

# CONCRETE ADVICE

THE BONADIO GROUP

Construction  
Division



A publication of

WINTER 2012 EDITION

## In This Issue:

**Keys to CFM's Role in Successful Project Management** ~Andrew Gutman, CPA, Principal

**Considering a Medical Reimbursement Plan?**  
~Andrew Koenig, CPA, Principal

**Contractors Toolbox**

**Pension and 401(k) Plans - Following the Rules**  
~Denise Gueli, CPA, Partner

**Getting Paid for Changed Conditions**~Thomas Eckert, Senior Construction Consultant

**Announcements, News & Events**

**Construction Summit East and West**

**2012 Contractors State of the Industry Survey**

## Keys to CFM's Role in Successful Project Management

~Andrew Gutman, CPA, Principal

I had the pleasure of attending the 15th Annual Construction Financial Management Conference sponsored by the CFMA and AGC. As would be expected, uncertainty surrounding the economy and the construction industry was one of the biggest discussion topics of the conference.

Since 2007, we have witnessed the economy struggle as a result of this "great recession", and the construction industry has been at the forefront of these struggles. According to the Census Bureau construction spending reports, construction spending in the U.S. has declined from approximately \$1,200 billion in 2007 to approximately \$800 billion in 2011. Going forward into 2012 and beyond, many believe we will see our economy and the construction industry enter a period of stagnation, or very slow growth, as we try to recover from the "great recession". While certain sectors of the Nonresidential construction industry are expected to experience growth in 2012, many sectors of the Nonresidential, Residential and Public construction industries are expected to face uncertainty or continued decline into 2012.

### So what does this mean to a construction financial manager (CFM)?

It means that CFM's need to be proactive and prepared for any challenges that might lie ahead. CFM's must develop systems, create a culture of preparedness and promote open communication at their organizations. CFM's need to both train project managers and superintendents on the financial aspects of the business, as well as gain a better understanding of how the project managers and superintendents are managing their projects. This open communication will enable CFM's to lead their organizations to growth and success.

There are three areas that I would like to specifically touch on that can be keys to the CFM's role in successful project management outcomes: 1) the contractor's process for qualifying its subcontractors, 2) change order management, and 3) the project close-out function.

### Subcontractor Qualification Process

Whether performing qualification before the bid process, having pre-qualified subcontractors, or using a third-party service for subcontractor qualifications, CFM's need to ensure that their organization has developed a system to qualify its subcontractors. Selecting the appropriate subcontractors on your projects can potentially make or break the performance of that project.

There are several aspects to consider in the qualification process of subcontractors. A few questions that every contractor should be asking in the qualification process include:

- ▶ Does the subcontractor have a history of being litigious?
- ▶ What is the subcontractor's safety record?
- ▶ Does the subcontractor's credit history or other factors make you concerned about their ability to perform under the contract?
- ▶ How many projects is the subcontractor currently doing for you? You don't want "too many eggs in one basket".

Depending on the size and complexity of your organization, the CFM's should develop a formalized system for qualifying subcontractors and ensure that your operational people (project managers) are actually following this qualification process. If pre-qualifying subcontractors, make sure the project managers are periodically re-evaluating the pre-qualified status.

## Keys to CFM's Role in Successful Project Management (Continued)

~Andrew Gutman, CPA, Principal

### Change Order Management

It is not unusual for contractors to see work performed on projects, whereby change orders are subsequently not approved for various reasons. Every contractor experiences this and every CFM wants to pull their hair out when this happens. However, this can be prevented, or at least minimized. Some best practices that CFM's should ensure their organizations are performing in relation to change order management include:

- ▶ Know and read your contracts. This includes everyone involved on the job from the owners and CFM, to project managers and superintendents, and even the other employees in the field.
- ▶ Know your true cost of performing work under a change order and get a reasonable mark-up.
- ▶ Document everything involved in the change order process to protect yourself from litigation or nonpayment.
- ▶ Make sure the contract specifies which individuals have authority to approve change orders and to what extent to do so.
- ▶ Require that a form is completed and approved prior to performing additional work.

