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### **Danger: men at work: conference debates efforts to stamp out corruption**

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While some progress has been made on the construction industry's aim to be more proactive in terms of corruption and safety, recent incidents at the Deutsche Bank Building and Trump SoHo gave panelists plenty of fodder at The Greater New York Construction User Council's third annual Integrity Pays event.

According to John Osborn, partner at John E. Osborn PC and moderator of the event, construction corruption is cyclical and the battle never ends. From inflated claims, bid rigging and falsified change orders, the industry still hasn't quite learned how to mind the store, so to speak. But tragedies show just how high the stakes really are.

"The biggest risk factor, though it's strange to hear, is unanticipated events--an accident, a death or whatever it may be, could have a huge impact," said Joseph DeLuca, executive vice president of Thacher Associates.

George Fink, PE and president at FAI Construction Consultants, spoke of some the dangers. He cited a litany of issues with Boston's Big Dig project including a subcontractor

jailed (under the False Claims Act) for fraudulent invoices and another, Powers Fasteners, indicted for manslaughter after knowingly applying the wrong type of epoxy on one of the project's tunnels, prior to its collapse. Bert Oberlander, esq., Gonzalez Oberlander & Holohan, offered the example of "criminally negligent homicide and manslaughter." Those were the charges Formica Construction Corporation faced after a trench collapse killed a worker and injured one other in Richmond County, New York. It was discovered the contractor failed to adhere to both federal and city safety regulations required for trench work.

In Manhattan, Bovis Lend Lease has found themselves facing negative publicity for two incidents: the August fire at the Deutsche Bank Building, which resulted in the fatality of two firefighters and, more recently, the concrete collapse at Trump SoHo condominiums.

Bovis's subcontractors--some of which the New York Times reported as having mob ties--were held liable for both incidents. Authorities say Brooklyn-based DiFama Concrete was responsible for last month's Trump SoHo concrete collapse that sent one worker plummeting to his death. Since 2004, the Occupational Safety and Health Administration (OSHA) cited the company for more than a dozen safety violations and issued more than \$71,000 in federal finds.

DeLuca said one reason some contractors are still running amuck, is that, since September 11, it is impossible to get the attention of law enforcement on anything but terrorism. Construction corruption isn't a priority from a policing standpoint, but Osborn explained that the city's building commissioner, Patticia Lancaster, has emphasized the need for more efficiency and integrity in the industry.

DeLuca says change needs to start from the top down. "If it starts with the owner, it will trickle down fairly easily," he said. And building owners are beginning to do more to protect themselves.

"I think it only takes one time to get burned," said Joel Sciascia, Esq., general counsel with Pavarini McGovern.

Sciascia said pre-qualifications are becoming paramount on the in-house side of tile business. He stressed the importance of owners knowing which red flags to look for and avoiding falling into the familiarity trap, meaning skipping pre-qualification for contractors they have worked with in the past; the process must be routine and regular. Construction managers, he added, can learn a lot from the mistakes of others.

Fink said general contractors and owners can verify the necessity of change orders simply by reviewing the contract signed by the subcontractors, to see exactly what they have committed to. But inflated claims are tougher to investigate. While the False Claims Act helps safeguard developers of projects that involve federal dollars, it offers little solace for privately funded sites.

The panelists acknowledged a higher level of efficiency and integrity when the general contractor is comprised of architects and engineers, but in other scenarios the flaws they bring to light fall on deaf ears and some are afraid to speak up because they feel it lies outside the parameters of what they've been charged to do. And the owners' inspection of construction sites can be shoddy or nonexistent.

"It's a tough sell. It's usually last on the list or worse: .sometimes it's never on the list," DeLuca said.

Osborn says the problem is a ubiquitous one--and not everyone seems to care. Some owners have told him that, given the slow process of developing in New York City, they're willing to turn the other cheek when they have reason to believe extra dollars are floating around. And in terms of safety, accidents, said DeLuca, are the "nature of the beast."

The group recognizes that more needs to be done to increase accountability in the industry. Some suggested a special committee on corruption comprised of professionals from all facets of the industry, as well as district attorneys. Others talked of developing a uniform code of ethics. But DeLuca expressed support for requiring that all contractors be licensed. The issue came up during Rudy Giuliani's term as mayor but was met with resistance from the industry, which lobbied against the measure. While DeLuca says the issue is back on the city's agenda, it remains a bone of contention.

"That's like killing a fly with a hammer," Osborn said. "I think there's more proactive things the city can do before making us do that."

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