



COMMITTED TO QUALITY SUBCONTRACTING



Dear Prospective Member,

Thank you for your recent interest regarding the American Subcontractors Association of Minnesota (ASA-MN).

More than 30 years ago, ASA began with the mission of improving business practices for subcontractors through a nationwide network chapters. We are a non-profit trade association of union and nonunion subcontractors and suppliers. Members receive information and education on relevant business issues and work together to protect their rights as an integral part of the construction team.

Here are just a few examples of the many benefits of membership:

- **Learn and network** at subcontractor focused programs on Getting Paid, Contracts, Indemnification, Bonding, Insurance and Lien Rights and benefit from comments from industry peers.
- **Protection** of YOUR subcontractor rights via national legislative platforms and coalitions.
- Benefit from one (1) **FREE hour** with ASA-MN's chapter attorney.
- **12 Educational event registration certificates** specifically for educational events to be use during your 1st year of membership.
- **Access discounts** on manuals, videos, cassettes, books, the "Members Only" website data, and national conventions promoting subcontractors as better business managers.
- Supporting **subcontractors** in the MN legislature. As the driving force behind the "The Contractor Bill of Rights" your voice adds to our strength on future initiatives. (Primary opponents to this legislation were AGC of MN and Builders Association of T.C.)
- **Help shape the future** of subcontractors and **grow professionally** by participating at programs or on the ASA-MN board of directors.

Simply put, ASA-MN is dedicated to the growth and profitability of **SUBCONTRACTORS!**

As a subcontractor or service provider, your membership is essential to the improvement of the construction industry—simply complete and mail the enclosed *Invitation to Membership today*. Should you have any questions or want more information please call. Thank you for your time and consideration, we hope to hear from you soon!

Sincerely,

Tony Grazzini  
President, ASA-MN  
Vice-President, WTG Terrazzo & Tile

***P.S. ASA-MN is the only organization  
dedicated to the business issues of  
subcontractors...join today!***

**American Subcontractors Association of Minnesota**

16112 Wake Street NE | Anoka, MN 55304

Ph: 763-413-0669 | Fx: 763-413-1131 | E-mail: info@asamn.org | www.asamn.org



# ARE YOU GETTING PAID? ARE THE PAYMENTS TIMELY? IS THE CONTRACT LANGUAGE FAIR?



Most subcontractors rate these as their most serious concerns. Subcontractors have no greater advocate than the American Subcontractors Association. *ASA works daily to reduce the impact of those issues.*

## ***WE ARE SUBCONTRACTORS AND SUBCONTRACTOR ISSUES ARE OUR FOCUS!***

*We work on these issues both in Minnesota and Nationally*

### **In Minnesota**

1. ASA renewed and leads the Contractors Bill of Rights Coalition (CBRC), an organization of the largest subcontracting trade associations in Minnesota. Our objectives in fighting together to improve existing law include:

- Forbid contract provisions restricting progress payments
- Require disclosure of payments to contractors (transparency)
- Prohibit indemnity transfer to third parties
- Require interest on retainage
- Remove residential exclusions (**Done in 2009**)
- Improve the effectiveness of liens as a collection tool

2. Best Practice and Education - ASA-MN provides an ongoing series of programs presented by attorneys, accountants and professionals to enhance knowledge and facilitate your success; examples:

- Using the law to get paid
- Understanding contract provisions and negotiations
- Financial management
- T.O.P.S. - Annual recognition of the best general contractors

### **Nationally**

1. Advocacy on national issues including:

- Opposition to the upcoming 3% federal retention requirement
- Fair and effective immigration reform
- Subcontractors legal defense fund - supporting local subcontractors on issues with national impact

2. Reasonable contract documents through the Contractor's Knowledge Depot and Consensus Docs

3. Broad and multifaceted education programs delivered in a variety of formats

4. An incredible array of information and research available on the web

This is just a summary of the high points, there is much more. Your membership will increase subcontractor leverage and enhance your team's expertise - join today!

