
- Ballard Marine Construction
- Barnhart Crane & Rigging
- Caddell Power
- DeWalt Manufacturing
- Great River Industries
- Haskell Company
- HKA Enterprises
- IC&E
- Judgment Index
- Maxim Crane Works
- NDE Incorporated
- Tetra Tech
- Tnemec Coatings Company
- Tradesmen International
- Universal Plant Services
- Wanzek

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EXCELLENCE**

Why Join SCOAR?

SCOAR fosters innovation and breakthrough thinking on issues related to industrial construction to improve your business performance.

SCOAR's dedication to learning is unique among associations serving the construction industry, giving you and your company the greatest return on the investment of your time and money.

Our membership is comprised of industrial facility owners, EPC companies, engineers, general and specialty contractors, labor and material suppliers, as well as service suppliers, educators and consultants.

HOW SCOAR IS DIFFERENT!

SCOAR is an interactive learning alliance of construction professionals.

- Spend your time learning and addressing interesting and challenging topics, not stuck working on the typical association-type committee.
- Benefit from an interactive learning environment focused around team-based exercises, subject matter experts and collaborative discussions.
- Be a part of creating new methods and processes to tackle the typical construction issues and challenges.

Case Example: "A new solution to an old problem."

The project started going wrong in the engineering phase. As it moved into construction, the project was behind schedule and over budget. The SCOAR member recalls, "The owner (us) was not happy, and my engineering and construction teams were pretty dispirited. Typically, we might go in and make some wholesale personnel changes, but I knew I had good people on the teams."

SCOAR had recently brought in an expert from outside the construction industry to discuss the Judgment Index, a scientifically-based assessment tool that measures, among other things, the level of engagement on a project. "I was intrigued by the concept and thought it was worth a try," says the owner.

The owner brought in the expert, who took the engineering and construction teams, as well as key contractors, through a daylong exercise.

"It worked. The process creates a lot of self-reflection. It makes you ask, 'Why is my responsibility here.' It got everybody past the typical finger pointing

and working together again. In the end, we were able to turn the project around and bring it in much closer to the original schedule and budget."

Harness the creativity and experience the diversity. SCOAR brings together facility owners from different industries and all parts of the supply chain to address the issues that will improve business performance.

- Combine experience bases and methodologies from different industries to discover new solutions.
- Understand and incorporate perspectives from various parts of the supply chain to create comprehensive responses to construction challenges with great changes for success.
- Learn from construction professionals who have already "been there and done that."

Case Example: "A whole new way to do business."

A long-time owner-member of SCOAR recently retired from his position managing construction for a utility company. He was approached by a supplier-member of SCOAR seeking help in bidding on the construction of a new energy plant. A third member of SCOAR, a large general contractor, was added to the team. Combining each team members' expertise and leveraging the working relationships developed through their time at SCOAR, this group proposed a new and innovative approach and won the bid.

"The client could see immediately how our approach is going to save them tens of millions of dollars, versus the standard way this stodgy industry goes about building this type of plant."

Focus close to home, on southeastern construction market, for a practical and actionable experience.

- Concentrate on regional labor and supply trends where impactful solutions can be generated and implemented.
- Learn about and share information on capital projects in the southeast increasing insight into your market and identifying potential partnerships.
- Experience more powerful networking by meeting colleagues in your own area who are facing the same issues and environment.

Case Example: "SCOAR learnings are more actionable."

A long-time owner-member commented that the interactions at SCOAR events resulted in learnings that "are more specific to the southeast," taking into account the southeastern environment—companies, cultures, behaviors and climate—and resulting in solutions that "we can actually implement."

Enjoy a collegial and "small group" atmosphere.

- Every member has a voice in the direction and focus of SCOAR. You help choose the focus.
- The informal and supportive atmosphere, where everyone is focused on learning, leads to a better and more fun way to accomplish objectives.
- Profit from a better approach to learning about and evaluating potential suppliers unencumbered by the pressures of the contracting process.

Join **SCOAR** to Start Networking With All Our Members!

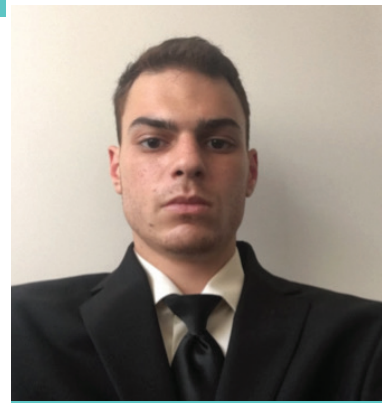
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| 23. Cornerstone Sales | 56. Moody Construction Services | 85. Wanzek |
| 24. Crane Industry Services | 57. Moretrench | 86. Wolseley Industrial Group |
| 25. Crane Inspection & Certification Bureau | 58. Mosaic Fertilizer | 87. Worley |
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SCOAR Scholarships

SCOAR continues to use donations and net revenue from operations to fund craft training grants, technical trades scholarships and college/university construction engineering and management scholarships. This year, SCOAR members donated over \$28,000 for these programs, for a total of over \$200,000 in donations in the past 10 years! This year's generous contributions were from **Graycor Southern, Fluor, NCCER/BYF, Worley, Southeastern Construction and Maintenance, Ironworkers/IMPACT, PTS Group** and the **Southern States Millwright Regional Council**.

The three \$5,000 construction management scholarships went to students in Florida, Georgia and North Carolina. Recipients were Joshua Prager, a junior in the University of Florida M.E. Rinker, Sr. School of Construction Management, and Amber Scarboro, who is in her second year in the Kimmel School of Construction Management program at Western Carolina University. A third scholarship will be awarded to a worthy student in the Construction Management Program at Kennesaw State University.



Joshua Prager



Amber Scarboro

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We train millwrights at more than 20 strategically located training centers across the Southern United States. Our training staff can also deliver specialized instruction customized to your jobsite requirements.

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