### Project Close-Out Function

How often do you see a project almost to completion, only to drag out several more months and incur unnecessary additional costs before it is finally closed out? So what can the CFM working in the office do to change this? Formalize the project close-out function and make sure some of the following are included in the process:

- ▶ Develop checklists – everyone on the job should have a list of items they need to check off before the job ends to ensure everything is done. Holding project bonuses until all checklists are completed is a way to ensure the checklists get completed.
- ▶ Don't pull your best guys out before the job is completed – while this is common practice, there is a cost associated with doing this. Make sure to push the project to completion with your best guys and this will make the owner a "raving fan" versus a dissatisfied customer.
- ▶ Educate your project managers, superintendents and foremen – train them on the financial side of the job and show them the impact and importance of this to both them as individuals and the company as a whole.

The job of a CFM can be very challenging, especially during a recession, but the CFM can lead change at his/her company to help drive the organization towards growth and success. Developing formalized systems, creating a culture of preparedness, and promoting open communication will enable CFM's to lead their organizations to financial success.



**About the author:** Andrew is a senior member of Bonadio's Construction Division. He has extensive experience in audits of contractors. He provides accounting services to a variety of contractors, including general, heavy highway, utility and mechanical. Andrew can be reached at [agutman@bonadio.com](mailto:agutman@bonadio.com).



### Contractors Toolbox: Fraud Risk - Purchasing

Every type of business has fraud risk. If you have employees, you have fraud risk. If you have computer systems, you have fraud risk. If you have subcontractors and/or vendors, you have fraud risk. Purchasing is a very large fraud risk area. For most contractors, "purchasing" includes the process of

buying all of the following: supplies and materials; sub-contractor services; vehicles and equipment; computers and software; gasoline (i.e. gas credit cards); and credit cards. How many different people in your company have the ability to authorize the purchase of these items? Purchasing fraud risk examples that you should be aware of include:

- ▶ Management employees (foreman, superintendents, etc.) who are allowed to select the vendor when purchasing supplies or materials can commit fraud in a number of ways. Some examples are: 1) creating false vendors, 2) doing business with companies which they own or are owned by friends or family, or 3) taking bribes or kickbacks.
- ▶ Management employees who select, negotiate or supervise the work of sub-contractors also are able to commit fraud by bribes or kickbacks.
- ▶ Employees who have access to trucks and/or field equipment can "authorize" the use of this equipment for side jobs (moonlighting using your equipment).
- ▶ Employees who have purchasing authority and also moonlight can "authorize" supplies and materials for their side jobs to be billed to your company jobs.
- ▶ Employees who authorize the purchase of computer hardware and software can order excess quantities for personal use or pay excess prices and obtain kickbacks.
- ▶ Unless your company has tight controls, employees who have the authority to use company gas credit cards (or other credit cards) can charge personal items on the company credit cards.

# CONCRETE ADVICE

## Considering a Medical Reimbursement Plan?

~Andrew Koenig, CPA, Principal

Amounts received under accident and health plans are covered under Internal Revenue Code (IRC) 105 and are often referred to as Medical Reimbursement Plans or Health Reimbursement Accounts. Although these plans are often used as self-funded health plans, there is also an advantage to adding a medical reimbursement plan to a conventional health insurance plan. Employees can be reimbursed tax free for qualifying expenses not covered by insurance while the employer claims a tax deduction for the reimbursement. In addition, the plan is paid for by the employer and not provided pursuant to salary reduction or a cafeteria plan.

Such a plan allows the employer tremendous flexibility with the plan provisions. The employer establishes the reimbursement maximum as well as the eligibility requirements for participation. For the employee, these reimbursements, of qualifying expenses, are not considered to be taxable income provided the employee does not deduct these same expenses on his/her personal tax return.

