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PRESIDENT'S MESSAGE *by Jack Moeller, P.E.*



Happy holidays! We are about to start a New Year and a new election cycle. This election year will be especially important to Marylanders because every elected position in State government is on the slate. There are several issues that make this election year very different. First of all, this election will be the first statewide election with the new legislative boundaries after Governor O'Malley's redistricting plan. Since Maryland is essentially a one party state, the primary election held on June 24th, will determine the fate of most candidates. The early primary election complicates this election year because the General Assembly is in session from Jan 8th to April 7th. During that time, incumbent legislators are prohibited by ethics laws from fund raising. This leaves just 89 days for fund raising and campaigning between the end of the legislative session and the primary. To further complicate matters, current speculation is that at least 50 incumbent Delegates and 12 incumbent Senators won't be returning to office next year. In summary, one third of the current 188 member General Assembly will be new after the election.

What does this mean to you as a member of ACEC/MD? This election offers a unique opportunity to build support for and influence the outcome on issues important to our industry. Since I'm not an elected official, I will speculate on where we may have opportunities.

- It seems logical that those Delegates and Senators up for re-election are more likely to listen to your needs. This will be an excellent time to explain ACEC/MD's Legislative Agenda. They need your vote and your political contributions, and they have very little time to garner either. Many of these legislators will attend our CEPAC luncheon on January 16th at the Governor Calvert House, and many will meet with us in the morning of the 16th during our Legislative Action Day visits.
- Those Delegates and Senators that are not running for re-election are likely to take one of two paths during this session. They will vote their conscience or they will vote the interests of their constituents,

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PRESIDENT'S MESSAGE *(continued)*

which may not be the same. Since they are not running for re-election they have little to lose. Pressing our legislative agenda with these legislators is a no lose proposition. Unless they are running for another office, they won't be looking for your contributions and hopefully will be doing the "right thing" for Maryland.

- First time candidates will need to develop their constituency. New candidates for office are likely to listen to your opinions because they are trying to gather information and develop their platforms. They also need your vote and your contributions. These candidates most likely will be happy to meet with you and are not restricted from fund raising during the legislative session. If invited, these candidates will likely be happy to visit your office. More than anything, first time candidates need votes.

After the election we are guaranteed to have a new Governor, Lieutenant Governor, Attorney General, and many new legislators because of retirements.

So how can we take advantage of this unique election year? In a simple phrase, get involved. As a first step we need at least 100 employees from member firms to attend our CEPAC Luncheon on January 16th. This is an excellent opportunity to have lunch with several of your legislators as a constituent from your home and/or your business' legislative district. As mentioned previously, we have also scheduled ACEC/MD visits for the morning of January 16th before the luncheon. Please sign up to attend the meetings with legislators from your home or business districts.

Our message to the legislative and the executive branches of state government needs to be consistent to be effective. Our Business Agenda, included in this newsletter, was developed by ACEC/MD's Legislative Committee led by Sean McCone. A brief summary of our agenda is listed below. For more details, please visit the ACEC/MD website.

Our 2014 Legislative Business Agenda will focus on five items:

1. Liquidated Damages. Exempt the Liquidated Damages on professional service contracts imposed by 2013 SB 188(14-303, b, 5). A&E industry compliance with the state MBE program has been excellent. There is no need for the law because it is anti-business and the unintended consequences to MBE firms are harmful.
2. Certificate of Merit. A certificate of merit requires a plaintiff to consult with a third party design professional to review merits of a claim before litigating. The legislative intent of the law has been contravened by a recent court decision. Legislative action is needed to restore the original legislation's intent.
3. Duty to Defend. Many state and local agencies are requiring A&E firms to defend the agency for the agency's own negligence. This uninsurable provision is a hardship on all businesses but especially hard on small businesses.
4. Infrastructure & Environmental Funding. Protect the funding that is already in place. Ensure that the funding is used for the purposes intended. Protect the trust funds previously established by law.

