

# The Impact of Bid Shopping on the Private Sector of the Construction Industry

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Over the course of history, the construction industry has been greatly affected by the effects of unethical practices made by owners, contractors and subcontractors. This study examines those practices, known as bid shopping, and its effects on the private sector of the construction industry. Bid shopping is primarily used by contractors and subcontractors to gain an unfair advantage over their clients, competition and subcontractors during the bidding process. Common consequences of bid shopping include lawsuits from contractors, subcontractors and vendors, refusal of the shopped party to sign a contract, compromised quality of workmanship, disregard toward safety measures, severed relationships among construction professionals and inflated bids. Education of construction professionals at the earliest stage possible is crucial to prevent the practice from happening. In addition, familiarity with all aspects of bid shopping helps construction professionals to recognize its symptoms when it does occur, so that appropriate measures can be used to deal with the issue as it is happening.

**Keywords:** Bid Shopping, Construction Ethics, Construction Education, Bidding Process, Private Sector Construction

## Introduction

Over the course of history, the construction industry has been greatly affected by the effects of unethical practices made by owners, contractors and subcontractors. One of the most important of these practices is bid shopping, which is used primarily by contractors and subcontractors to gain an unfair advantage over their clients, competition and subcontractors during the bidding process. While there have been many published studies on this topic, the majority address bid shopping with regards to the public sector of the construction industry. There is very little research on how much bid shopping has occurred on private projects. The purpose of this study was to gather data on what contractors and subcontractors, in the private sector, really thought about bid shopping, and if they could provide real-world solutions that would complement the information found in the literature search. The focus of this study is on the effects of bid shopping on the private sector of the construction industry. From the researcher's experience, bid shopping occurs more in the private sector than it does on government contracts. To set the stage for this study, a brief discussion on construction ethics, the bidding process, current legislative efforts, and why bid shopping occurs is presented first.

### *Construction Ethics*

Bid shopping is defined as the unethical practice in which a contractor discloses the bid price of one contractor or subcontractor to another, in order to obtain a lower bid price (Poage, 1990; Degn & Miller, 2003). Bid shopping can occur either before or after the prime contract is

awarded. There are three common types of bid shopping: pre-award shopping, post-award shopping, and electronic reverse auction bidding; all three can lead to questionable ethical practices (Angelo, 2002).

Bid shopping currently is not illegal, but it certainly is unethical. Organizations such as the Associated General Contractors of America (AGC), Falls Management Institute (FMI) and the American Subcontractors Association (ASA) have had much influence in raising the image of the constructor to a position of near professionalism (Poage, 1990). The American Institute of Constructors (AIC) developed a code of ethics for their members. The code specifically addresses ethics and deceptive practices, including bid peddling, bid rigging, and bid shopping (AIC, 2006). Part of the AIC's credentialing process includes a means of disciplining construction professionals who engage in unethical conduct. Many large general and specialty contractors have developed their own codes of ethics, which their employees are expected to sign an affidavit; this affidavit is then used as a basis for disciplinary actions that may result from any infractions of the ethics code.

### *The Bidding Process*

The primary method of securing construction contracts is through competitive bid. In this method, the project owner hires a designer (architect or engineer) to create a set of plans and allow general contractors to submit bids to construct the project. The contract is awarded to the lowest responsible bidder whose bid meets the requirements set forth by the awarding authority.

It is quite common for contractors to have one week or less to put a bid together between the time that a request for proposal is sent from the owner and the time the proposals are due (Ferrantella, 2001). Any mistake in the preparation of a bid can prove costly to a construction firm. Minor mistakes are often compensated for by other portions of the contract, making the overall contract look healthy. But oftentimes, contractors take certain risks that cannot be compensated for. Risks, such as those that are illegal or unethical, can result in penalties, fines, loss of licensing or jail time. At the very least, these risks can hurt the business' reputation and those of its employees, especially key personnel such as estimators, contract administrators and project managers.

Once the prime contract is awarded, subcontractors become bound to the contractor in much the same way that the contractor becomes bound to the owner. This applies to government contracts as well as private contracts. However, current laws do not forbid the contractor from re-selecting or re-negotiating the bid price after the prime contract is awarded (Degn & Miller, 2003).