Medical Reimbursement Plans are not allowed to discriminate in favor of highly compensated individuals with regards to both eligibility requirements and benefits provided under the plan. Highly compensated employees include the five highest-paid officers of the employer or a shareholder owning directly or indirectly more than 10% in value of the stock of the employer. In addition, a highly compensated employee is an employee who is among the highest paid 25% of all employees. Failing these discrimination rules will result in the benefits being taxable to that employee.

With health costs rising, a Medical Reimbursement Plan might just be what the doctor ordered. As the employer, you claim the tax deduction while the reimbursed employee excludes the reimbursement from taxable income; therefore, neither party experiences an increase in payroll tax expense.



Please contact us if you would like additional information.

**About the author:** Andrew (Andy) Koenig, CPA is a principal in The Bonadio Group's tax practice and a member of the firm's Construction Division. He has over 20 years of experience in public and private tax and consulting. Andy specializes in construction companies, real estate partnerships and transportation companies. He can be reached at [akoenig@bonadio.com](mailto:akoenig@bonadio.com).

## Pension and 401(k) Plans - Following the Rules

~Denise Gueli, CPA, Partner

Many businesses sponsor pension plans and, in particular, 401(k) plans. Sponsoring a plan is a great benefit to provide to employees, and it can be an effective retention tool. However, it doesn't come without risk, and the complexity of rules surrounding pension plans increases every year. Pension plans are unusual in that there is more than one governmental entity overseeing them – the IRS and the Department of Labor, among others. These agencies treat employers as being in the business of running pension plans, and expect you to be current on the rules. Participants are also more likely to litigate over pension issues than in the past. Employers need to not only be aware of the rules, which change every year, but make sure they are following them.

### Common Errors in Determining Plan Eligibility:

▶ How is service calculated for eligibility? Is it based on elapsed time (3 months for example) or is there an hours requirement (such as 1,000 hours of service)? If there is an hours requirement, which hours count toward service? For example, does vacation or disability count? Check your plan document to be sure.

▶ Watch entry dates – does the plan allow participants to enter only on January 1 and July 1? Or is it the first day of the month following attaining the eligibility requirements? Make sure if it's a 401(k) plan that their deferrals start being withheld when they should be.

### Common Errors in Contributions:

▶ What is the definition of compensation? Once you determine a definition in your plan document, you must follow it. For example, are cafeteria plan contributions included in compensation? How about bonuses?

▶ Matching contributions may or may not be discretionary – if the plan document does not specify that they are discretionary, then the plan sponsor must calculate and deposit the match. And don't forget, if the employee contribution was calculated based on the wrong compensation, then the match will likely be wrong, too.

### Common Errors in Vesting:

▶ What is the definition of service for vesting purposes? It may be calculated differently than the definition of service for determining eligibility.

## Pension and 401(k) Plans - Following the Rules (Continued)

~Denise Gueli, CPA, Partner

### Common Errors in Vesting (Continued):

- ▶ If you've changed third party administrators, watch the vesting schedule to ensure that everyone's vesting has transferred correctly to the new TPA. It's costly to fix this later.

### Common Errors in Distributions:

- ▶ Watch hardship distributions – they must be allowed by the plan document, and they can only be made for certain IRS approved reasons.
- ▶ Do your participants request a distribution directly from the TPA with no correspondence with your company? This can ease your administrative burden, but you're now out of the loop on an area that has high risk – the participants getting the right amount of money in a timely manner, which is the point of the pension to begin with. Consider having the TPA communicate back to the plan sponsor when distributions are made, so the plan sponsor can maintain the appropriate level of oversight.



Plan sponsors usually try to do the right thing - they just need a little help following the rules. If you need help, please feel free to call me at (716) 580-1562 or email at [dgueli@bonadio.com](mailto:dgueli@bonadio.com).