*Jennifer Sahler, President, Dispatch Trucking LLC- "As a small business, I wondered whether joining ASAMN would be a good investment. Now I renew my annual membership without question. As with any business owner, collecting our receivables can be a daily struggle. In the last year alone, the education that I have received, and the connections that I have made, helped me recover over 10 times the dollar value of my membership dues. I wish every business investment had that kind of return!"*

*Donna Gulden, President, Homeco Insulation, LLC- "ASA changed the way I do business" Donna used the information within the ASA website to improve contracts and her ability to negotiate!*

**For More Information about Joining ASA-MN Call Today 763-413-0669 or visit [www.ASAMN.ORG](http://www.ASAMN.ORG)**

ASA-MN

16112 Wake Street NE | Anoka, MN55304 | 763-413-0669 | fx: 763-413-1131



# American Subcontractors Association of Minnesota



## ASA-MN Presents Slate of Officers for 2011-2012

### Officers:

President: Tony Grazzini, WTG Terrazzo & Tile

Past-President: John Lloyd, Lloyd's Construction Services

Vice President: Jeff Meek, John A. Knutson & Co. PLLP

Treasurer: Jennifer Sahler, Dispatch Trucking

Secretary: Angie Stanton, C&S Blacktopping

Chapter Attorney: Curt Smith, Moss & Barnett P.A.

### Board Members:

Fabyanske, Westra, Hart & Thomson P.A., Aaron Dean

Kraus-Anderson Insurance, Patrick Kennedy

HLB Tautges Redpath, Paul Longsdorf

RJF Agencies, Laura Moore

Pipeline Supply, Steve Singer

Floyd Total Security, John Ferguson

Homeco Insulation, Donna Gulden

Minnesota Exteriors, Steve Schiltz

Premier Restaurant Equipment, Kelly Alexander

Chapter Lobbyist, (non-voting) Remi Stone, Crocus Hill Consulting



# Knowing your trade gets the job done, Joining **ASA-MN Improves Your Bottom Line..** We Are Committed to Quality Subcontracting [www.asamn.org](http://www.asamn.org)

## **ASA-MN—Who Are We?**

- ▶ A community dedicated and focused on Subcontractor's business issues. **You are not alone!**
- ▶ Supporters subcontractor friendly legislation at **all levels** of government.
- ▶ Contributors who **shape the future** of Subcontractors through ASA-MN's scholarship fund, workforce development and general improvement of working conditions.
- ▶ **A Network** of competitors, high level executives and business owners.
- ▶ Offer **personal and professional growth** with participation in programs and being on the board of directors.

## **Mission Statement**

To provide a forum for the improvement of the business condition for its members through education, legislative activities, and other united and cooperative actions for the betterment of the construction industry. ASA-MN is a not-for-profit organization dedicated to the needs of Subcontractors. Established in 1991.

## **Vision Statement**

The ideals and beliefs of ASA are ethical and equitable business practices, quality construction, a safe and healthy work environment, integrity and membership diversity.

## **What Do I get with Membership**

- 1) Model Contract Documents
- 2) Intellectual Capital of Subcontractors
- 3) Participation in T.O.P.S. GC Awards Program
- 4) Subcontractors Legal Defense Fund
- 5) Industry Advocacy
- 6) Knowledge
- 7) Education
- 8) Increased Visibility
- 9) Discounts on Products & Services
- 10) Local and National Staff that Works for You!

## **National Representation**

In 1966, The American Subcontractors Association, Inc. (ASA) embarked on a mission that has expanded to a national network of local and state chapters that represents the single voice for all specialty trade contractors (union and non-union) and suppliers in the construction industry.

ASA laid the critical foundation, recognizing that subcontractors in all trades and geographical areas needed a **solid platform to ensure fair representation**. Today, with more than 4,500 member firms and expanded services, we stand recognized nationally as the leading construction association serving the specialty contractor.

**Participation our association gives YOU Greater Control over YOUR business destiny!**

**All for about \$2.00 a DAY...joining ASA-MN is a sound financial investment...**



Visit our website and see more benefits of membership.