Currently, there are many different types of subcontractors, with various specialties in the industry. Competition is often tight, allowing the contractor to have work completed at the lowest possible price. This creates healthy competition for the industry, keeping general costs low, and enabling contractors to receive a fair price for subcontracted work. This then allows the contractor to pass the savings on to the owner (Degn & Miller, 2003). Competition can lead to contractors taking advantage of subcontractors through the use of excessive bargaining pressure such as found in bid shopping (Degn & Miller, 2003).

### *Current Legislative Efforts*

Bid shopping is not new to federal and state government contracts. Recent changes in federal and state laws have been introduced in order to prevent the practice of bid shopping from being used on government projects. One example is the Construction Quality Assurance Act of 2005 (Weitz & Luxenburg, 2005), a bill that has been backed by construction professionals at all levels, marking the first time in the history of design and construction that all parties have agreed that changes must be made in order to improve the current system and protect its image and future. The bill is intended to spare contractors and subcontractors from deceptive practices, including those of government.

Laws governing construction contracts state that except under certain circumstances, once the prime contract is awarded, the awarding authority is strictly prohibited from re-soliciting bids or re-negotiating prices with the lowest bidder (Degn & Miller, 2003). The purpose of these laws is to protect the awarded contractor and allow for government projects to be constructed at the lowest possible price (Degn & Miller, 2003). Private owners also bid projects using the competitive bid system. However, private owners are not bound by law to award the project to the lowest responsible bidder (Degn & Miller, 2003).

### *Why Bid Shopping Occurs*

Bid shopping occurs for several reasons. The first reason is due to the inability of the subcontractor to tie the contractor to the bid. Under common law, except for on federal projects, the contractor is not obligated to contract with the subcontractor, even though the subcontractor's bid was used in the contractor's original bid (Degn & Miller, 2003). However, this does not work in reverse. Subcontractors are bound to the contractor through the submitted bid, unless serious unforeseen circumstances prevent the subcontractor from performing the work. These include loss of licensing or binding, severe penalties that prevent future business, or a loss of key personnel (Sugar, 1999).

The second reason for bid shopping is that contractors like to save time when preparing bids. Other reasons include saving money once the project is awarded, and compensating for craftworker mistakes, design omissions, future price increases, and underbidding work items. Newer contractors have been known to bid shop because they are new to the market, and feel that they will be unable to get the contract because of a lack of reputation. A final reason for bid shopping is that due to fluctuations in the construction job market, companies are desperate for work and will underbid projects just to keep their crews busy and to prevent layoffs or financial ruin of the company.

## **Research Methodology**

### *The Survey Instrument*

A literature search was conducted in order to develop a survey instrument on the effects of bid shopping on the private sector of the construction industry. The survey questionnaire was

intended to develop a statistical analysis of bid shopping as it pertains to the private sector of the construction industry. The survey questionnaire is shown in Appendix A. Nine questions were on the questionnaire, and included return address and contact information. Closed-end and open-ended questions were included to allow the respondents to provide as many answers as possible. The first question was intended to categorize respondents as either contractors, subcontractors or both. The second question was intended to determine the respondents' experience with bid shopping, and as a lead-in question as to how much they have been affected by bid shopping. The third question asked respondents to select from the choices given; what they see to be the implications of bid shopping. Question 4 asked respondents to select from the choices listed; what they believed to be the reasons for contractors and subcontractors to practice bid shopping. A choice of "Other" was given for respondent-supplied answers that were not found during the literature search. Question 5 dealt with items that could raise a red flag to estimators that their company was being shopped by a subcontractor or another contractor. Question 6 asked if the respondents' companies participated in any continuing education programs covering bid shopping. This was a simple Yes or No answer, designed to categorize statistically the number of contractors surveyed who did participate in such programs, and the number of those surveyed who did not. For those who did not participate in any programs, they were instructed to continue to Question 8. For those who responded that their companies did participate in continuing education programs covering bid shopping, they were asked in Question 7 to select, from the choices listed, how the programs were administered. A choice of "Other" was provided for respondents to list any unique programs that were not known to the researcher. Question 8 asked the respondents' opinions of what penalties or legislation should be taken against contractors and subcontractors who use bid shopping. Five choices from the literature search were provided, as well as a choice of "Other," to capture any new ideas that the respondents may have. The ninth and final question asked respondents, based on their companies' experiences, what they believed to be the most difficult challenges facing contractors and subcontractors today in the area of bid shopping. Again, five choices from the literature search were listed, as well as a choice of "Other." This was designed to capture any unique challenges facing those surveyed that were not mentioned in the literature search. Respondents were also asked if they would like to receive a copy of the study's results. The survey was then pilot tested and validated.