***About the author:** Denise is a member of Bonadio's Construction Division. She is a nationally recognized expert in employee benefit plans and has over 17 years of in-depth experience in this highly regulated and complex area. Denise is a member of the Planning Committee for the AICPA's National Conference on Employee Benefit Plans, considered the premier conference in the industry, where she also teaches various sessions and serves on an "Ask the Experts" panel.*

## Getting Paid for Changed Conditions

~Tom Eckert, Senior Construction Consultant

Whether bidding in the tight Market of the past few years or the "seller's" Market that preceded the downturn, usually the lowest responsible price will be awarded the contract. That contract will require the work to be performed by the successful low bidder in accordance with the documents provided at bid time; nothing less and nothing more. It's the "nothing more" portion of this agreement that can promote an adversarial atmosphere on a project when the Contractor advances its rights to extra compensation and, possibly, more time to complete the work. In order to promote its position so that it results in an executed Change Order, the Contractor needs to be on the right side of all three of the following issues involving "changed conditions": validity, timely notice, and value.

**Validity** is the most apparent element of a changed condition. Adding an additional run of sewer pipe to an additional manhole or installing a door and two vision panels in a blank wall would be easily acknowledged by a reasonable person as "something more" than base contract work. In many cases this type of change is initially generated by the designer along with a proposal request for the extra work. On the opposite end of the spectrum are issues that were reasonably expected by the Contractor at time of bid, based on the contract documents, but did not exist during construction. These factors could include site conditions, water levels, existing structural or mechanical elements, etc. In any case, the first thing the Contractor must do is document the reasons why this is forcing the performance of "something more".

**Timely notice** is especially important today, particularly on public work. Every contract contains notice provisions within the General Conditions. These provisions can be extremely onerous; allowing little time between the initial discovery of a potential changed condition and the decision to request additional compensation. Any Contractor that engages in work for a School District in New York must also comply with NYS Education Department regulations regarding timely notice or their most valid claims will be thrown out without review. More private contracts are also imposing short notice provisions as the economy continues to generate heavy competition and fewer chances for Contractors to opt out of tough contract opportunities.

**Value** is a very subjective and elusive component. McNeill Stokes states in Construction Law in Contractors' Language, "A contractor is well advised to negotiate the price of a change before the change is performed rather than afterward. This is termed in the construction industry as the "call-girl principle" after another ancient profession in which their services are worth more before the service is performed than after." While the potential for settlement "up front" is rare, there is no doubt the longer it takes to finalize a Change Order the more the Contractor is apt to settle for less. Get it right the first time and go after it. The goal is getting paid.

***About the author:** Tom Eckert is a Senior Consultant with Bonadio's Construction Division and former President and CEO of MLB Construction Services. As a consultant, Tom is involved in succession planning and strategic planning for construction companies, claim preparation assistance, strategy development and expert testimony for construction claims, damage assessment and control work for surety companies, as well as executive coaching to construction company CEOs. Tom can be reached at [teckert@bonadio.com](mailto:teckert@bonadio.com).*



# CONCRETE ADVICE

## Announcements, News & Events

**Andrew (Andy) Koenig, CPA, Principal**, presented a “Year End Tax Planning for Contractors” webinar with Constructive Solutions on December 20th.

### Construction Division Team Members Receive Promotions



**Andrew (Andy) Gutman, CPA** was promoted to Principal on January 1st – Congratulations Andy! Andy joined The Bonadio Group in 2002 upon graduating from SUNY Geneseo. He has extensive experience in auditing contractors and he provides accounting services to a variety of contractors, including general, heavy highway, utility and mechanical. Andy was destined to be a member of Bonadio’s Construction Division – his father owns and operates a remodeling construction company in the Albany area. This led to his desire to serve contractors.



**Kait Bloss, CPA** was promoted to Manager on January 1st – Congratulations Kait! She joined the firm in 2006. Kait received her Bachelor of Science degree in Accounting from Nazareth College. She is a member of the National Association of Women in Construction (NAWIC) and she serves on the Board of the Capital District Chapter of NAWIC.