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PRESIDENT'S MESSAGE (continued)

5. Qualifications Based Selection (QBS). Support continued use of QBS for A&E contracts in state and local governments.

ACEC/MD has been busy meeting with key legislators in the last month. To discuss our business agenda, members of the Executive Committee, Legislative Committee and the Executive Director met with Delegates Sandy Rosenberg, Dan Morhaim, Joseph Vallario, and Luiz Simmons, and Senators Joan Carter Conway and Jennie Forehand. So far, our message seems to be well received.

Best wishes for a happy Holiday Season! I look forward to seeing everyone at the Legislative Action Day visits and luncheon on January 16, 2014.

ACEC/MD 2014 LEGISLATIVE BUSINESS AGENDA

The 2014 General Assembly Session convenes on January 8, 2014, and your Legislative Committee, chaired by JMT's Sean McCone, has been laying the ground work for success in what promises to be a very challenging 90 days.

Firms can assist in the Legislative Committee's efforts by:

- Contacting their elected officials to share their viewpoint on these important issues.
- Responding to Legislative Alerts issued by ACEC/MD.
- Attending ACEC/MD's Legislative Action Day, including morning visitations with Legislators, and annual CEPAC luncheon at the Governor Calvert House.
- Providing ACEC/MD with the legislative districts of both your firm and employees.

ACEC/MD's 2014 Business Agenda was officially rolled out at the Annual Legislative Breakfast, as follows:

AGENDA ITEM #1 - Liquidated Damages

2013 SB 188 (14-303, b, 5) triggered guidelines from GOMA requiring that all state contracts containing certified MBE participation goals contain a liquidated damages provision that applies if the contractor fails to comply in good faith with the provision of State MBE laws or the pertinent terms of the procurement contract.

What is the Issue?

Liquidated damages are unprecedented in professional service contracts, but are now being included. The unintended consequence of the prime firms feeling the need to protect themselves from being assessed liquidated damages will hurt the smaller specialty MBE firms.

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ACEC/MD 2014 LEGISLATIVE BUSINESS AGENDA (continued)

Why is it Important / Unintended Consequences

- Similar liquidated damage provisions will be passed through in MBE subcontract agreements.
- This provision encourages the use of diversified MBEs over smaller specialty MBE firms.
- MBE firms are concerned that they will only be given staff services type work because this provision places an emphasis on meeting the goals rather than providing these firms with the opportunity to perform meaningful assignments.
- A&E industry compliance with the MBE program on state contracts has been excellent.

Legislative Action Required

Exempt professional services from the liquidated damages provision.

AGENDA ITEM #2 - Certificate of Merit

A Certificate of Merit requires a plaintiff to consult with a third party design professional to review the facts of their claim and agree it is valid before moving it forward.

What is the Issue?

The intent of this law passed by the legislature was recently contradicted in a court opinion that stated the Certificate of Merit law was not applicable to a non-licensed individuals practicing engineering under the supervision of a licensed engineer.

Why is it Important?

- Certificate of Merit laws protect design professionals from baseless claims made against them.
- Allowing a third party "qualified expert" to review the facts of a claim ensures that false claims are terminated in the early stages, which will reduce both expenses as well as congestion in the court system.

Legislative Action Required

Amend MD. Code ANN., CTS. & JUD. PROC. Section 3-2C-02(2003) to include making the certificate requirement applicable when non-licensed personnel of the firm engage in the authorized practice of the discipline under the responsible charge of one or more licensed professionals of the firm.

AGENDA ITEM #3 - Indemnity - Duty to Defend

What is the Issue?

State and local contracts are including clauses that require the "duty to defend" for obligations regardless of the firm's negligence.

Why is it Important?

- These types of clauses are an unfair allocation of risk.
- They are uninsurable.
- This requirement contractually draws engineering firms into litigation where they have no negligence.
- If the firm was negligent, recourse already exists for claimants to recoup attorney's fees.
- Small businesses could be bankrupted from resulting expenses without any fault.

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ACEC/MD 2014 LEGISLATIVE BUSINESS AGENDA

(continued)

Legislative Action Required

Amend the state's current anti-indemnification law to also make the "duty to defend" requirement illegal.

AGENDA ITEM #4 - Infrastructure & Environmental Funding

What is the Issue?

We would like to thank the legislature for passing bills that adequately fund infrastructure and environmental mandates!

Making the tough vote to fund environmental compliance and construction is of paramount importance.