### *Participants*

The membership list published on AGC's website for Florida, Georgia, North Carolina and South Carolina was used as the sample source for this research. The survey along with a cover letter and a self-addressed, stamped envelope was mailed to 100 randomly selected contractors and subcontractors; 25 from each of the four states. The sample size chosen is believed to be representative of the larger private sector within the construction industry. The sample was limited to the four states chosen because the participants would be more likely to respond to someone from the region rather than to someone from two time zones away. Statistically speaking, 30 responses are considered to be significant. All participants chosen construct private projects and none were affiliated with the researcher's company. These contractors and subcontractors added real-world knowledge/point of view that was not previously discovered in the literature search or in previously published research on bid shopping.

## Results

Of the 100 questionnaires mailed to the randomly selected contractors and subcontractors, it was expected that 40 responses would be received, 10 would formally decline, 45 would not respond and five would be returned by the Postal Service due to incorrect address information. The actual responses were: 30 completed surveys were received (a response rate of 30%), no formal declinations, 69 non-responses and only one returned by the Postal Service.

The respondents were asked in Question 1 of the survey to classify themselves as either a contractor or a subcontractor. Of the 30 responses received, 18 were contractors (60%), 3 (10%) were subcontractors and 9 (30%) were both.

The second question of the survey was asked to determine the number of participants who had experience with others who practice bid shopping. Only one respondent (3%) had never experienced bid shopping, 26 (87%) had occasionally experienced bid shopping, and 3 (10%) had frequent problems with bid shopping.

Question 3 asked for respondents' thoughts on what the implications from bid shopping are. All choices listed on the survey came directly from the literature search. They were asked to check all that apply, which is why the total number of responses is greater than the number of respondents (30), and the total percentage of respondents do not add up to 100%. The results are summarized in Table 1.

Table 1

### *Implications of bid shopping*

| <b>Responses</b>  | <b>Frequency</b> | <b>Percentage of Respondents</b> |
|---|------------------|----------------------------------|
| Tarnished reputation of contractors and subcontractors  | 28               | 93.3                             |
| Decreased integrity of contractors and subcontractors   | 26               | 86.7                             |
| Severed relationships among construction professionals  | 22               | 73.3                             |
| Decreased quality of work                               | 13               | 43.3                             |
| Increased number of inflated bids                       | 13               | 43.3                             |
| Decreased competition                                   | 12               | 40.0                             |
| Decreased value of the contract amount                  | 12               | 40.0                             |
| Decreased safety measures                               | 8                | 26.7                             |
| Increased competition                                   | 6                | 20.0                             |
| Increased value of the contract amount                  | 3                | 10.0                             |
| Increased quality of work                               | 0                | 0                                |
| Increased safety measures                               | 0                | 0                                |
| Improved relationships among construction professionals | 0                | 0                                |
| Increased integrity of contractors and subcontractors   | 0                | 0                                |
| Improved reputation of contractors and subcontractors   | 0                | 0                                |
| No implications   | 0                | 0                                |

Of the choices given, the three most frequent answers were Severed Relationships (22 responses or 73.33%), Decreased Integrity (26 responses or 86.67%), and Tarnished Reputation (28 responses or 93.33%).

Question 4 asked why contractors and subcontractors practice bid shopping. There were twelve choices and they were asked to check all that apply, which is why the total number of responses is greater than the number of respondents (30), and the total percentage of respondents do not add up to 100%. The results are summarized in Table 2.

