

Survey of Construction Industry Ethical Practices

ethical practices today



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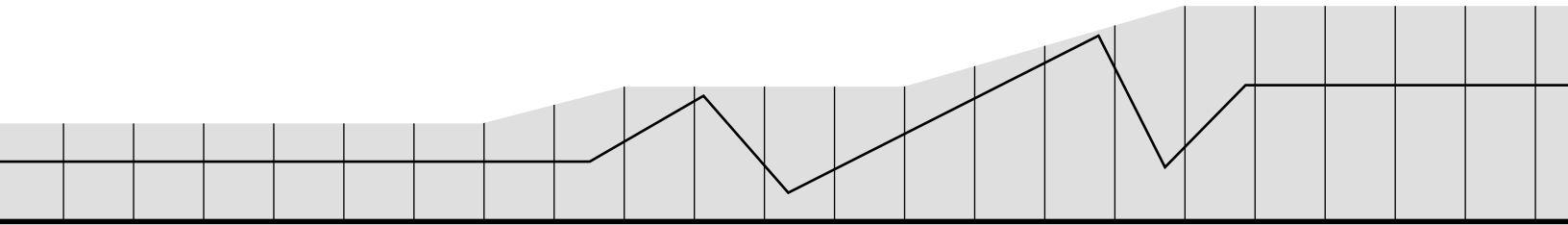


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FMI Survey of Construction Industry Ethical Practices

By Dennis Doran, FMI Market Manager, Owner Services

“The integrity of the construction process is as important as the integrity of the construction products.”

— Ralph James, Ph.D., The Integrity Chain

“You should not have to regulate or teach ethical behavior. Individuals know right from wrong.”

— Anonymous survey respondent

When asked if they had “experienced, encountered, or observed construction industry-related acts or transactions that they would consider unethical in the past year,” 84% of the owners, architects, construction managers, contractors, and subcontractors responding to our survey said that they had, and 34% said they had experience with unethical acts “many times.” If we project those results from the 270 people who answered our survey onto the whole construction

industry, it is easy to see why 61% of our survey respondents thought that the industry was “tainted” by unethical acts. Whether the acts experienced by the survey respondents are small transgressions or large-scale scandals awaiting court dates, this is a serious knock on the construction industry.

We cannot conclude from this single survey that there is a trend one way or the other regarding construction industry ethical practices. Nor have we set a tolerance level for our analysis. Ideally, the industry would be free of any practices considered unethical, but there will always be some disagreement about what is or is not ethical. Nonetheless, the response to our survey shows that 84% of those answering the survey encountered situations that they considered unethical in their business dealings, and that is alarming.

To begin to understand why we think it is important for companies and individuals in business to follow ethical practices, we need only to look at recent business news headlines for a who’s who of ethical meltdowns. Enron, WorldCom, and Tyco not long ago were symbols of successful economic growth and model companies setting the pace for American business. Now, those company names have become synonymous with greed and corporate malfeasance, leading to tremendous losses in shareholder value, trust, and a laundry list of legal battles. The losses from these headline scandals and many others not noted here are immense in terms of dollars, but chief among the losses is the loss of trust. Besides spurring the enactment of new laws and regulations, the magnitude of these scandals has cast a bright light on ethical business practices.



Defining Ethics

The famous cases like Enron show the damage that can be caused by following unethical and illegal business practices. Companies rapidly lose their good reputations, shareholders revolt, employees lose their savings and jobs, and in these big cases, whole industries come under suspicion. The resultant lack of trust in business can mean higher legal costs, additional regulations, more complex contracts, and a generally less cooperative environment in which to work.

What do we mean when we talk about “ethical” or “unethical” behavior? We gave some examples in our survey, but we intentionally didn’t define the term “ethics” so survey respondents would give us their opinions on what was and wasn’t ethical. We relied on the idea that, as noted in several survey comments, individuals know right from wrong. However, for the sake of our current discussion, ethics is defined as:

- The discipline dealing with what is good and bad about moral duty and obligation
- A set of accepted moral principles and values about what ought to be
- A theory or system of moral principles governing the appropriate conduct for an individual or group
- A code of morality.

Ethics can refer to several different things – a discipline or area of study, rules or principles, a system governing what individuals and groups agree is their duty, and what is good or bad conduct. Right away, we see that this term we use with ease in conversation is loaded with different meanings and questions.

What do we mean by “moral principles and values”? Morality is a set of accepted standards or rules about what is right or wrong conduct. Conduct or behavior is the way a person responds to a set of conditions. Therefore, when we speak of an action being “unethical,” we mean an action that is inconsistent with agreed-upon moral conduct.

Although we accept the idea that we intuitively know right from wrong, once we start to talk about moral codes and values, duties and obligations, the subject gets complicated. We expect some differences of opinion as well as some gaps, for instance, in what we consider right and wrong in different

circumstances or from different points of view and what we actually do when confronted with those circumstances. In our survey, we found evidence of those gaps and a good deal of agreement in several areas.

We could give the executive summary of what ethics is in this single wise saying, “There is no right way to do the wrong thing.” Another saying that isn’t as easy for all to immediately believe is, “Good ethics are good business.” But, these bumper sticker ethical codes, true as they are, don’t give us a very deep understanding of the issues regularly faced in the construction industry.

Many acts that we consider unethical were committed because someone representing a company thought the unethical activity was good for their particular business, at least until they were caught. Unethical acts often signal a failure of management or leadership to know how to get the job done the right way. They think they are taking short cuts. Ultimately, as Ralph James, an FMI director, points out in his book, *The Integrity Chain*, ethics for contractors is largely a matter of integrity and trust. Our survey supports this thesis; however, it also points out that there are differences in many situations that need a deeper understanding. Ethics is something that the industry needs to talk more about, agree on, and put into wider practice.

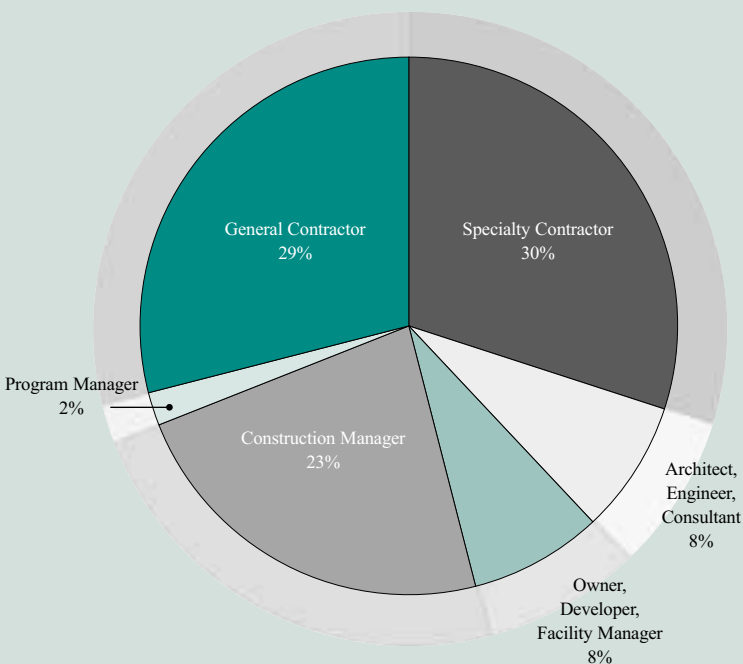


Survey Methodology

FMI conducted the “Survey of Construction Industry Ethical Practices” in conjunction with the Construction Management Association of America (CMAA) to gauge ethical practices and concerns in the construction industry. The survey was conducted entirely online using a third-party site. The survey link was sent by FMI electronically to a randomly selected list of owners, architects, engineers, construction managers, general contractors, and subcontractors. In addition, CMAA sent the survey link to its membership. The American Subcontractors Association (ASA) also helped solicit responses from their membership, and ASA made the link available through the association’s web site. Thanks go out to all those who helped promote the survey to industry contacts. Special thanks to Rick Bishop of Integribuild for his contributions to develop the initial survey concept and questionnaire.