Why is it Important?

- Infrastructure is a non-partisan issue that affects everyone.
- Adequately funding infrastructure is vital to our economic competitiveness and growth.
- Environmental stewardship and providing a first-class transportation network is a fundamental role of the government.

Legislative Action Required

Protect the laws changed during the passage of:

- HB 1515 Transportation Infrastructure Investment Act of 2013 (2013).
- HB 987 Stormwater Management – Watershed Protection and Restoration Program (2012).
- SB 1302 Environment – Bay Restoration Fund – Fees and Uses (2012).

Gain back the trust of the public. Continue to ensure funds levied under the purview of these bills do not get diverted and used for unrelated expenditures. Enact stronger legislation to protect dedicated funds such as the Transportation Trust Fund.

AGENDA ITEM #5 - Qualifications Based Selection (QBS)

The procurement of engineering and related services is one of the most important parts of the process for ensuring the quality of a constructed project. A QBS process allows the owner to choose the firm determined to be the most qualified based on objective criteria. Selecting the most qualified firm results in the least expensive project over the long run, as a high quality design phase will result in less expensive construction and maintenance costs.

Contact the ACEC/MD office at 410-539-1592, or email acecmd@acecmd.org, for a copy of ACEC/MD's 2014 Legislative Business Agenda.

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ACEC/MD LEGISLATIVE ACTION DAY JANUARY 16, 2014

8:30-11:30AM – Targeted Legislative Visitations

10:00-11:30AM – Executive Committee Mtg.

11:30AM-1:30PM – Annual CEPAC Luncheon Governor Calvert House, 58 State Circle

Commencing at 8:30am, individual visitations will be scheduled with important General Assembly members. Please check the appropriate area on the registration form below if you plan to participate in these visitations.

ACEC/MD's Legislative Committee and CEPAC (the Consulting Engineers Political Action Committee) invite you to attend an informal luncheon with members of the Maryland General Assembly.

**Thursday, January 16, 2014
Luncheon 11:30 AM – 1:30 PM**

**Governor Calvert House
58 State Circle, Annapolis**

As we recover from the most devastating recession in decades, the upcoming Legislative Session shapes up to be another challenging one. This is the perfect opportunity to educate your elected officials on important issues that impact your firm, which includes the need to:

- Amend the law requiring Liquidated Damages provisions for MBE compliance on A/E contracts.
- Strengthen the Certificate of Merit law to ensure coverage for non-licensed individuals practicing engineering under the supervision of a licensed professional.
- Amend the state's current Indemnification Law to make a "Duty to Defend" requirement illegal.
- Preserve the state's Qualifications Based Selection (QBS) law.
- Defeat attempts to raid money from accounts dedicated for infrastructure funding.

The cost is only \$75.00 per person. Part of the cost will help to defray expenses associated with legislators' attendance.

COALITIONS FOCUS ON TARGETED BUSINESS PRACTICES

ACEC's coalitions provide a valuable resource for firms practicing in specific areas. This includes information sharing, best practices, and networking. These communities offer professionals easy access to information pertaining to their area(s) of expertise. For information on ACEC's coalitions, please go to www.acec.org. ACEC Member Firms may purchase coalition publications through the ACEC store: www.booksforengineers.com. Coalition members receive these publications free as a benefit of membership. In addition, firms participating in the ACEC Business Insurance Trust will have \$150 of their coalition dues paid by the Trust. To learn more about ACEC's Coalitions, contact Heather Talbert at 202-682-4377 or htalbert@acec.org.

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GOVERNOR'S TASK FORCE ON TRANSPORTATION FUNDING ISSUES REPORT

As expected, the Local and Regional Transportation Funding Task Force (LRTFTF) has submitted a report encouraging local jurisdictions to form Regional Transportation Authorities (RTA). With the reinstatement of the Highway Users Revenues (HUR) highly unlikely, local governments will need to establish local and regional taxes and fees to address future transportation needs. To accomplish the recommendations, the General Assembly will need to enact enabling legislation.