(Local) [www.asamn.org](http://www.asamn.org)

(National) [www.asaonline.com](http://www.asaonline.com)



# We Are Dedicated to Subcontractors

## 1. Subcontractor Advocacy—National Representation We're On YOUR Side to Defeat the Problems

*As the primary national association of construction subcontractors and suppliers, ASA is a critical voice on the laws and public policies that shape the business environment. ASA provides subcontractors and suppliers with the information and tools they need to make a difference in the public policy arena.*

- *Slow Final Payment*
- *Pay-if-Paid Clauses*
- *Retainage*
- *Assuming Inappropriate Risk*
- *Onerous Subcontracts*
- *Weak Government Regulation*
- *Bid-Shopping*
- *and MORE!*

## 2. Business Tips & Trend Analysis: Improving Your Bottom Line

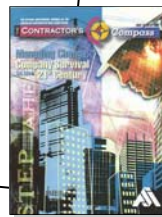
*Benefit from the many educational offerings of ASA. Weekly updates provide you with practical business tips and analysis that help you improve your bottom line. Our editorial team examines what ASA members' interests and needs are and aims to put valuable and relevant information at their fingertips.*

### ASA today

Published monthly via e-mail. Keeps you informed on ASA national activities and how other states are dealing with the issues that face all subs and suppliers.

### Contractor's Compass

Quarterly magazine is the official educational journal of the American Subcontractors Association.



### ACTION: ASA

Published monthly via e-mail. Targets chapter leaders. Provides key information designed for members.

## 3. Holiday Station Stores Reward Program

*Receive a \$.04 (4 cents) per gallon rebate on all gasoline and diesel fuel purchases. Plus many other program benefits.*

## 4. National Buying Power

*Discover the ASAdvantage with significant DISCOUNTS exclusively for ASA members. Fleet Enterprise Services, Constructware, McGraw-Hill Construction, DHL, The Blue Book, Allstate Insurance, Just to name a few—Go to [ASAONLINE.com](http://ASAONLINE.com) for more details*



# Your Subcontractor Business Resource at your fingertips 24/7

Only ASA MEMBERS Can Access the Most Valuable Areas of [www.ASAONLINE.com](http://www.ASAONLINE.com).

The screenshot shows the website header with the ASA logo and navigation menu. The main content area is titled "Member Resources" and lists various benefits for members, such as access to task forces, archives, and exclusive services. A red bracket highlights the "Member Resources" section.

## Subcontractor Advocacy

As the primary national association of construction subcontractors and suppliers, ASA is a critical voice on the laws and public policies that shape the business environment.

ASA provides subcontractors and suppliers with the information and tools they need to make a difference in the public policy arena:

<p><b>ASA Federal Advocacy</b> <i>including</i></p> <ul style="list-style-type: none"> <li>• Bid Shopping</li> <li>• OSHA Reform</li> <li>• Prompt Payment</li> </ul>	<p><b>ASA State Advocacy</b> <i>including</i></p> <ul style="list-style-type: none"> <li>• Retainage Reform</li> <li>• Anti-Indemnity</li> <li>• Prompt Payment</li> </ul>	<p><b>Subcontractors Legal Defense Fund</b> <i>including</i></p> <ul style="list-style-type: none"> <li>• Landmark Court Cases</li> <li>• Legal Briefs</li> <li>• Donate to the Cause</li> </ul>
<p><b>Political Action &amp; Education</b> <i>including</i></p> <ul style="list-style-type: none"> <li>• ASA-PAC</li> <li>• Grassroots Action</li> <li>• Countering the Opposition</li> </ul>	<p><b>Construction Industry Legislative Institute</b> <i>including</i></p> <ul style="list-style-type: none"> <li>• Capitol Hill Visits</li> <li>• How To Run a Legislative Campaign</li> <li>• Distinguished Speakers</li> </ul>	<p><b>Subcontractors Legislative Resource Center</b> <i>(members only) including</i></p> <ul style="list-style-type: none"> <li>• Model Legislation</li> <li>• Written Guides</li> <li>• Issue Backgrounders</li> </ul>



# BUSINESS-TO-BUSINESS ACCOUNTABILITY

## ASSESSING BUSINESS RISK

HF 590 (HOWES, LANNING, NELSON, HOLBERG, BUESGENS, JOHNSON)

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### THE PROBLEM

Construction Subcontractors – a diverse segment of Minnesota’s Small Business community – are investing time, money, and labor in projects that they may never be paid for.

**A bad economy, reluctant lenders and perverse business incentives are harming the viability of Minnesota’s Subcontractors.**

The perverse reality is that sometimes it is in the best interest for project lenders, owners and prime contractors to have Subcontractors do work even if they know that they cannot pay the Subcontractors for their work... And Subcontractors only find out after it’s too late.

### THE SOLUTION

**HF 590 Calls For “Real Time” Business-to-Business Accountability** by facilitating honest communication between business partners so each can assess risk.