Over 270 people responded to the survey. The respondents range by title from owners and top executives to project managers and estimators. A cross section of the industry responded to this survey including owners, A/E firms, construction management firms, general contractors, and subcontractors from both large and small companies.

Survey Response by Type of Organization



Summary: Trust Tops List of Key Concerns

Issues concerning trust and integrity as underlying values lead the list of chief concerns voiced in this survey. The reputation of individuals and the companies they represent is based on trust and integrity. People want to be trusted as well as trusting. Results from other surveys conducted by FMI point to the importance of collaboration and communication for completing successful projects; it is not surprising then to see the concern for trust here as an important quality in collaborative relationships. (See *FMI Owner Survey Report, 2003.*)

Bid practices, specifically bid shopping and reverse auctions, garnered strong responses and comments in this survey. When asked about ethical codes, most saw the need for everyone to have and share ethical codes with employees and partners, but few practice this procedure. Most respondents agreed that associations should take the lead in drafting industry ethical codes, but, when asked if they would favor more industry regulation, the response was mixed. We had many comments that owners should drive plans to improve ethics in the construction industry.

It is apparent from our survey that few companies make ethical issues part of their mission statement or strategic plan, at least not to the point of drafting ethical codes. It is hard to find the benefits in such an approach, especially in dollar terms. For those who prefer to conduct business ethically, there seems to be a sense of powerlessness to change things, because this is “the way it’s done in this business.” Whether they like it or not, many people will work with companies that are unethical. If this is true, and our survey indicates that it is, then maybe our survey will help to bring ethical questions to the table.

Ultimately, we think that most companies and individuals in the industry act ethically most of the time, and most would like to see the industry improve its reputation on ethical issues.

Key Ethical Concerns Reflected in the Survey

- A breakdown in trust and integrity is bad for business
- Loss of reputation for industry and individual company if practices aren’t more ethical
- The need for codes and standards for ethics
- Create a fair and ethical bid process

Survey Results

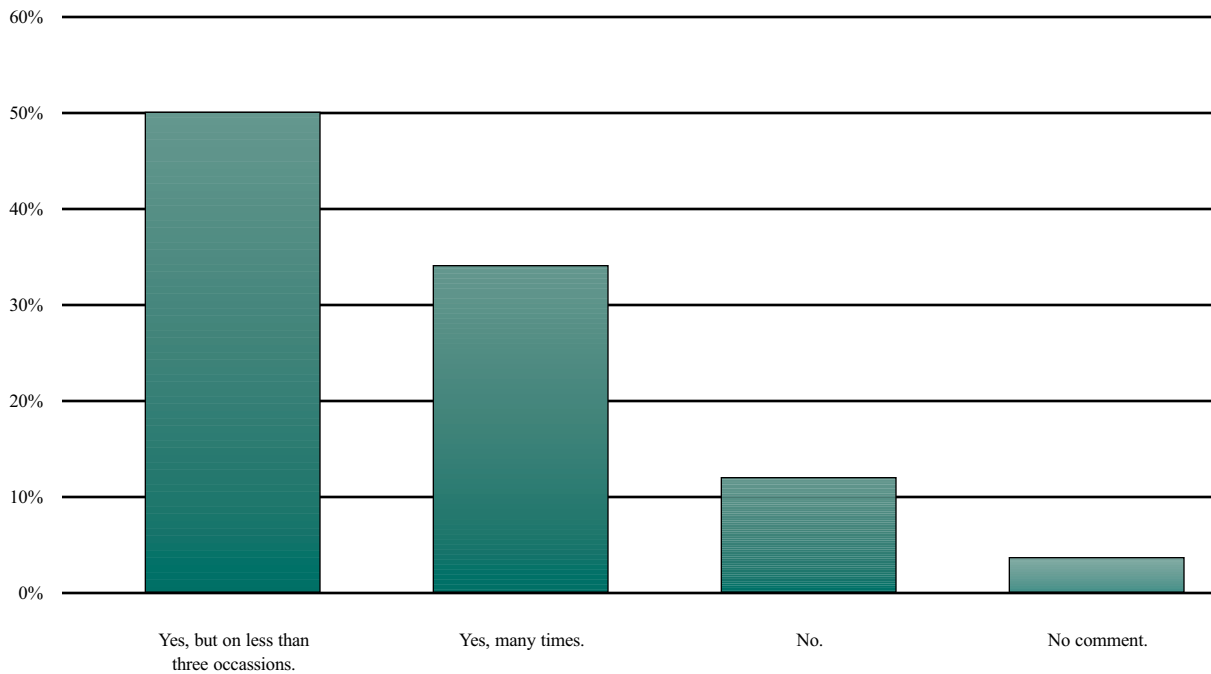
INDUSTRY CONCERN FOR ETHICAL ISSUES

The construction industry needs to pay more attention to ethical issues according to 69% of the survey respondents. Twenty-one percent said that ethical issues put the industry in a bad light. Though this survey doesn't define what "paying more attention" would mean, it is clear that most would prefer to get these issues on the table in order to improve industry ethical standards.

When asked if they had "experienced, encountered, or observed industry-related acts or transactions that they would consider unethical in the past year," 84% said that they had, and 34% said they had experience with unethical acts "many times."

While we would like to know more about the acts encountered – even if these acts were small transgressions – this is a serious knock on the industry. It means that the majority of executives in the industry will face ethical questions or dilemmas at least once within the next year. When one does run into the inevitable ethical question, what should he or she do? Is the unethical situation just ignored? Is there a procedure for reporting concerns about ethical issues? These are the types of questions that need to be addressed in a company's code of ethics.

Over the last twelve months, have you personally experienced, encountered, or observed industry-related acts or transactions that you would consider unethical?



What difference does it make if there is frequent unethical behavior in the construction industry? According to the response from our survey, unethical behavior affects the public's perception of the industry (61%), and, more importantly, it affects the level of trust between owners and contractors (74%), and between contractors and design professionals (60%).

Just over 63% of survey respondents agreed or strongly agreed that, in general, the construction industry is tainted by prevalent acts that are considered "unethical." Examples of unethical behavior given in the question included unauthorized use of equipment or supplies, mis-reporting costs, and time.

Unethical behavior also affects the cost of getting projects built according to 61% of respondents. When asked to choose an estimated range for the cost of unethical behavior on a project, 35% responded between 1/2% of 1% and 2% of the total project cost, and 25% said between 2% and 5%. That means anywhere from \$5,000 to \$50,000 for every million dollars spent on a project is lost or "unaccounted for" in some sort of unethical transaction.