The Task Force recommendations include the following:

- Regional Transportation/Transit Authorities (RTAs) should remain an option to be given future consideration as specific regional transportation investments are identified and finance plans assembled.
- If local governments choose to advocate for the creation of an RTA, the local government should outline how they would address the key characteristics, including governance and funding, as part of their RTA proposal.
- Consideration of any regional approaches should consider the benefits of Maryland's more centralized transportation investment structure and the vital coordinating role played by the Maryland Department of Transportation (MDOT) in the State's integrated transportation network.

The General Assembly should consider enabling the following local-option revenue sources, to be made available for use at each local government's discretion⁹:

- A newly enabled voluntary local-option vehicle registration fee.
- An expansion of the local-option income tax increment specifically dedicated to transportation. Some counties and municipalities are already at the current cap and an increase to the cap would be required for those jurisdictions to avail themselves of this option.
- An expansion of local jurisdictions' real estate transfer tax authority.
- The facilitation of the application of value capture techniques at the project level in instances where market conditions and project dynamics allow. Such techniques are generally already enabled in State law, but could potentially require legislative or administrative refinements as specific applications are developed

The Task Force recommends that discretion be given to local jurisdictions to implement any or all of these options and, to the extent administratively feasible, to set the rate imposed up to reasonable limits established by the General Assembly and potentially at established optional increments. The General Assembly also may wish to identify which levels of local government are granted the authority to levy each specific mechanism and how resulting revenues are shared among counties and underlying municipalities.

Continued consideration should be given to identifying a reasonable, incremental strategy to provide local jurisdictions with an increase in the basic level of HUR in a method compatible with the appropriate expansion, preservation, and maintenance of the State transportation system. The Task Force discussed opportunities for when the General Assembly should begin considering increases in the HUR funds; however, there was no resolution on a specific trigger.

As these recommendations are considered, the Task Force believes it is important to maintain the current funding arrangements now in place.



CONGRESSMAN DELANEY OUTLINES INFRASTRUCTURE FUNDING PLAN

ACEC/MD was pleased to host a fundraiser for first-term Congressman John Delaney on November 7th. Of special interest was the Congressman's innovative approach to infrastructure funding that over 50 years could finance \$2-trillion worth of infrastructure and create more than three million jobs.

Under the Partnership to Build America Act (H.R. 2084) an American Infrastructure Fund (AIF) would be created that could act like a bond insurer or bank for state and local governments to build transportation, energy, water, communication and education infrastructure.

It is anticipated that \$50-billion of capital would be funded not by government but by private companies that purchase 50-year bonds at 1-percent interest that are not government-guaranteed. As an incentive to purchase these below-market bonds, buyers would be allowed to repatriate a certain amount of overseas earnings tax-free. The specific ratio would be established by auction, which would encourage interested companies to bid against one another, guaranteeing a fair deal for the government.

With an estimated \$2-trillion of corporate cash sitting overseas, this plan would allow companies to reinvest these funds in the United States guaranteeing that jobs would be created.

To date, this proposal has garnered bi-partisan support, with 25 Republican and 25 Democratic co-sponsors. This legislation addresses tax policy concerns that Republicans have voiced for decades, while increasing infrastructure investment which Democrats have pushed since the 1990s.

Even with strong bipartisan support there is still work to do. **Contact your elected federal officials today and encourage them to support H.R. 2084.** If you need any supporting information, please contact the ACEC/MD office.

We would also like to thank ACEC and the members of the ACEC/MD Host Committee for helping to raise over \$10,000 for the Congressman.

SEEKING EMPLOYMENT

The following individual is seeking employment and has a complete resume on file in the ACEC/MD office. Please phone 410-539-1592 if you are interested in obtaining a copy.

P. E. with 17 years of experience, licensed in Florida and Georgia, seeks a role in a dynamic and growing organization with an emphasis on transportation engineering and planning.

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VOLUNTEERS NEEDED TO ASSIST IN CAREER OUTREACH ACTIVITIES

Appreciating the need to develop future engineers, ACEC/MD's Career Outreach Chair Ray Streib (DFI), and ACEC/MD's Engineers Week/Engineers Society of Baltimore Associate Societies Chair Rommel Fajardo (Kim Engineering), and MdQI Steering Committee Co-Chair Dan Cheng (JMT) have been spearheading efforts to expose students to the benefits of pursuing a career in the engineering profession. To that end, in addition to contributing monetarily, it is extremely important that member firm representatives assist in this worthwhile effort.