Table 2

***Why contractors and subcontractors practice bid shopping***

| <b>Responses</b>   | <b>Frequency</b> | <b>Percentage of Respondents</b> |
|--|------------------|----------------------------------|
| To save money once the project is awarded  | 22               | 73.3                             |
| Lack of honesty and integrity  | 18               | 60.0                             |
| To compensate for underbidding work items  | 13               | 43.3                             |
| Desperation for work, therefore underbidding projects just to carry the company and keep crews busy during fluctuations in construction job market | 13               | 43.3                             |
| To compensate for future price increases when vendors, contractors and subcontractors will not hold their prices                                   | 7                | 23.3                             |
| To compensate for unethical practices by the project owner   | 4                | 13.3                             |
| To compensate for design omissions   | 3                | 10.0                             |
| To save time when preparing bids   | 2                | 6.7                              |
| Fear of not being able to get the contract because the company is new to the market, and wishes to build reputation                                | 2                | 6.7                              |
| To compensate for craftworker mistakes   | 1                | 3.3                              |
| Other:   |                  |                                  |
| Gain edge in competitive bid arenas  | 1                | 3.3                              |
| To increase profit and to offset additional unanticipated costs  | 1                | 3.3                              |
| Greed  | 1                | 3.3                              |
| To increase profit margins   | 1                | 3.3                              |
| Advantageous to contractor to lower bid process  | 1                | 3.3                              |
| Some companies have a corporate policy requiring price shopping to enhance the bottom line (aka “buyout”)  | 1                | 3.3                              |

Of the selections listed from the literature search, most chose “to save money once the project is awarded” (22 responses, or 73.33%), and “lack of honesty and integrity” (18 responses, or 60.00%).

Question 5 asked respondents to choose from the choices given, what were their most common problems with bid proposals. It was possible to choose all four choices given. The most common response was “untimely responses to bid proposals” (25 responses, or 83.33%), followed by “lack of itemized detail for activities in bid price” (23 responses or 76.67%), “accuracy of proposals” (23 responses or 76.67%), and “accuracy of quantities in proposals” (20 responses or 66.7%).

Question 6 of the survey asked respondents if they participated in any continuing education programs that covered bid shopping. Twenty-seven (90%) respondents did not participate in any programs covering bid shopping. These respondents were instructed to continue to Question 8. Three respondents (10%) participate in programs covering bid shopping. They were instructed to continue to the next question (question 7), which asked how these programs were

administered. Of the three, one program was offered through construction education seminars, one program as part of another course, and one program as a mixture of continuing education courses, construction education seminars and on-site training.

Question 8 asked participants what penalties or legislation should be levied against those who bid shop. Eleven or 36.7% of respondents believe that there should not be any penalties or legislation. Eight or 26.7% of respondents believe in disqualifying “winning” bidders who are immediately found guilty of bid shopping. Six or 20% of respondents believe in suspension of licenses or permits. Five or 16.7% of respondents believe that there should be legislation to cover private projects not just federal projects. And, two or 6.7% of the respondents believe in imposing liquidated damages or fines. This was an open-ended question with a choice of “Other,” allowing for unique responses. There were ten responses to “Other.” Answers include: Not using bids from contractors/subcontractors who bid shop (2 responses or 6.7%); eventual punishment by lack of competitive bidding (1 response or 3.3%); loss of business due to lack of competitiveness (3 responses or 10%), no legislation – stress honesty, integrity and professionalism (1 response or 3.3%); and do not know what can be done (3 responses or 10%).

Question 9 asked respondents what they believed to be the most difficult challenges for contractors and subcontractors in the area of bid shopping. The most frequent response was “preventing bid shopping from occurring” with 19 responses or 63.3%. This was followed by “recognizing that the practice is happening” with 8 responses or 26.7%, “training staff members to not use the practice” with 7 responses or 23.3%, “training staff members to recognize when they have been shopped” with 5 responses or 16.7%, and “to make penalties as severe on private jobs as they are in government jobs” with 5 responses or 16.7%. This was an open-ended question with a choice of “Other,” allowing for unique responses. There were three responses to “Other.” Answers include: the ability to stop the practice (1 response or 3.3%), staying competitive in a market with bid shoppers (1 response or 3.3%), and recovering time lost preparing and submitting legitimate bids (1 response or 3.3%).