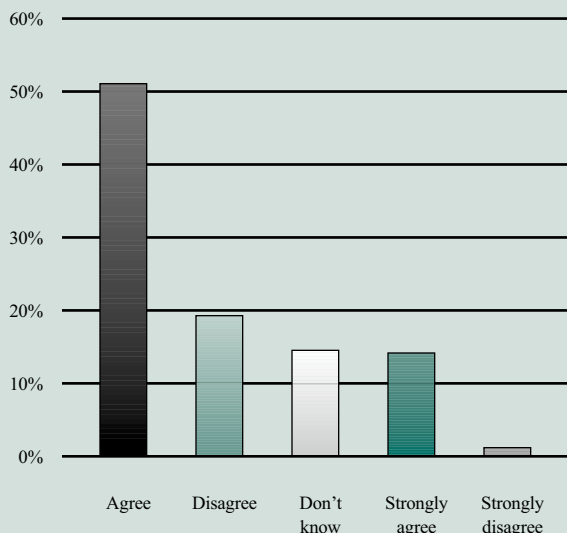
Is there an "acceptable" level of loss for unethical practices? Should you provide for this somehow going into a project?

Writing these expenses off as a cost of doing business is an admission that you accept unethical behavior as the norm. While some may find it more expedient to act unethically, if such behavior becomes the norm, then shouldn't we also question the safety of the structures built by such companies?

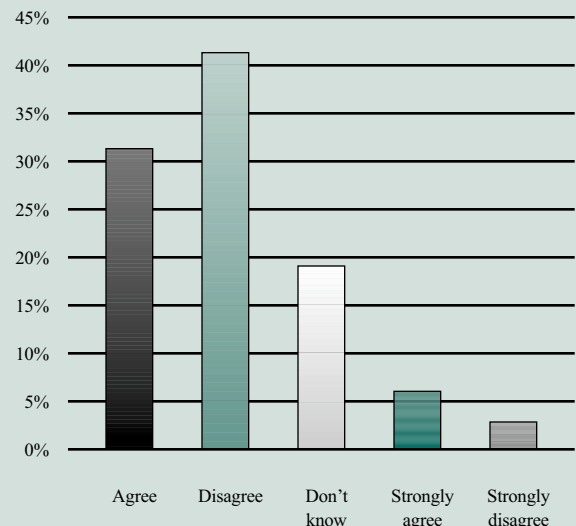
When asked if they thought that the construction industry was tainted by prevalent "illegal" acts, 44% either disagreed or strongly disagreed that the industry could be characterized that way. (Examples of illegal acts given in the question were bribery, harassment, and alcohol use during work hours.) While we may be relieved to find that not everyone thinks the industry is plagued by unethical and illegal acts, it is clear that any firm or company operating in the construction industry is fighting an uphill battle to convince someone, say prospective employees or clients, that they are trustworthy.

What's the difference between "unethical" and "illegal" behavior? Ethics are governed by societal norms; laws and regulations tell us what is legal or illegal. While most people don't want more laws and regulations, if norms are continually broken, people will call for new laws to govern behavior. Think of all of the rules and regulations regarding safety, hiring practices, and contracts. For instance, most companies understand that working safely is good practice; others need laws to encourage safe working conditions.

The construction industry, in general, is tainted by prevalent acts that are considered **unethical** (such as unauthorized use of equipment or supplies, mis-reporting of costs or time, etc.).

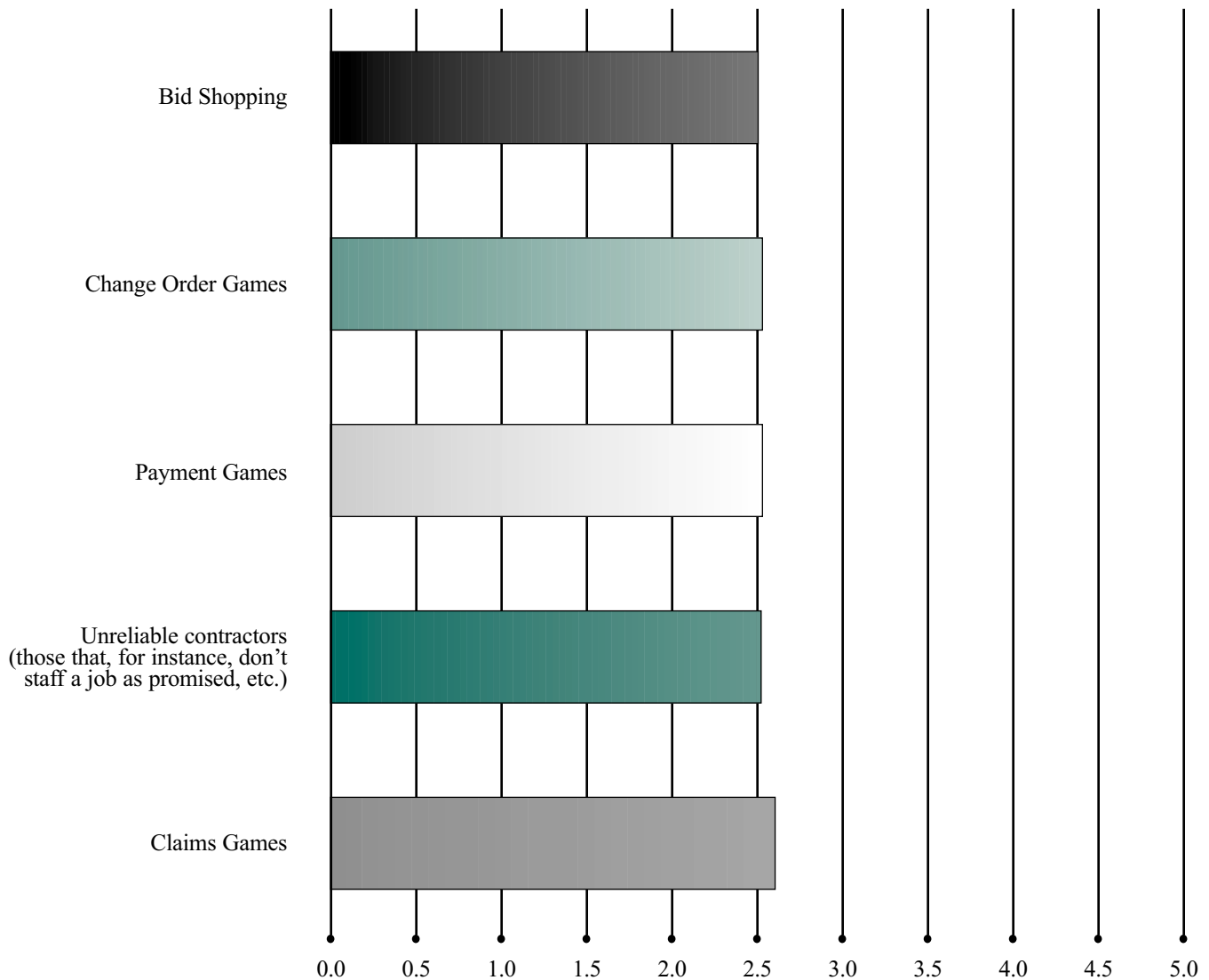


The construction industry, in general, is tainted by prevalent **illegal** acts (such as bribery, harassment, alcohol use during work hours, etc.).



Rank the five most critical ethical issues you face in your work.