We were recently advised that member firm participation at recent MdQI Career Outreach events was lacking. In fact, SHA senior personnel were required to step in and make presentations that would normally have been conducted by younger representatives from consulting firms. Needless to say, this lack of participation was noted by SHA.

Looking forward, there will be numerous opportunities to provide assistance during events associated with the 2014 Engineering Challenges and throughout the year. Of note, please mark your calendar for Saturday, March 8, 2014, from 10:00am – 2:00pm at the Anne Arundel Community College, and plan to engage the 500 students that are expected to attend the 21st Century Education Foundation's Annual Career Exploration's "Building For The Future".

If you are interested in assisting in upcoming events, please contact the ACEC/MD office. Thank you very much for considering this request!

ACEC/MD ACHIEVES RECORD MEMBERSHIP

With ACEC/MD membership at an all-time high exceeding 85 firms, we would like to thank our member firm principals and their staff for investing in the only organization that focuses on the business interests of the engineering and surveying professions. As a valued member of ACEC/MD, you appreciate that there is strength in numbers. When interacting with other business professionals that are not already on board, encourage them to join the organization. Let ACEC/MD assist in your recruitment efforts. To enhance your discussion, please consider the following:

Established over fifty years ago, the American Council of Engineering Companies/Maryland (ACEC/MD) is the engineering industry's trade association, representing over 85 companies in the state of Maryland employing 6,000 professionals. Through its association with the American Council of Engineering Companies (ACEC), which represents 5,700 companies with over 500,000 employees, the Council's mission is to contribute to America's prosperity and welfare by advancing the business interests of member firms. One third of our members are either small or minority firms who, along with many top firms in the ENR 500, are realizing the benefits of membership.

By being a member of ACEC/MD your firm benefits by being a part of the Council's substantial efforts toward:

- Advocacy
- Educational Programs
- Relationship Building providing for greater teaming arrangement opportunities

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ACEC/MD ACHIEVES RECORD MEMBERSHIP

(continued)

The Council promotes infrastructure investment and eliminates regulatory barriers in Annapolis, Washington DC and in the courts. With federal and state governments establishing new tax priorities and developing new regulations, now is the time to stand with and be part of the experienced voice of the engineering industry.

Thank you for both your monetary and time investment in ACEC/MD. We could not be successful without your continued support. Best wishes for a wonderful Holiday Season and a prosperous New Year!

NEW MEMBERS

The following firms have been elected to Membership in ACEC/MD:

E2CR, INC.

1405-A Parker Road, Baltimore, MD 21227

Phone: 410-737-9100; FAX 410-737-9101

Rep.: Siva Balu

Website: www.e2cr.com

Brief History and Activities of the Firm: E2CR, Inc., founded in 1994, is a geotechnical and environmental engineering firm. The firm's field of operation includes geotechnical engineering, environmental engineering, hazardous waste contamination sampling and testing, in-house laboratory testing of soil and concrete, and construction inspection. Engineering activities include shallow foundations, sinkhole remediation, surcharging/settlement assessment, utility tunneling, slope stability analysis, pavement design, dam/dike stability analysis, subsurface improvements, deep foundations, deep dynamic compaction, construction dewatering, UST/AST design, removal & installation, subsurface contamination sampling, testing & monitoring, engineering supervision of hazardous contamination related construction and disposal, drilling on land and water, conduct structural inspection and in-situ testing, and install geotechnical instrumentation.

EPONA ENGINEERING, LLC

4963 Pale Morning Dun Road, Elkridge, MD 21075

Phone: 443-492-9655; FAX 410-747-1934

Rep.: Margaret Becker

Website: www.eponaengineering.com

Brief History and Activities of the Firm: Epona Engineering, LLC, founded in 2012, is a woman-owned certified Disadvantaged Business Enterprise (DBE) specializing in civil and environmental engineering. The firm's field of operation includes civil engineering, construction management, environmental engineering, and Federal Emergency Management Agency (FEMA) disaster program support. Specific civil engineering activities include water system design and planning, storm and sanitary water design and planning, flood control, site layouts, erosion & sediment control, inspection services, data collection and utility coordination. Specific planning services include Hazard Mitigation Plans, risk and vulnerability analysis, Hazard Mitigation Grant Program Applications, hazard analysis, FEMA Public Assistance Expertise, public outreach and grant administration.

