



LABORERS'
HEALTH & SAFETY FUND
OF NORTH AMERICA



THE POWER TO PROTECT

- Home
- About Us
- Health Promotion
- Occupational Safety and Health
- Research
- Publications

Sun Sense Plus Campaign

Webinar Archive

Site Safety & Health Program

Topics

Aging and Retirement

Best Value Contracting

Chronic Disease

Confined Spaces

Critical Incident Stress Management (CISM)

Ergonomics and Construction

Falls

Find It, Fix It Checklists

General Wellness

Health & Welfare Fund Assistance

Health Care Reform

Health Fairs

Health

Lifelines *online*

April 2019
Vol. XV, Num. 11

In This Issue

Fighting for All Workers on Workers' Memorial Day

Stopping the Red Tape Affecting Work Zone Safety

Combating the Opioid Crisis Through Injury Prevention

OSHA Reverses Course on PELs, Ignoring Opportunity to Protect Workers

Safely Dispose of Unused Medications Now to Prevent Unsafe Use Later

Lyme Disease: Not Everyone Gets the Bulls-Eye Rash

Protecting Yourself from Falling and Flying Objects on the Job

Getting a Grip on Your Finances Doesn't Have to Be Scary (and It's Worth the Work)

Stopping the Red Tape Affecting Work Zone Safety



Published: April, 2019; Vol 15, Num 11

Related Articles

- [Prevention through Design](#)
- [Work Zone Safety](#)

April 2019

- [Fighting for All Workers on Workers' Memorial Day](#)
- [Stopping the Red Tape Affecting Work Zone Safety](#)
- [Combating the Opioid Crisis Through Injury Prevention](#)
- [OSHA Reverses Course on PELs, Ignoring Opportunity to Protect Workers](#)
- [Safely Dispose of Unused Medications Now to Prevent Unsafe Use Later](#)
- [Lyme Disease: Not Everyone Gets the Bulls-Eye Rash](#)
- [Protecting Yourself from Falling and Flying Objects on the Job](#)
- [Getting a Grip on Your Finances Doesn't Have to Be Scary \(and It's Worth the Work\)](#)



Stopping the Red Tape Affecting Work Zone Safety

Keeping workers and the traveling public safe in highway work zones is of the utmost importance to LIUNA, the LHSFNA and signatory contractors. However, this goal can become a major challenge if the proper safety procedures and equipment aren't put in place. Working within inches of [passing traffic](#) and alongside [heavy construction equipment](#) contributes to many worker injuries and fatalities every year. In 2017 alone, [132 workers](#) were killed in highway work zones. Nearly 800 motorists and pedestrians also died in work zone crashes in 2017.

"Instead of federal procurement laws that focus on the safety of workers and the traveling public, we have legislation that favors the lowest possible bid and limits the types of products that can be used to keep workers safe from fast-moving traffic in highway work zones," says LIUNA General President Terry O'Sullivan. "Changing or revising these ill-conceived and outdated rules would save lives and help level the playing field for contractors who don't skimp on safety when bidding these projects."

Federal laws that place limits on [patented and proprietary products](#) and a [bidding process](#) that prioritizes low cost over quality are making it more difficult to create safe work zones. For example, [funding is available](#) for the [purchase, rental or lease](#) of patented and proprietary roadway protection products, but applying for it adds to the already cumbersome contract process. The result is that the safety of workers and the public often gets short-changed. The Federal Highway Administration (FHWA) has issued a [notice of proposed rulemaking](#) that will "provide greater flexibility" to use these products by either amending the requirements or rescinding them altogether. In the meantime, here's a look at current policy, the accompanying red tape and the potential funding areas that – when approved by the FHWA – can help make work zones safer for workers and the traveling public.



**LIUNA General President
Terry O'Sullivan**

Why Isn't More Positive Patented and Proprietary Protection Used?

There's no argument that temporary positive protection,

including barriers that require less manpower to set up and take down and that can be easily moved and configured as the work zone advances, are an improvement over traditional concrete barriers. For example, the ease of assembly and disassembly [reduces worker exposure](#) to traffic during set-up and take-down periods. The traveling public also benefits because lanes reopen faster. However, some of these products, such as [Mobile Barriers MBT-1](#), a self-contained, crash-worthy barrier made of [high-grade steel](#) that can be trucked from one work zone to another, carry patents. Current [FHWA policy prohibits](#) the use of patented and proprietary products unless they meet certain criteria. For example, contractors must show proof that:



- The item is purchased or obtained through competitive bidding with equally suitable unpatented items.
- The contracting agency certifies the item is essential and that no equally suitable alternative exists.
- The item is used for research or for a special type of construction on relatively short sections of road [for experimental purposes](#).

Trying to get this approval is a time-consuming process for contractors who are already in the midst of assembling competitive bids and who have no guarantee that the FHWA will grant their request. Additional information on FHWA's policy on patented and proprietary products is available [here](#).

What Kind of Funding Can Help Secure Positive Protection?

The FHWA's [Highway Safety Improvement Program](#) (HSIP), [National Highway Performance Program](#) (NHPP) and [Surface Transportation Block Grant Program](#) (STBGP) can help contractors and state Departments of Transportation (DOTs) secure funding for positive protection. [Positive protection](#) secured with HSIP funds can be used on federal and state roads. Positive protection secured with NHPP and STBGP funds can only be used on federal roads. However, the substantial legwork currently required for obtaining any of this funding discourages application.




Why Does the Federal Government Favor Low-Bidding?

Even if patented and proprietary products were more readily available, the [competitive bidding requirements](#) of the Federal-Aid Highway Program, which provides financial assistance for the construction and maintenance of the nation's [3.9 million-mile highway network](#), stipulate that the contractor submitting the [lowest bid](#) is the one who secures the project. The rationale behind mandated low-bidding is that it [guards against mismanagement](#) of taxpayer money by encouraging contractors to provide safe, efficient services at the lowest price possible. However, the [reality of low-bidding](#) is that it discourages innovation and encourages contractors to cut corners, jeopardizing the safety and health of workers and the traveling public.

It's important that the FHWA revamps and streamlines the process for awarding construction and maintenance contracts. When contractors and state DOTs have less red tape to wade through, work zones will be less dangerous for the workers tasked with building and maintaining the nation's roads and for the public traveling on them.

The LHSFNA has a number of resources available in our [Publications Catalogue](#) that provide guidance on safe work zone practices. These include our *Preventing Intrusions into Highway Work Zones* pamphlet, our *Highway Work Zone Safety Checklist* and our new *Flagger Safety* and *Spotter Safety* toolbox talks.

[Janet Lubman Rathner]

 [Print this article](#)