Scale: 1 to 5, 1 = most critical

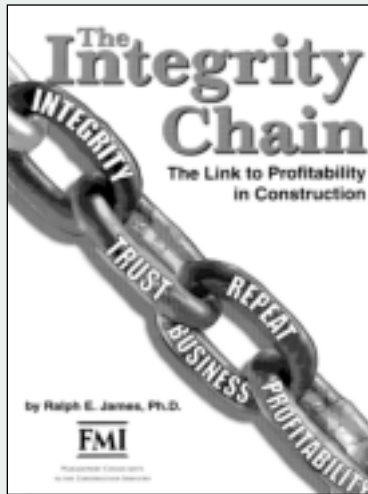


CRITICAL ETHICAL ISSUES

The top five “most critical issues” selected by respondents were bid shopping, change order games, payment games, unreliable contractors, and claims games. With the possible exception of the unreliable contractor, one thing that ties all

of these issues together is the apparent effort of one party to profit at the expense of another. The emphasis is on “gamesmanship,” not trust and integrity, not “win-win” situations. These games indicate a breakdown of the collaboration and communication that characterize healthy business relationships.

Lying in the Bushes



“Aha,” exclaims Tommy, the project manager, “they’ve done it again.”

“Look,” he says to the superintendent, “The sequence is wrong again – we can really make ’em pay for this one. By the time they realize their mistake, we’ll have them.”

Tommy is playing an old construction game – waiting for people to make a mistake, then making them pay for it. Tommy’s game is called “*Lying in the Bushes*.” His rules are simple:

1. **Never forewarn the other party about a mistake he knows is going to happen.**
2. **Pounce when the mistake is made, perhaps pretending ignorance of the situation.**

Is it any wonder that owners, designers, and contractors suspect each other’s integrity? Construction games have proved to be too easy to play – and they have been perceived to be too financially rewarding, like other forms of theft, to be avoided. After all, the people playing the game can always adopt the attitude: “If they are stupid enough to do that, they ought to pay for their stupidity.”

How to Demonstrate Integrity

Here is a potential list of things I might do to show integrity:

1. Show up on time, every time.
2. I write down things that I’m requested to do and follow up.
3. I keep all promises or explain the difficulty to the other party.
4. I focus on performance.
5. I look to see if anything about my behavior causes inconsistency, such as not putting on my own hardhat when I’m requiring everyone else to wear one.
6. I communicate frequently with everyone to remove doubts about the integrity of the system caused by lack of information.
7. I do not cover up bad news.
8. I fix processes rather than blame people.
9. I apply any discipline that is required.
10. I review policy statements frequently to make sure they are consistent with actions and vice versa.
11. I control the rate of change in the company culture so that people do not lose confidence because of too much change too fast.
12. I maintain an open-door policy.
13. I work through channels rather than around channels in order to maintain the integrity of the reporting process.
14. I stick with people over the long haul—as former Texas University football coach Darrell Royal used to say, “We dance with who brung us.”
15. I admit mistakes and use them as an opportunity for improvement.
16. I insist on honesty in all dealings because I know that in the long run my reputation and the reputation of my business are essential to success.”

– From Ralph James, Ph. D. *The Integrity Chain*, 2002, FMI

Ranking the Importance Of Ethics

When asked if ethical issues were a consideration in their decision to work with or hire contractors, 91% responded that it was either of utmost importance (49%) or important (42%). Thirty-seven percent were concerned about the ethics and integrity of the contractors they work with, and only 30% were marginally concerned. Sixteen percent responded that they would never hire or work with a contractor or subcontractor they considered to be unethical, and 32% said they would rarely do so unless under pressure. However, 24% said they might work with unethical contractors if circumstances dictated, and 24% admitted that they often didn't know if the contractor they hired was ethical or not until that contractor was on board.

Important as ethical issues were to respondents, only 30% had ethical programs that were "formal and well-known to everyone in the firm and enforced by top management" and 11% had no ethics program at all. Forty percent of the companies responding do not have formal programs, but they take ethics seriously. In contrast, just over 10% had formal programs that were not enforced or widely known, and 7% said their programs were both informal and not widely known.

Given the low number of respondents that had well-known, formal ethics programs in their own companies, it is not surprising to see that, when these companies were working with contractors or subcontractors, only 1% were aware that the companies they worked with had formal, documented

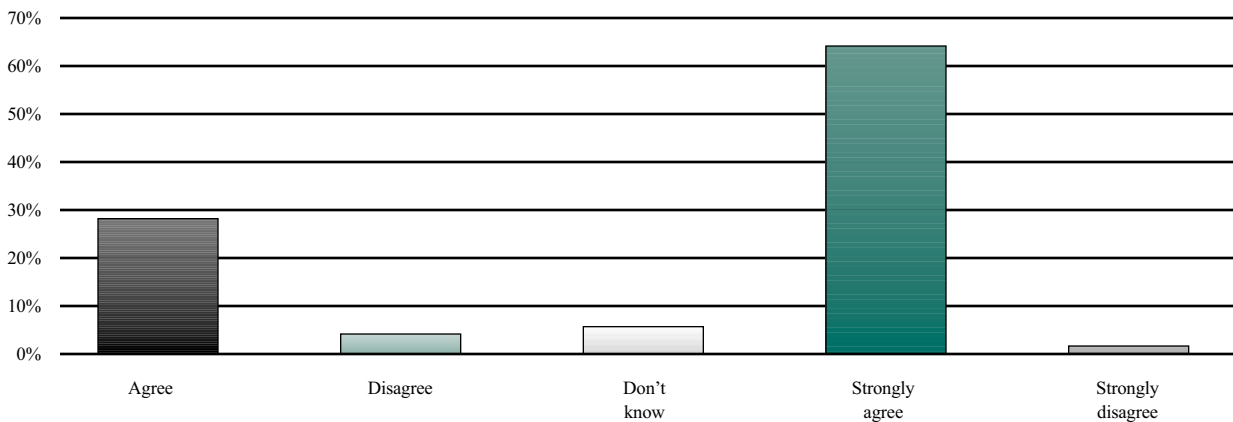
ethics programs. Fifty-eight percent responded that the topic of ethics programs never came up in meetings or negotiations, or they just didn't know if the contractors they worked with had ethics programs. When asked if the owners they worked with had ethics programs, only 14% were aware of such programs.

In the results above, we find a large gap between the value people place on ethics and what they actually do in practice to support their values. It is important to be an ethical company and work with ethical companies, but who wants to bring up the subject in meetings or negotiations?

Forty-seven percent of respondents said it would be important to have the contractors they worked with review and sign their ethics code – 20% agreed that this would be good for business – but most people in the industry rely solely on their judgment and relationship with other companies to assure that they are on the same "ethics page." Few make ethical issues part of meeting discussions (8%).

It is clear from our survey response that ethics is an important concern among companies in the industry. It is also clear that very few are taking actions to support their ethical values. For most, "ethics" is an abstract concept that is not quantifiable in terms of person-hours or cost per square foot. What measure would we use to know if one company was more ethical than another? Nonetheless, we usually do know right from wrong. We won't resolve ethical issues without some lively discussions and agreements on those issues that aren't always clearly right or wrong.

