

## GENERAL CONTRACTORS: SOME ETHICAL PROBLEMS



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1. POLITICS. You have decided that you would like to be eligible to do work for the state. You fill out the appropriate forms and send them in. Two weeks later you receive a call from the Governor's Campaign Committee asking you to take a table at the next Fundraising Dinner. A table seats ten. At a \$1000 a place, that is \$10,000. You have never been asked to a Fundraiser before, much less one as expensive as this; and if you had been, it would not have been for the Governor's party. You have the feeling that if you don't do as you asked, you won't receive any state contracts. The \$10,000 would, however, not make much of a dent in what you could reasonably expect to make on one or two good state projects. What should you do?

2. COMPETITION. "As you probably know," Edgar Plumb, the developer began, "we negotiated a bid with Truss Construction to put up an office building here for \$14,000,000. Soon after, we started a similar project in Miami. That project will be about \$12,000,000. We seem, in other words, to be paying two million more than we should for the office building here. So, we've decided to dump Truss. The only thing that's stopping us is finding a suitable replacement. Do you think you can do better than Truss? Are you interested? Here's the list of his subcontractors." After examining the plans and checking with Truss's subcontractors, you conclude you could cut the cost by about \$2,000,000, mostly by modest modifications in the plans, even though Truss has already cleared the ground and begun work on the foundation. You could use the work. Plumb says he's prepared for any legal fallout. What should you do?

3. "NO DAMAGE" DAMAGES. You are building a large bridge under a contract with the state. The contract has a "no damage for delay" clause: the state is not liable for any costs to you even if the state causes them. The state has just cost you about \$17,000 by delaying approval of certain design changes. You complain to the state official in charge. He agrees that the state is at fault and adds, "It isn't fair that you should bear this cost. While I can't authorize a payment of damages, I'm willing to see that you get your money. We've decided to add 17 light poles to the bridge. Just add a \$1,000 to the price you'd ordinarily charge for each pole. I'll approve." Should you do as he suggests?

4. GETTING ALONG WITH THE POLICE. You want to stay on the good side of the police working near your worksites.

You have therefore made it a policy to hire as flagmen off-duty police from the neighborhood. You pay them \$100 for two hours work. Any problem?

5. BIRDS OF A FEATHER. McKnife is a developer with a big project in mind. The plans look good. The financing is excellent. McKnife has been successful before. Everyone involved with the project should do well. You are nonetheless uncomfortable. McKnife is said to have underworld connections, as are many of his partners. You suspect that some of the financing involved may have originated in criminal activity. You also suspect that some of the profit may end up going back into criminal activity. But you have only rumors and suspicions, no hard evidence. If the project is otherwise sound, should you take it on?

6. THE TIRED SUBCONTRACTOR. You have been using Lonie Wrench as a plumbing subcontractor nearly ten years. He now has a \$500,000 contract with you on a \$10,000,000 project. Until last week, his crew of 24 was doing their usual good work. Then, on Friday, payday for the crew, Lonie didn't show up. The crew worked anyway. Now, Monday, you learn that Lonie suffered a stroke Friday morning. Though stable, his condition is not good. He is partially paralyzed, cannot talk, and seems unable to concentrate. The doctors don't expect him to be fit for work for a long time, if ever. His wife tells you he's "broke" and thinks that worrying about how he was going to pay his bills had a lot to do with the stroke. "He just burned out," she says. The crew refuses to work until somebody pays them. What should you do?

7. LOW BALLER. I decided not to bid on a \$1,000,000 commercial project because I learned that Loose Change Construction has submitted a bid. I know exactly what will happen. Loose Change is one of those contractors that figures its bid without figuring in a reasonable profit. They will make a profit by charging an arm and a leg for change orders as the job progresses. In the end, the project will cost the developer at least as much as it would if I did it. But small developers generally get taken in by a "low baller" like Loose Change. I mention all this because the developer has just called to find out whether I'll be submitting a bid. I'm sitting here wondering what I should tell him if he asks why I don't want to bid. My first impulse is to say something ambiguous like "it's not my kind of job".

8. FIGURING BIDS. Part of developing our bid is, of course, soliciting bids from subcontractors. We do not, however, usually take a sub's bid at face value. Our rule

of thumb is to discount a bid by 5%. If we get the contract, we try to get the sub down to our figure. We have been pretty successful at doing this. When we have not been, we have, of course, had to eat the 5% ourselves. Our method has, we think, given us a competitive edge. We have, however, begun to notice that the bids we receive from subs seem to be padded in a way they were not a few years ago. We may, in fact, be forced to raise our discount to 10%.