## 2012 Construction Summit East – Albany, NY



The Bonadio Group - in conjunction with our sponsors Cool Insuring Agency, Inc., Couch White, LLP, and NBT Bank - is pleased to announce that George Hedley of HARDHAT Presentations and Hardhat BIZ-COACH is this year’s presenter of our 2012 Construction Summit East – Building a Better You.

George says, “Don’t get stuck with your head in the muck!” Your old business model won’t work today. You need to make pro-active positive changes and do what’s necessary to get back on track and start thinking like an entrepreneur. George will share his proven ‘Business \$uccess Blueprint’ to get your business to grow and profit!

George says, “Don’t get stuck with your head in the muck!” Your old business model won’t work today. You need to make pro-active positive changes and do what’s necessary to get back on track and start thinking like an entrepreneur. George will share his proven ‘Business \$uccess Blueprint’ to get your business to grow and profit!

**March 6, 2012 | The Albany Marriott | Wolf Road, Albany, NY**  
**7:15 a.m. to 12:00 p.m. | 7:15 Breakfast Buffet & Registration | 8:15 a.m. – 12:00 p.m. Program**  
**CPE is being offered to CPAs**  
**Cost to Attend \$50 | All registration fees are being donated to Capital District Habitat for Humanity**  
**For all the details about the Summit and George Hedley visit [www.AdvisorsForConstruction.com](http://www.AdvisorsForConstruction.com)**  
**Register online at <http://ow.ly/8EFqZ> or call Tamara Slater at 518.464.4080**

## 2012 Construction Summit West – Buffalo, NY



Running a construction company is always challenging and most certainly over the last couple of years. And, by all indications, 2012 will be as well. To help you meet those challenges head on, The Bonadio Group - in conjunction with our sponsors First Niagara and Harris Beach, PLLC - is pleased to present the 2012 Construction Summit West – A Blueprint for Your Success.

The Summit will start with an overview of the current surety environment presented by Harry Wolf, Assistant Manager at Liberty Mutual Surety. And back by popular demand is our featured presenter, Charles Vander Kooi, who will speak on one of the top concerns of contractors today – People Management.

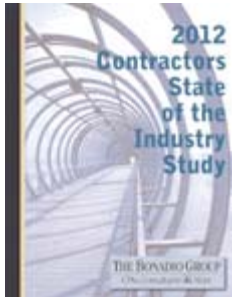
**March 22, 2012 | Salvatore’s Italian Gardens | 6461 Transit Rd., Depew, NY**  
**7:15 a.m. to 12:30 p.m. | 7:15 Breakfast Buffet & Registration | 8:15 a.m. – 12:30 p.m. Program**  
**CPE is being offered to CPAs**  
**Cost to Attend \$50 | All registration fees are being donated to Habitat for Humanity Buffalo**  
**For all the details about the Summit and our presenters visit [www.AdvisorsForConstruction.com](http://www.AdvisorsForConstruction.com)**  
**Register online at <http://ow.ly/80ao4> or call Kelly Catanzaro at 716.580.1602**

# CONCRETE ADVICE

## Bonadio's 2012 Contractors State of the Industry Survey is Open for Participation

The Bonadio Group's Construction Division wants to help you make 2012 the best year it can possibly be.

The resulting report will answer questions, such as:



- ▶ How drastic will the public vs. private sector revenue shift be in 2012?
- ▶ Bid success rates – how do you benchmark?
- ▶ How does your backlog stack up?
- ▶ Will you look for projects in specialty areas that you didn't do last year?
- ▶ What's the #1 strategy contractors are using for profitability in 2012?
- ▶ What are the top three issues keeping your competitors up at night?...& MUCH MORE!

There are two ways to take the survey:

1. On line – <https://www.surveymonkey.com/s/2012constructionsurvey>
2. Hard Copy – call Jennifer Fehrenbach at 585.249.2807 to have one mailed to you.