Bid Shopping Is Unethical



Bid Shopping, Reverse Auctions, And Over-Billing

Among the issues that don't seem to be clearly unethical to everyone, at least not in practice, are bid shopping, reverse auctions, and over-billing. Bid shopping, or the practice of divulging solicited bids as leverage with contractors to lower their prices, is a hot topic, especially for specialty and trade contractors. Ninety-four percent of those surveyed think that bid shopping is unethical.

The response to the reverse auction question nearly mirrors the response to the "bid shopping" question, with the notable exception that 20% said they "didn't know" if reverse auctions were unethical. In this case, it seems that the question needs clarification. While very few disagreed that reverse auctions were unethical, more discussion among interested parties could help decide the question of ethics here. What is the ethical issue in reverse auctions? Is it really just a business issue that is measured by profit and loss, market share, and growth? If the owners that are using reverse auctions as a method of securing contracts make the bidding rules clear up front for all parties, where is the ethical issue?

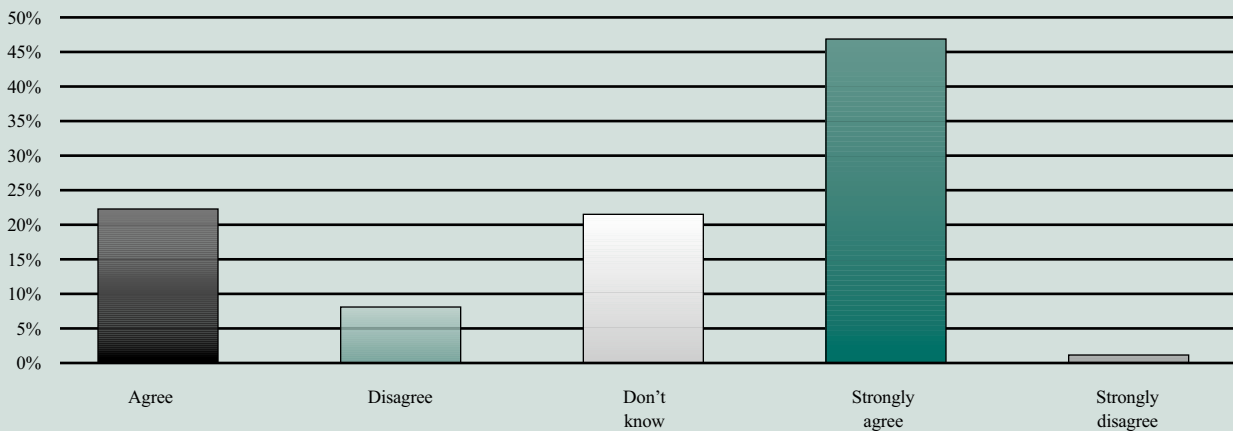
These are important questions for the industry. There are those that bristle at the mention of these questions; others think we are at the frontier of a new way of securing construction projects. Will e-Bay be the model for all business in the future? Bid shopping may lead to a breakdown in trust and collaboration and is likely to cause a more contentious atmosphere between owners, contractors, and subcontractors.

The question of whether or not over-billing is unethical at first seems quite clear; it is not. Eighty six percent of respondents agree or strongly agree that over-billing is unethical. If so many agree, why do we also find that 10% disagreed, and a smaller percentage did not know if the practice was unethical? How prevalent is this practice?

We asked Tom Kort, senior consultant for FMI, to clear up this difference. Kort often consults with clients on the subject of cash flow, and he happens to be among those who do not think that over-billing is unethical. The over-billing question came up recently at an executive seminar he was teaching. Two professors attending the seminar said that over-billing was clearly unethical. However, according to Kort, they changed their minds on the topic "when I showed them what happens to their cash flows when they don't collect their money on time." (See sidebar "Over-Billing – Pro or Con?")

Advocates of over-billing cite the problem of withholding funds due contractors and especially subcontractors as the reason that a contractor must over-bill. When asked if holding monies for any period after receipt and not forwarding payment to subcontractors that have done the work the money has been received for, is unethical, 94% either agreed (25%) or strongly agreed (69%). It is clear that the practice of holding funds or not "paying when paid" is unethical. That it happens at all appears to be another example of gamesmanship that pervades the industry and leads to the opinion that the construction industry is "ethically challenged."

Reverse Auctions Are Unethical



Over-Billing — Pro or Con?

Question: Tom, in the results of our survey on construction industry ethics, we heard from respondents that 86% think that the practice of over-billing is unethical, but you say that over-billing is not only ethical, but a good practice for a company concerned with their cash flow. Why don't you agree with the majority on this issue?

Tom Kort: A contractor should unbalance the bid/front-end load of the project even though they collect money in a timely manner. If a contractor, particularly a subcontractor, doesn't unbalance the bid, the difference in cash disbursed against cash received on a project can be enormous, and no one would notice, because most accounting systems do not detect it. When examining the job, you will find that you are funding labor and other costs but you're not being paid in a timely manner. For example, when you bill at the end of month one and collect the money at the end of month two, you have 60 days of labor and related costs that you've already paid for on that project. Therefore, you are always behind unless you front-end load or unbalance the bid.

Question: Would it sound better if we called it pre-billing instead of over-billing? Would that be acceptable on ethical grounds?

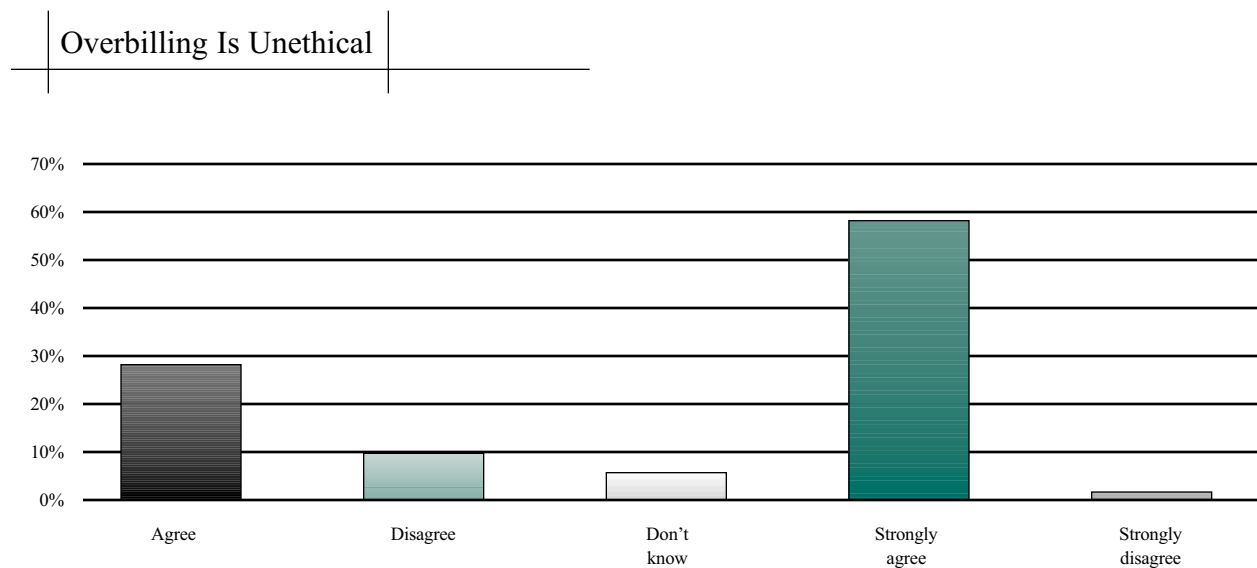
Tom Kort: Here's my definition of over-billing: Over-billing does not refer to billing for work not performed. That would

be unethical. The term refers specifically to rebalancing the schedule of values to place a higher value on work performed early in the project and lower values on work to be completed near the end of the project so that the contractor is not seriously out of pocket on cash flow. It is the process of negotiating the value of work with the owner or general contractor.