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NEW MEMBERS (continued)

FROEHLING & ROBERTSON, INC.

7798 Waterloo Road, Jessup, MD 20794

Phone: 443-733-1011; FAX 443-733-1015

Rep.: Robert L. Mashewske

Website: www.FandR.com

Brief History and Activities of the Firm: Froehling and Robertson, Inc., founded in 1881, is a multi-disciplinary engineering firm providing a full range of civil engineering in geotechnical, transportation and environmental engineering services. F&R's field of operation also includes construction materials engineering; construction management; hazardous waste services; hydrogeology/hydrology; code compliance; and drilling. Engineering activities include full-services laboratory capabilities for environmental and construction materials testing and analysis; field capabilities for subsurface exploration, construction testing & inspection, and non-destructive testing and examination, plus industrial hygiene, indoor air quality, and forensics.

We welcome these firms as Members of ACEC/MD. Be sure to add their information to your records. The next time you see one of their representatives, please take the time to let them know we're glad that they have joined the Council!

MEMBER NEWS

DEWBERRY recently announced the confirmation of retired **Maj. Gen. Merdith W. B. "Bo" Temple, PE, PMP**, to the company's board of directors.

EBL ENGINEERS is pleased to announce that **Robert H. Stratemeyer, P.E.** has received the Life Membership Award from the Building Congress & Exchange of Metropolitan Baltimore. The award is presented to a member whose efforts have exemplified outstanding service to the organization.

GEORGE, MILES & BUHR, LLC (GMB) announced that **Peter A. Bozick, Jr., P.E.** recently became a Board Certified Environmental Engineer (BCEE) in the specialty of Water Supply & Wastewater. Reflecting his 40 years of experience in the field, this certification recognizes the top 4% of environmental engineering experts.

ROWLES & COMPANY, LLP has relocated to:

8100 Sandpiper Circle, Suite 308, Baltimore, MD 21236

Office: 443-725-5395; Fax: 443-725-5074

SABRA, WANG & ASSOCIATES, INC. is pleased to announce the opening of their AASHTO R18-accredited and MDOT-approved construction materials lab in Baltimore, MD.

Celebrating 25 years, **STRUCTURA** recently relocated its Metro Washington office to:

111 Rockville Pike, Suite 950, Rockville, MD 20850

Office: 301-987-9234; Fax: 301-987-9237

Also, **Jon Tung, P.E.** recently joined the firm as an associate.

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OFFICERS**President**

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Johnson, Mirmiran & Thompson

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EBL Engineers

Alternate Director

Leon Kriebel, P.E.
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RJM Engineering
Jerry Jannetti, P.E.
Parsons Brinckerhoff

2012-2015

Alan Straus, P.E.
URS Corporation
Stuart Taub, P.E.
Wallace Montgomery

2013-2016

Christopher Fronheiser, P.E.
AECOM
Manny Sidhu
Sidhu Associates

Executive Director

Jim Otradovec

MEMBER NEWS (continued)

WALLACE MONTGOMERY is pleased to announce that they have relocated their offices to:

10150 York Road, Suite 200, Hunt Valley, MD 21030

Please be aware that their new fax number is 410-667-0925.

PROFESSIONAL DEVELOPMENT

February 7-8, 2014 "Stepping Up: Building a Performance Culture Across the Generations"

New Orleans, LA. Sponsored by ACEC's Coalitions - Small Firm Council (SFC). For more information, contact Heather Talbert at 202-682-4377 or htalbert@acec.org.

###

HAPPY NEW YEAR

SAVE THE DATE!

JUNE 25-28, 2014

**ACEC/MD 26TH ANNUAL CONFERENCE
HOTEL MONTELEONE
NEW ORLEANS, LA**

MARK YOUR CALENDAR!

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**ACEC/MD 2013
Engineering Excellence
Grand Award winning
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