**The survey closes February 21st...don't miss the opportunity to get the information you need to be competitive in 2012.**

### *In Their Own Words: Testimonial #1*

**W.M. Schultz Construction, Inc.  
William Schultz, President**



“Our company was lacking direction and morale was low – I asked our accountants, The Bonadio Group, to help us with strategic planning. We are now operating at a whole new level. I feel much more in control of the company than I ever have before, our employees are motivated to reach both their personal and corporate goals and my quality of life has greatly improved. Thanks to The Bonadio Group, I am now running a successful construction company.”

### *In Their Own Words: Testimonial #2*

**Frontier Industrial Corp.  
David Franjoine, President**



“When you find a business advisor who knows your industry and can give you the advice and guidance you need to be successful, you stay with them. That's why The Bonadio Group has been our accounting firm of choice for over 20 years. We would not have the relationship with our bank and bonding company without Jim Keefe, our Bonadio engagement partner, and his team. Our tax needs are also tremendous as we do business all over the United States and in other countries. Bonadio assists us with all of this and has worked directly with our corporate council on international tax matters as well. No matter what our needs are, the team at Bonadio is always there to help us.”

Looking for articles for your construction publication or speakers for an upcoming conference or program, contact Mazie McMahon at [mmcmahon@bonadio.com](mailto:mmcmahon@bonadio.com) or 855.250.7739 (toll free)

**We are proud members of the following associations:**

ABC – [www.abcnys.org](http://www.abcnys.org) | AGC NYS – [www.agcnys.org](http://www.agcnys.org)  
Construction Exchange of Buffalo & WNY – [www.conexbuff.com](http://www.conexbuff.com)  
Eastern Contractors Association - [www.ecainc.org](http://www.ecainc.org) | Builders Exchange of Rochester - [www.robex.com](http://www.robex.com)  
NAWIC – [www.nawicnycap.org](http://www.nawicnycap.org) | NESCA – [www.nesca.org](http://www.nesca.org)  
New York Construction Materials Association – [www.nymaterials.com](http://www.nymaterials.com)  
CCA – [www.ccahv.com](http://www.ccahv.com) | CIC – [www.cicnys.org](http://www.cicnys.org)  
DBIA – [www.DBIA.org](http://www.DBIA.org) | NASBP – [www.nasbp.org](http://www.nasbp.org)

personality

Small firm

capability

Big firm



THE BONADIO GROUP  
Construction  
Division

6 Wembley Court  
Albany, NY 12205

THE BONADIO GROUP  
CPAs, Consultants & More

# CONCRETE ADVICE

WINTER 2012

THE BONADIO GROUP  
Construction  
Division



A publication of

*"Recipients of Concrete Advice should not act on the issues presented without seeking professional advice. The following statement is provided pursuant to US Treasury Department Regulations: This communication is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax provisions."*

## About Bonadio's Construction Division

With offices in Rochester, Albany, Buffalo, Syracuse, NYC, Geneva and Perry



Bonadio's Construction Division serves over 250 construction/contractor clients throughout New York State and beyond. We recognize that running a construction business isn't easy and that construction company owners face many unique challenges that general business owners don't. They need advisors who know construction and who have the know-how, skills, and experience to provide the guidance and advice necessary to ensure their profitability. That's why the specialists in our construction division include CPAs, tax specialists, former CEOs of large, successful construction firms, engineers, CCIFPs, CITs, Certified Fraud Examiners and a Certified Exit Planning Advisor. For more information about our Construction Division, please visit [www.AdvisorsForConstruction.com](http://www.AdvisorsForConstruction.com) or call our toll free construction hotline at 1.855.250.7739.

Visit the Construction Community of our website for insights and articles by our partners and staff on issues of importance to the construction industry –  
[www.bonadio.com/construction-community](http://www.bonadio.com/construction-community).