The owner or general contractor does not pay the contractor weekly for labor and other costs as they are incurred. To make matters worse, the typical contractor does not collect receivables for 60 days or longer. It is unethical to ask the contractor to finance those costs for 60 days or more before he or she is paid. Unbalancing the bid or receiving payment for up-front costs incurred is about the only real opportunity a contractor has to keep cash flow in reasonable balance.

“Ethics issues in the construction industry have created voluminous contracts that regrettably transfer risk of the projects to subcontractors. Why is it that a subcontractor should have financing risk of the project (pay-if-paid clause)? Why is it that a subcontractor should have to accept negligence on the part of owners and contractors (additional insured provisions and broad form indemnity agreements)? The upper tiers are forcing lower tiers to choose between such onerous language or not taking the job. If this was a male/female or minority relationship, this would be considered harassment.”

– Anonymous survey respondent



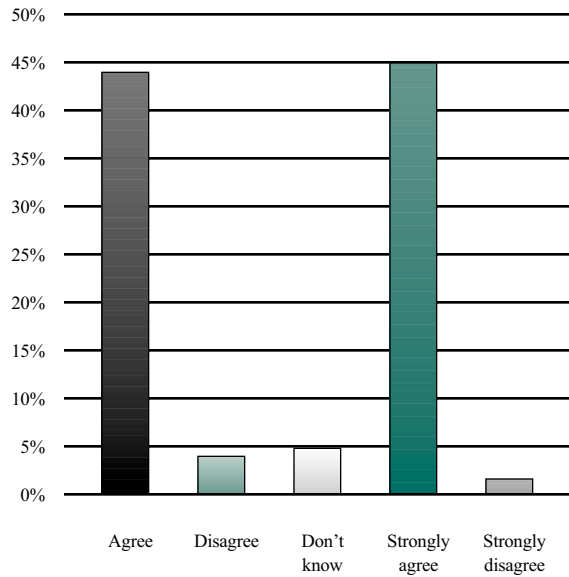
Finding Solutions for Construction Industry Ethical Issues

In order to minimize the chances of unethical or illegal behavior in the construction industry, respondents chose four answers rating about the same degree of importance, there should be:

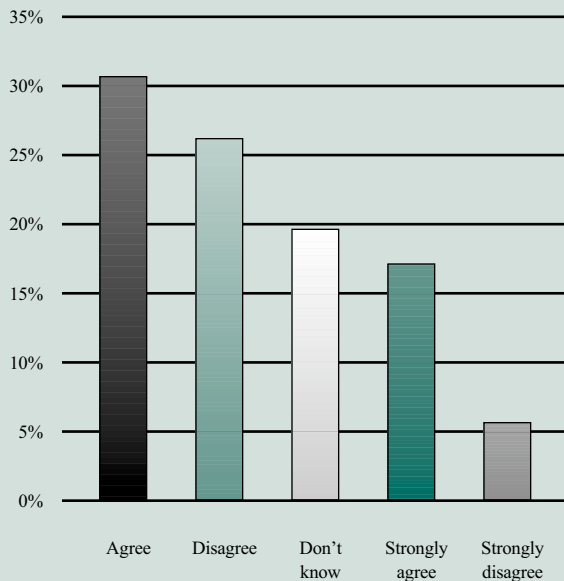
- Stiffer penalties for those caught in unethical or illegal acts
- An industry-wide code of ethics
- More emphasis placed on social responsibility in award criteria
- More training

Even though a large majority (85%) believes that there should be an industry-wide code of ethics, only 30% agreed that adding regulations concerning ethical behaviors is a good idea. There is a strong indication that associations should take the lead in crafting and enforcing codes of conduct. We didn't ask associations how they felt about this, but it was our discussions with associations, particularly CMAA, that initiated this survey. Some industry associations are already taking steps to help their membership learn about and support ethical codes.

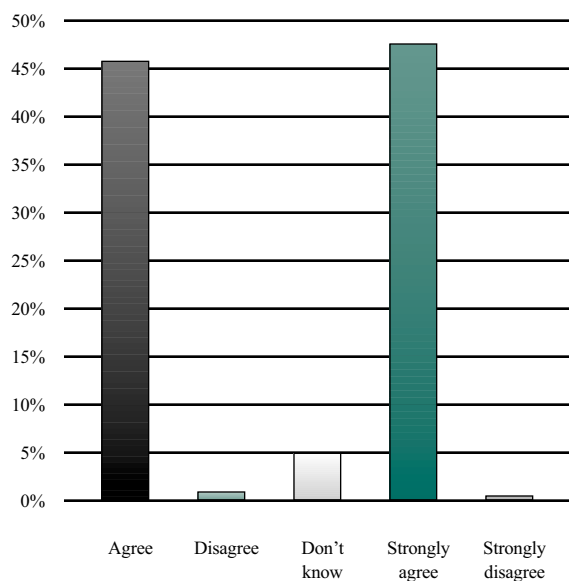
To help insure ethical conduct throughout the industry, industry associations should take a leadership position in crafting, and enforcing codes of conduct.



To help insure ethical conduct throughout the industry, there should be more regulations.



To help insure ethical conduct throughout the industry, there should be more ethics training available.



TRAINING

Many didn't know (20%) if more regulation was the answer to ethical problems in the industry; however, over 90% thought that the industry should get more training on ethics. Ninety-seven percent thought that ethics training should begin at the collegiate level. FMI's recent *Training Report* shows that the trend toward increased training in the industry continues to grow, but we seldom hear about initiatives to offer training on ethics.

Before there is a trend to increase training on ethics, more companies and associations will need to adopt ethical codes. When that happens, training will be more goal-oriented and become part of an overall corporate strategy. Companies should consider ethical issues in their strategic plan in order to foster a culture for growth and improvement in those areas.

LEADERSHIP

"I think we all know what is ethical. Training isn't the answer. Top management living it and preaching it is."