9. AN ARCHITECT'S HARDWARE. While preparing a bid on a \$750,000 project, Backfill Construction noticed that the developer's architect had included \$15,000 for hardware. \$5,000 would have been enough. This, of course, is not uncommon. Architects like to have a little slush fund someplace to pay for mistakes in a way that will not upset the developer. Our usual practice when we find such a fund is to include in our bid a "voluntary alternate to owner" (which says, in effect, "This is an unnecessary expense"). Or, rather, that is what we do when we don't know the architect. If, however, we know the architect, and we have nothing against him, we generally do not include a voluntary alternate. Any problem?

10. SLUSH AGAIN. We submitted our bid with a voluntary alternate to owner for a number of slush funds we caught in the architect's plans. The developer told us informally that we had the job but asked that we remove the alternates from our final proposal. He explained that the architect and he had agreed to include these slush funds in the project plans because his partners refused to accept a 3% contingency fund as a budget line. He was experienced enough to know that the unexpected happens often enough to require some provision for contingencies and had adopted this subterfuge to provide for them. While he was impressed by our alertness, he also hoped we could help him keep the project financially sound.

11. HARD BALL. My company and Cheap Contractors were the two lowest bidders on a small project (about \$700,000). Cheap was \$20,000 below me, but his bid did not include full-time supervision while mine did. So, all in all, we were about dead even. I then submitted a carefully revised bid, paring almost \$20,000 from my original. Cheap, however, simply told the developer that, whatever I bid, he would do the work for \$20,000 less. He got the contract. Was that fair?

12. BEING NICE TO SUBS. It is, of course, inevitable at the end of a project that the owner and architect will send over a "punch list" of little mistakes needing

correction. We always do our own inspection as well and add to the list anything they missed. Our additions are of two sorts. Some are significant, that is, likely to cause trouble later. Some, however, are mere technicalities--for example, wiring that is up to code but not the brand specified. We like to have a few technical mistakes on each sub's punch list. It gives us leverage in negotiating how much is to be done to correct significant mistakes. It also gives us leverage in getting subs with whom we have not been happy to settle for less than we contracted to pay them. And, just as important, it allows us to reward subs with whom we have been happy by telling them, "Because you've been fair with us, we'll let this go."

13. NEGOTIATED FEE. An ordinary contractor needs about 10% overhead on a project to make a 3% profit. So, when I tell a developer that I'll do his project for cost plus 4%, I generally get the job. Most developers are sophisticated enough to know that I'll put as much overhead into the contract as I can. They are, however, usually unprepared for how much I can put in. For example, my company is organized so that even accounting, data processing, and secretarial work done for a project can be identified and assigned to the project as labor. By the time a developer catches on, the project is usually far enough along that he has other things to think about. So, there are seldom any hard feelings. We do good work at reasonable cost and that's what a developer really cares about anyway.

14. TOMBSTONE BLUES. The project I'm managing has not been going well. There was, first, an old but working sewer where none was supposed to be. It was probably a stream buried when a swamp was filled in to make dry land a hundred years ago. By the time we had repaired the sewer and changed the building's siting, we had lost two weeks. Now the trenchers have unearthed 19th century gravestones, six so far, suggesting that the site might be a forgotten graveyard. If that is what it is, we have to stop all work until the graves are moved. Opening a grave without legal authority is a crime. When I phoned my boss with the bad news, he just said: "Don't worry. Did you ever hear of a graveyard in a swamp? The gravestones are probably part of the fill. Ignore them. Don't tell anybody. We can't afford to lose any more time." My boss is right, of course. We can't afford to spend a week or two waiting for somebody from the County to make up his mind whether the gravestones are just debris or instead mark a buried graveyard. On the other hand, though, I'm the one in charge of the job. If this is a graveyard and I don't notify the authorities, I'm

the one who will be responsible for the desecration. What should I do?

15. GETTING EVEN. About a year ago, you, a general contractor, were maneuvered into paying one of your subcontractors \$10,000 to which you felt he was not entitled. He had done his job so poorly that you had to re-do it at substantial cost (\$10,000). When you had tried to deduct that amount from what you paid him, he had threatened to file a lien against the project. The lien would have upset the project's owner, your client. The lien would have put a cloud on his title and so threatened his ability to sell the project upon completion. Since the owner was holding up payment to you of \$5000,000 pending proof that all subcontractors had been paid, you did not want to do anything to upset him. So, you paid the subcontractor the \$10,000 and then filed suit to get it back. The suit has not yet been tried.

Two months ago, you learned that the same subcontractor has been working for you on another on another job, that he has completed his work satisfactorily, and that you owe him a final payment of \$20,000. This would, of course, be of no interest whatever were it not that, through some sort of oversight, the subcontractor has both issued you the customary "final waiver of liens" and failed to bill you for the final payment. You waited, expecting him to discover his mistake and bill you accordingly. He has not. Apparently, he does not realize you owe him \$20,000. What should you do? Nothing? Send him a note telling him you're holding the money until he settles the suit with you? Send him \$10,000 and tell him you're holding the rest until he settles the suit? Send him the whole \$20,000 and hope for the best? Or what?

D3/Letters