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Improve poor ethics in construction: set consequences

Ethical behavior in the construction industry is a subject rarely discussed openly, probably because for most people in construction it's the epitome of throwing stones in a glass house. A 2004 study by FMI Corp. and the Construction Management Association of America indicated more than 80 percent of almost 300 construction industry professionals (including architects, engineers and contractors) had personally witnessed unethical behavior in the previous year. In my experience, that statistic does not shock me, but it may shock an owner or financing professional writing construction loans. Ethical violations in construction are never on the front page of the newspaper or on the evening news, but they happen every day. And, in many cases, they cause real-world problems for owners as well as many good companies that refuse to participate in the types of unethical preconstruction procurement activities of their potential clients and general contractors.

Examples of typical unethical scenarios occurring in competitive design-bid-build construction are bid shopping (pre- and post-bid time); underbidding a less than adequate set of project documents to be the low bid-



Doug Miller
Business development
manager, Kimmel
Mechanical Inc.,
Denver

der; knowing the plan is to flood the contract with change orders during construction to make the money back; and specialty contractors slandering their competition when they have their client's ear. Obviously there are many more examples, but this article does have to fit on one page.

Why is this the case in our industry? Is this the case in every industry? Would 80 percent of 300 lawyers admit witnessing unethical behavior in the past year? It's doubtful and there are reasons why.

I believe there are two reasons the construction industry has fallen into the unethical abyss: 1) There are no licensing consequences for unethical behavior in construction; and 2) Most owners don't specifically demand ethical practices from their contractors in competitive bidding situations.

The first reason for an unethical environment given above has to do solely with the business consequences of unethical

behavior. Our profession is one that bridges the gap between services and products. Building a commercial office building is manufacturing a custom product that requires consultant, professional, managerial and labor services. Many of these services are performed by construction professionals, not licensed consultants. For industries that solely provide professional services (i.e., lawyers, therapists, etc.), ethics plays a part in licensing and continuing education. There are consequences for unethical behavior in the form of being fined, being fired or losing a license and having to change careers. This is not the case in general or specialty contracting. If there were one state agency that licensed all construction contractors, that would be a great place to start this movement. But, there isn't one licensing authority; there are many cities and other state or county agencies that require individual contractor licensing. In a brief research effort, neither city of Denver nor city of Boulder requirements for a general contractor license information documents mention the word "ethics," let alone highlight any licensing consequences for unethical business practices.

In the construction/development hierarchy, the owner and his financing team have ultimate

authority over the requirements of the project. Obviously, the requirements include the building's size and specific materials and methods (i.e., roofing, structural, electrical, etc.), but also they can include required methods of procuring subcontractors and vendors that require ethical practices and transparency. Surely there are some owners requiring methods of preconstruction procurement that do encourage ethical behaviors, but even in these cases we have to ask the question: Would they fire their selected general contractor during the construction process if they learned that the GC achieved budget/cost savings by shopping the subcontractors' bids to someone willing to drop his price in order to pick up a 2 percent savings on the specific scope of work?

In order to compete and win work in the tough construction market we are in today, people will do what they need to do to survive, let alone thrive. Since we are in an environment where there are very little consequences for unethical behavior, it is exactly what we can expect. Psychology and sociology both teach us that consequences affect behavior and in the construction industry the consequences for unethical behavior are few and far between.▲