Just sending people out to get training in ethics won't improve the industry's ethical profile. We often hear from companies that say they want to do training without really focusing on what they want to accomplish or where the training fits into their strategic plans. If a company really wants to change their ethical standing, the company's leadership must serve as a role model and guide; leadership practices reflect on the whole company. Mike Kane, manager of FMI's Leadership Group, says that they don't teach ethics per se at the **Leadership Institute**. They teach character building. Competent leaders with noble characters will act ethically. (See sidebar "Ethics and Leadership")

S I D E B A R

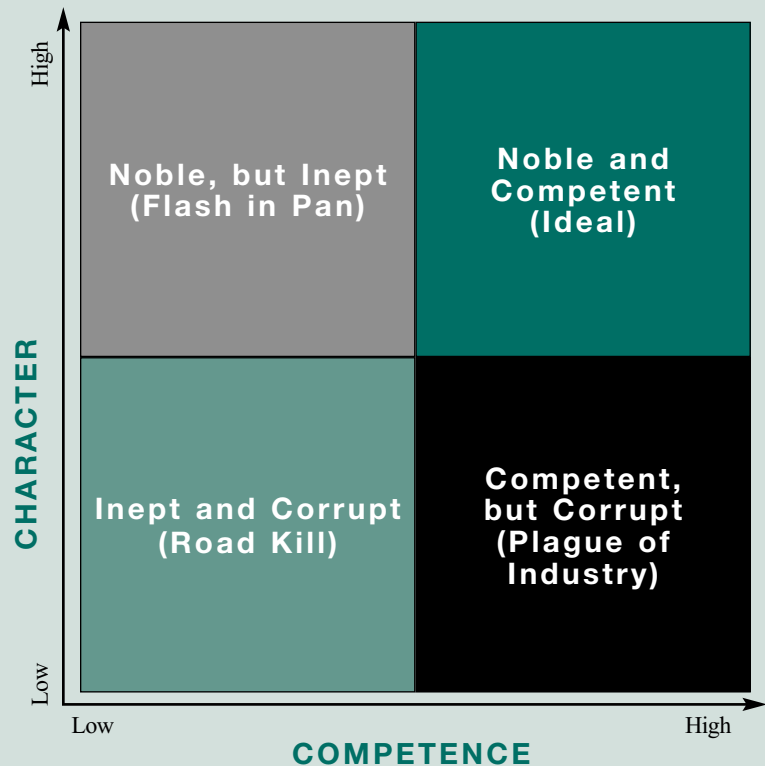
Ethics and Leadership

Michael P. Kane, Esq.

As an attorney who has worked in and around the construction industry for over 30 years, it has been very clear that our industry has suffered no more, or less, from unethical/shady or questionable business practices than any number of industry groups. Recent news articles confirm that "new or emerging" industries are vulnerable to massive ethical lapses along with old-line "white shoe" accounting firms historically viewed as stodgy or conservative. Clearly, no industry is safe.

Often, when thinking about ethics, people confuse compliance with ethical behavior. Ethics is not a legal discussion; it is a character question. In FMI's Leadership Group, we assess this question at our **Leadership Institute** by using the following four squares:

CHARACTER AND COMPETENCE IN LEADERSHIP



*Bell-Shoultz Character/Competence Grid,
©Antony Bell and Daniel Shoultz, the Bell Group*

Overview of Survey Comments

The topic of ethics in the construction industry is certainly broader than indicated in the questions and responses to our short survey. With that in mind, we asked for comments on anything that respondents did not think we covered in the multiple-choice questions. We list selected comments grouped by topic beginning on page 14.

The practices of bid shopping and reverse auctions received many additional comments. One concern that goes beyond seeking the lowest bid is the sharing of intellectual property. If owners expect to get the best thinking and value engineering on their projects, they must respect intellectual property rights and not divulge proprietary information from one contractor or architect to another. At the same time, if such information is offered to a contractor or architect for review, they should refuse to see it. One commenter suggests that these practices are not unethical or illegal if the activities are within “contractual requirements.” Of course, bid shopping and reverse auctions generally happen before a contract is signed. What would happen if owners made it clear in the RFP that all bids would be revealed to all bidders? How would competition and innovation change if everyone saw their competitors’ books? Would owners support showing all of their own competitors their plans and books?

When we examine ethical questions, there is the sense that we know what is right and wrong; we have a sense of “fair play” learned in childhood. The Golden Rule, or its philosophical reformulation, “Act according to that maxim whereby you can at the same time will that it should be a universal law” also serves as a guiding principle for many who are concerned about acting ethically. Yet, it seems that our sense of right and wrong often clashes with our need to win, sometimes at any cost, or at least with calculated risk.

One key principle in business is “get it in writing.” There is the idea that most of our ethical concerns can be solved with contract language that either permits or prohibits certain actions. This approach has the force of added regulation on the industry, which most said they weren’t in favor of; nonetheless, it seems to be the direction the industry is going. That means we can continue to see longer, more convoluted contracts. Many commented that

Tony Bell, of the Bell Consulting Group, generally leads a discussion at our **Leadership Institute**, which describes character in leadership as “pursuing noble ends with noble means.” Clearly, building and construction is a noble end of tremendous societal benefit. Noble means can be defined as “integrity, courage, sacrifice, and humility.” The constant tension between the upper and lower right-hand quadrants defines the task of all business leaders to not only scrupulously guard against ethical shortcuts, but to filter them and their organizational conduct through a screen that tests whether the business practice enhances or erodes the firm’s reputation.

Warren Buffett once spoke to the senior team at Johns Manville following its acquisition by Berkshire Hathaway and asked us all to assess our business judgments using this rule: “If your business decisions and motives were published on the front page of a large circulation newspaper the day after you make your decision, and you still feel comfortable, then do it.” You see, it is not compliance or being technically right, it is more about perceived fairness and enhanced reputation. It is resoluteness in the face of expediency – it is character that takes a lifetime to build and a few short moments to destroy. We build many things in life besides structures, but most significantly, we build character and earn reputations.

If we believe that change is possible for all who can be honest, open, and willing to change, then not only can industries or organizations change, but individuals too can be led to a new level of ethical behavior and conduct. At FMI, we believe that begins with developing exceptional leaders, one at a time.



such contracts were one-sided documents that shifted risk to the contractor and subcontractors who felt pressured to sign the contracts despite objections. There is another principle in business long advocated by FMI, “Profit thrills, volume kills.”

Changing ethical behavior often takes the courage of one’s convictions. Sometimes we have to say “no” and walk away from projects or even companies, as a few of our survey respondents noted that they had done. Such actions aren’t easy, and may even be costly decisions in the short term, but there is no indication that those who have taken such actions regretted them.

Companies who act responsibly and ethically are often rewarded with repeat business and good reputations. As Ralph James points out in *The Integrity Chain*, “Trustworthiness keeps customers around and allows the learning curve to drive cost down. Without integrity there would be no trust, and these cost savings from repeat business would not be realized.” (*The Integrity Chain*, p. 12)