**This can help keep business out of the courts, and the government out of business,** by creating an identifiable channel of communication that allows businesses to assess risk, and making it more efficient to deal with financial problems upfront than going to court.

**How HF 590 works:**

#### **I. Access to information – sections 1 & 2**

- ❖ Informs parties as to whether there is financing for the project, identifies who is financing and working the project, and requires disclosure if there is a material change in financing
- ❖ Ensures parties will not be forced to waive the ability to access information

#### **II. Red Flags if there is non-payment for work performed – section 3**

- ❖ If financing is in place and has been allocated to pay for work, but the Sub is not paid for work performed, a Sub has the ability to raise a non-payment red flag to the lender, but does not require any action from the lender
- ❖ The bill notifies the defaulting party they will be liable for illegal retaliation

#### **III. Adequate assurances after a default – section 4**

- ❖ Requires the lender to notify Subs identified in the sworn construction statement if an owner defaults on the construction loan
- ❖ If the lender fails to provide notice, the Sub receives lien priority for the value of any work performed after the notice should have been given
- ❖ If there is default on the construction loan this gives the Contractor or Sub the right to suspend work until they receive adequate assurance or the default is cured



## RETAINAGE ESCROW & RELEASE

HF 589 (BUESGENS, HOLBERG, NELSON, JOHNSON, GRUENHAGEN)

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### Proposed Changes

#### ➤ What Does HF 589 Do?

##### Unless otherwise agreed to by contract:

- Requires retainage to be **held in an interest bearing escrow or trust account**.
- Requires retainage and interest to be **released and paid to within 30 days after substantial completion** of the project.
  - Substantial completion is defined in § 514.051 and is when the work is sufficiently complete so that the work can be occupied or used for its intended purpose.

### Existing Law

#### ➤ Construction Contracts Allow for **Progress Payments & Retainage**

- A progress payment is a monthly payment made to a contractor/sub-contractor by the owner

#### ➤ What is **Retainage**?

- Retainage is a sum withheld from progress payments to the contractor/sub-contractor as an assurance for the timely completion and quality of a contractor/subcontractor's work.
- The retainage is money earned by a contractor/sub-contractor but not paid to the contractor/sub-contractor until the completion of construction.
- Up to 5% of the progress payment may be retained.
  - **For example:** Contractor enters into a 5-month building project with Owner. In month #1, Contractor earns \$10,000 excavating for a foundation. Owner pays Contractor \$9,500 and retains ("keeps") \$500 – often held long after the work is done & the project is complete.

#### ➤ **When is Retainage Released and Paid to the Contractor/Sub-Contractor?**

- Minnesota statute does not answer this question.

#### ➤ **Where is Retainage Held?**

- Minnesota statute does not answer this question.

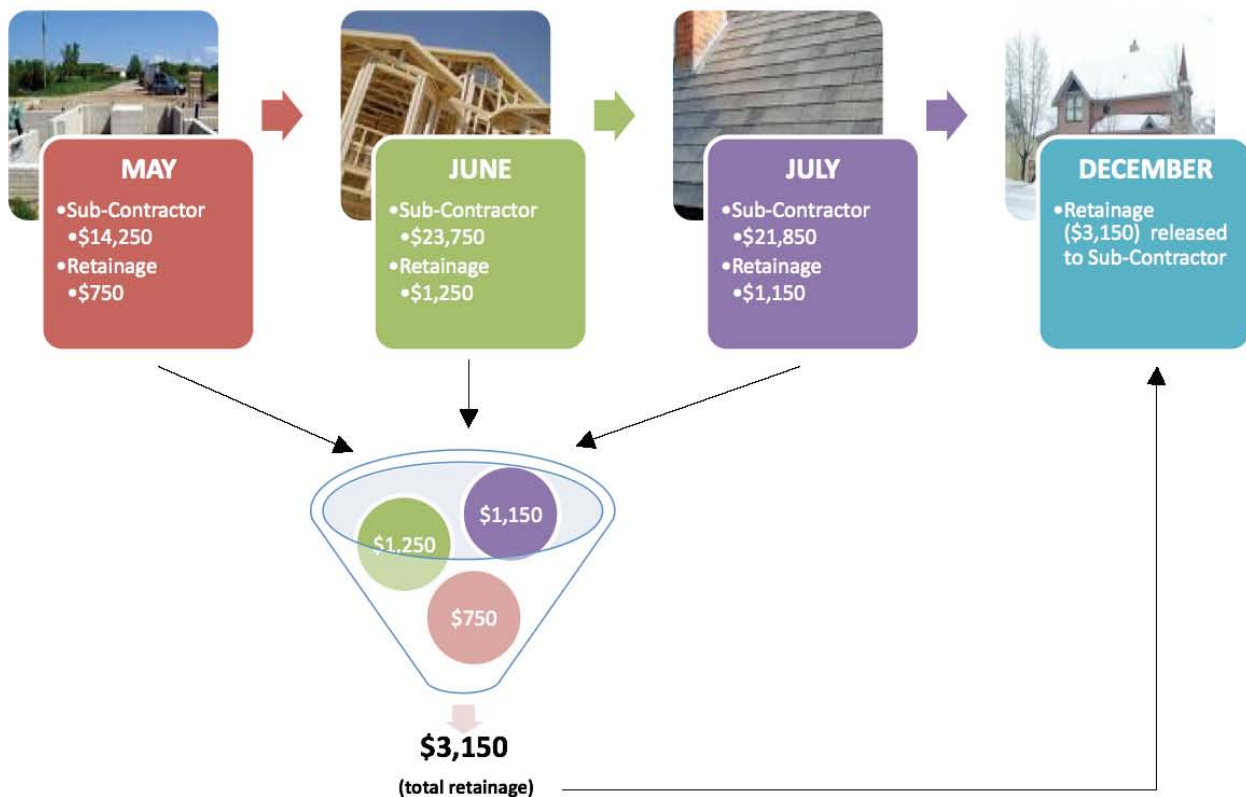
#### ➤ **What about other states?**

- Nationally, retainage is a typical practice in public and private construction contracts. In many states, retainage is held in escrow and paid to the contractor/subcontractor with interest. Many states also permit contractors/subcontractors to substitute securities in lieu of retainage. The majority of states permit contracting agencies or owners to reduce or even eliminate retainage once portion of the contract is complete. **For example:**
  - In North Dakota the maximum retainage is 10% of the contract estimate. When more than 50% of the work is done, no further retainage may be withheld. At 95% of completion, the state may pay 95% of the retained funds to the contractor. Retainage is held in a North Dakota financial institution and accrues interest.
  - In Wisconsin the maximum retainage rate is 5% for public projects. When 50% of the work is complete no additional funds shall be retained. If the progress is not satisfactory, additional funds may be retained at a rate not to exceed 10%.

# CONTRACTOR *Bill of Rights*

## RETAINAGE

Imagine how your auto-mechanic would react if you told him, prior to a brake pad replacement, that you were not planning on paying the full amount of the bill until you were convinced the work was defect-free. Now, imagine what his reaction would be when you told him it could take you 12-18 months to decide whether you are convinced the new brakes are satisfactory. *This unusual practice is widespread in the construction industry and is known as retainage.*



For example, Sub-Contractor earns \$15,000 for work completed in May. In June, Sub-Contractor earns an additional \$25,000 for other work completed. In July, Sub-Contractor earns \$23,000 for additional work completed. By December, the 8<sup>th</sup> month, the project is substantially complete. At each monthly payment, 5% is held back (“retained”) by the Owner and released upon substantial completion of the entire projects.

A sub-contractor with 100 employees may be working on up to 50 projects at any given time. If these 50 projects are similar to the example above, this particular sub-contractor could have just under **\$160,000** of earned money (**retained**) held until December for work completed during the months of May, June, and July.



*Committed to Quality Subcontracting*

## INVITATION TO MEMBERSHIP\*

\_\_\_\_\_ YES, my company, operating primarily as a Subcontractor or Supplier/Service Provider, hereby applies for membership in the American Subcontractors Association of Minnesota (ASA-MN).

*Company Name:* \_\_\_\_\_

*Representative:* \_\_\_\_\_

*Address:* \_\_\_\_\_

*Phone:* \_\_\_\_\_

*Fax:* \_\_\_\_\_

*E-mail:* \_\_\_\_\_

*Website address:* \_\_\_\_\_

What is your primary area of interest with ASA? Education, Gov't., Networking, other? \_\_\_\_\_

*Please indicate the type of membership you are applying for:*

\_\_\_ *Active Subcontractor or Construction Supplier\* Annual Dues \$825\*\**

\_\_\_ *Professional Service Provider\*, Annual Dues \$1000\*\* (any firm or individual who is not an active subcontractor or supplier)*

*Describe your specific business for the directory* \_\_\_\_\_

*What is your primary NAICS code* \_\_\_\_\_

Annual membership is from July 01 through June 30. The first year is payable in full upon application. Credits for partial year applications will be applied at renewal.