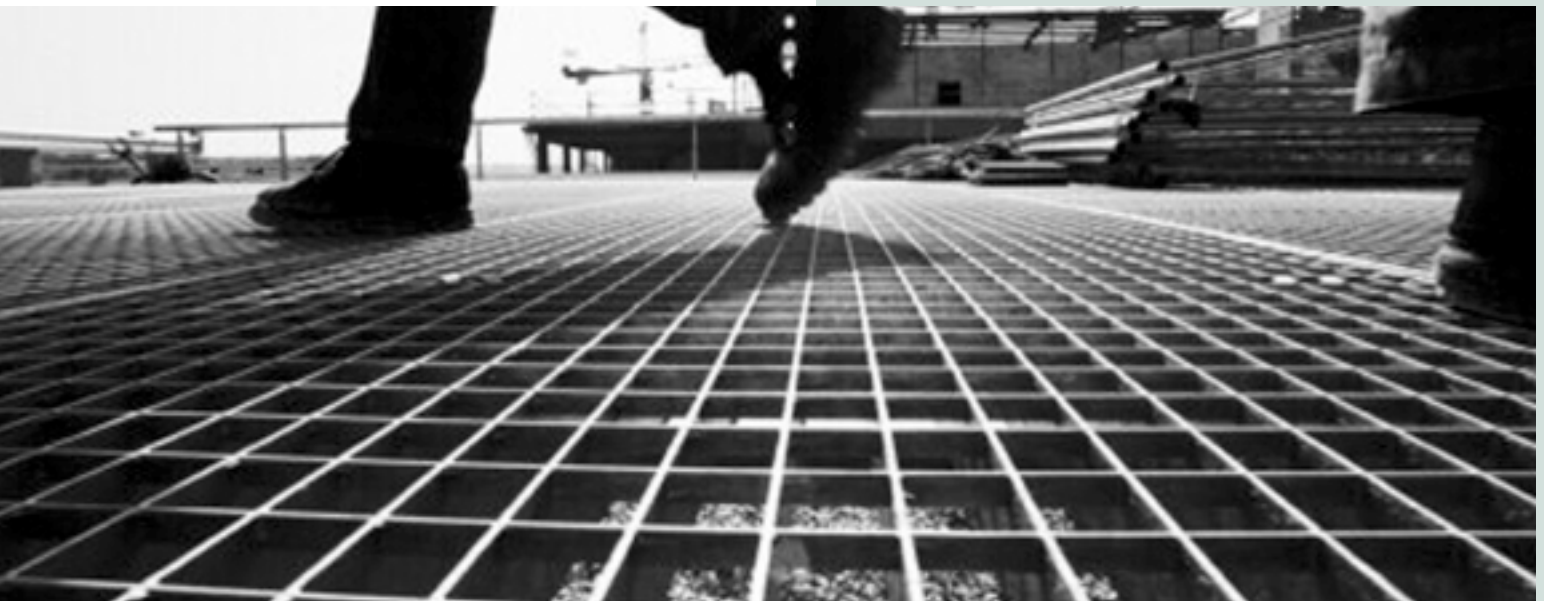
Ultimately, the answers to this survey will not solve any ethical dilemmas, but we hope this survey will serve as a foundation to open up conversations on ethical practices in the construction industry. If we are not happy to hear that ethical problems are pervasive in the construction industry, we need to make changes. Frequently, the changes need to start within our own companies with leadership, ethical codes, and the assurance that everyone in the company understands the right way to do the right thing.

Specific Survey Comments



Architects and Engineers

- I have serious concerns about the ethics of the design community. Many architects don’t operate with an ethical approach. They will do whatever is necessary to make the client (owner) like them, many times at the expense of the contractor. Architects need to understand and honor their obligation to be equitable in their decisions, and fairly represent both the contractor and the owner.
- Ethics in the selection of A/E services, which are generally not cost based, is a major issue.
- Knowingly issuing drawings and other bid documents that are defective and deficient with the expectation that construction costs will be avoided.





Bid shopping and reverse auctions

- Disclosing bid numbers to other subcontractors.
- In addition to bid shopping by GCs, owner's reps and/or architects, intellectual property and/or design efforts are also regularly "shopped around" as well.
- There is no ethical violation to any of the behaviors seen as unethical (bid shopping, payment holding, etc., as long as [the activity] is within the contractual requirements). The contract must trump any social code of conduct in my view.



Contracts

- I believe too many contracts are unethical and one-sided.
- Retainage requirements, particularly on permanent materials, need modification, especially if the contractor has provided a bond.
- A contractor is free to do whatever is necessary to make money on a project, as long as he is observed to meet the terms of the contract he holds with the owner.

Owner Responsibility

- Owners engaging work and not paying. The pay-when-paid clauses are a large concern between general contractors and subs, when the owner (who commissioned the work) is where our attention should be.
- Owners play a large part in the unethical behavior of contractors. They try to pass off their responsibilities to others, don't ensure that adequate and complete information is supplied, and they play games with payments, extras, penalties, delays, etc.
- Ethical issues must be driven from the owners. They must first follow their own code of ethics (enforcing the safety requirements for all bidders, shopping prices after the bids are submitted, honoring field orders, etc.). If owners dictate ethical behaviors and practices, general contractors and their subs will follow or get pushed out.
- I believe our owners have become much more unethical and that they are a significant part of the problem.
- There needs to be more dialogue between the construction industry and owners regarding what is expected of both parties.

Training

- While I believe stronger ethics would improve the industry in many ways, I don't think the legislative, or contract route is the way to go at this time, I do think that training on all levels in industry associations and schools would be an approach. Emphasis on ethics should be a prime consideration in all award selection processes.
- Due to the lack of workforce craft training in many of the common trades, a majority of the newer specialty contractors are uneducated in the craft as well as ethical procedures, and therefore don't even know that they are screwing others, themselves, and/or the industry.



Project Delivery

- It is impossible to control the actions and inactions of general contractors and subcontractors in either the general contracting system or the design-build contracting system because very little of the information they are required to provide is overt to the owner.
- Both the general contractor and design-build systems promote unethical actions, because most owners are “first-time constructors” as far as knowledge of the contracting and construction processes is concerned. The only owners that know what’s going on from the hiring of the design professional to the end of construction are the “constant builders,” such as governmental entities and some large corporations.
- Unless construction users themselves become thoroughly knowledgeable in project delivery processes and the construction industry, or hire an organization that has expertise in all of the required areas (a construction management firm) as an agent, the problems being addressed here will not abate one iota, regardless of the efforts to establish a practical level of ethics.

Other comments

- As a subcontractor we were recently asked to cut 5% out of our already low bid on an awarded project. We declined and excused ourselves from the project.
- Promising what you cannot deliver.
- The impact that attorney’s have in facilitating claims and insurance issues in the labor market. Colleges are actually teaching students how to assemble claims and create disputes on projects. There is no real accountability in our industry for poor design. E&O (errors and omissions) insurance is not a viable option for clients due to the “standard of care” that must be violated in order for owner’s to recover on damages. Even then, the recovery cost is small when compared to the impact cost that they cannot recover without significant pursuit cost on the legal side.
- The use of illegal aliens to do the work and drive the labor costs and quality down and drive true craftsmen out of the industry!
- With respect to the ability to exclude undesirable contractors or subcontractors from bidding a project, it is more difficult to do so in the public bidding arena since state and municipal and other public entities have loose pre-qualification requirements and most often the entity itself or the general contractor/construction manager/program manager are forced to accept the low bidder.



Dennis Doran, FMI market manager, Owner Services, conducted the premier *FMI Survey of Construction Industry Ethics* in conjunction with CMAA (the Construction Management Association of America). In his consulting practice, Dennis enhances the value of strategic relationships between owners and the design professionals and contractors that provide them construction and facilities operations services. He has developed and delivered training on topics ranging from cost analysis and quality assurance to team building and communication. He works with organizations in the utility and construction industries to create continuing partnerships that yield significant gains for the parties involved.

To request additional copies of the *FMI Survey of Construction Industry Ethical Practices*, contact Phil Warner, FMI marketing coordinator, at 919.785.9357 or email pwarner@fminet.com

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About FMI

Founded in 1953 by Dr. Emol A. Fails, FMI provides management consulting, training, and investment banking for the worldwide construction industry.

FMI delivers innovative, customized solutions to contractors; engineers, architects; manufacturers and suppliers of building materials and construction equipment; construction materials producers; facility owners, managers, and developers; surety companies; industry trade associations.

FMI's experienced professionals assist businesses with strategic planning, leader and organizational development, business development, compensation planning, strategic research, mergers and acquisitions, private equity financing, project partnering and teambuilding, and management and supervisory training.

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