\_\_\_ Check enclosed payable to ASA-MN

\_\_\_ I would like to pay by credit card: \_\_\_ VISA \_\_\_ MC \_\_\_ Discover \_\_\_ AMEX

Name Credit card \_\_\_\_\_ Card # \_\_\_\_\_

Expiration \_\_\_/\_\_\_ CID # \_\_\_\_\_ Credit Card Billing Zip Code \_\_\_\_\_

*Signature:* \_\_\_\_\_

*With my signature I agree to receive faxes and emails regarding ASA and ASA-MN.*

*Title:* \_\_\_\_\_

*Date:* \_\_\_\_\_

*Who introduced you to ASA?* \_\_\_\_\_

**Thank you for your support! Please return the application to:**

American Subcontractors Assoc. of MN (ASA-MN)

16112 Wake Street NE Anoka, MN 55304 - Office: 763-413-0669 Fax: 763-413-1131 - info@asamn.org  
www.asamn.org - national affiliate www.asaonline.com

\*\*Membership dues include optional \$50 contributions to the advocacy and scholarship funds. With my renewal I agree to receive faxes and emails regarding ASA and ASA-MN. 77% of your investment is deductible as a business expense. ASA estimates that 23% of dues are not deductible due to lobbying activities on behalf of ASA's members.

\*Architects, engineers, general contractors, construction managers and construction owners are not eligible for membership in ASA.

Who would you like to recommend for membership in ASA?

Phone: \_\_\_\_\_

Average number of employees (office and field personnel): (Please check one box)

- |                                |                                  |                                  |
|--------------------------------|----------------------------------|----------------------------------|
| <input type="checkbox"/> 1-5   | <input type="checkbox"/> 26-50   | <input type="checkbox"/> 151-300 |
| <input type="checkbox"/> 6-10  | <input type="checkbox"/> 51-100  | <input type="checkbox"/> 300+    |
| <input type="checkbox"/> 11-25 | <input type="checkbox"/> 101-150 |                                  |

Average annual sales Volume: (Please check one box)

- |                                                  |                                                  |
|--------------------------------------------------|--------------------------------------------------|
| <input type="checkbox"/> \$0-499,000             | <input type="checkbox"/> \$3,000,000 - 6,999,999 |
| <input type="checkbox"/> \$500,000 - 999,000     | <input type="checkbox"/> \$7,000,000 - 9,999,999 |
| <input type="checkbox"/> \$1,000,000 - 2,999,999 | <input type="checkbox"/> \$10,000,000 +          |

Company description check list: (Please check all that apply)

- |                                |                                       |                              |
|--------------------------------|---------------------------------------|------------------------------|
| <input type="checkbox"/> Union | <input type="checkbox"/> Family-Owned |                              |
| <input type="checkbox"/> WBE   | <input type="checkbox"/> MBE          | <input type="checkbox"/> DBE |

What year did you start in the industry? 19\_\_\_\_

Primary work field: (Please check only one)

- |                                           |                                             |                                          |
|-------------------------------------------|---------------------------------------------|------------------------------------------|
| <input type="checkbox"/> Commercial (CO)  | <input type="checkbox"/> Government (GV)    | <input type="checkbox"/> Industrial (IN) |
| <input type="checkbox"/> Residential (RE) | <input type="checkbox"/> Institutional (IS) | <input type="checkbox"/> Other (OT)      |

ASA committees or issues interested in:

(Please check all that apply)

- Government relations
- Membership
- Programs
- Audit
- Bylaws

What other associations are you a member of? (Please circle all that apply)

Your specialty trade association : \_\_\_\_\_ , Associated General Contractors (AGC), Associated Builders and Contractors (ABC), National Association of Home Builders (NAHB), Builders' Exchange (BE) , Construction Specifications Institute (CSI) , Construction Financial Management (CFMA) , American Society of Professional Estimators (ASPE) ,  
Other: \_\_\_\_\_

***Thank You for Your Time and Support of Minnesota Contractors!***