## **Discussion**

Bid shopping is a sensitive and important topic that is not always properly addressed in the construction industry. It can be concluded from the literature search and from the study results that bid shopping is a serious ethical transgression that should be further studied. As an issue of ethics, the problem of bid shopping is not something that can be fixed quickly. Through careful analysis of the effects from bid shopping, the construction industry and education programs can educate current and future professionals on proper estimating practices and conduct that will prevent bid shopping from becoming more serious than it already is, and possibly eliminate it altogether.

According to the information provided by the contractors surveyed, an overwhelming majority appear to consider bid shopping to be a serious issue facing contractors and subcontractors today. Contractors constantly deal with others in the industry that use bid shopping on a regular basis. Symptoms of bid shopping include decreased safety measures, increased number of inflated bids, severed relationships among construction professionals, decreased integrity and tarnished

reputations of those who bid shop. Most of those surveyed listed untimely responses to requests for proposals and inaccuracy of proposals that are submitted to them as problems that their companies experience on a regular basis.

Some of the reasons given for why bid shopping occurs include saving money once the contract is awarded, a lack of honesty and integrity, compensating for underbidding work items and desperation for work to keep crews busy and carry the company through difficult times and fluctuations in the construction job market.

Education of current and future construction professionals is a vital key in preventing bid shopping from occurring. Continuing education programs currently cover bid shopping as a separate topic from business and construction ethics.

Penalties and legislation are necessary to drive home the point that unethical practices cannot be tolerated, and that serious implications can occur if a company or its employee(s) are reported or caught for bid shopping. The possibility that fines, liquidated damages and/or suspension of licenses or permits may be enough for many contractors and subcontractors to change their methods of conducting business.

Today's construction industry is heavily challenged to prevent bid shopping from occurring, and to develop and enforce the penalties and legislation required to prevent its occurrence, especially in the private sector. Currently, legislation has been developed to protect federal projects valued at over \$1 million, and several states have measures intended to protect state jobs in excess of \$1 million. However, no legislation exists that will protect private sector projects at any dollar value.

### *Recommendations*

Due to the increasing need for the practice of solid ethics in the construction industry, contractors and subcontractors need to stress ethics in their business dealings. Estimating teams should conduct their bidding work without the use of any questionable practices or methods. All work should be completed with fairness, and with respect to the owner, designer, other contractors and subcontractors. After all, each party is working as part of a team to price, accept and deliver the project properly, at the best price and with the highest quality.

Construction education should include training on the concepts and application of ethics in construction. The construction industry is part of the much larger business environment, and can greatly benefit from ethical concepts as related to the construction industry.

The elimination and prevention of bid shopping as a practice in construction estimating can become a reality if the obstacles of education and the lack of legislation are overcome. The optimum bidding process will be achieved and can then serve as a baseline for the future.

Finally, more practical research can be conducted that can be used as a management decision-making tool. This will then encourage lawmakers at all levels to develop, pass, enact and



enforce tough measures that will eliminate the practice of bid shopping, or at least minimize its occurrence. Unethical practices will always occur, but will occur less often if remedies exist.

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### Appendix A Survey on Bid Shopping

The following questions are directly related to the study on bid shopping, and what impacts it has had on contractors and subcontractors. Please complete the following questionnaire and return it to the researcher in the self-addressed, stamped envelope provided. The survey can also be returned via e-mail. For your convenience, the mailing address and e-mail address for return receipt has been included at the end.

1. Please indicate whether your company is a contractor or subcontractor.

\_\_\_\_\_ Contractor                      \_\_\_\_\_ Subcontractor

2. Please indicate which of the following best describes your company's experience with bid shopping.

\_\_\_ We have never experienced bid shopping.

\_\_\_ We occasionally have problems with contractors or subcontractors who use bid shopping as a business practice.

\_\_\_ We frequently have problems with contractors or subcontractors who use bid shopping as a business practice.

\_\_\_ We always have problems with contractors or subcontractors who use bid shopping as a business practice.

3. What are the possible implications of bid shopping as practiced by contractors and subcontractors?

Please check all that apply.

- |   |  |
|---|--|
| <input type="checkbox"/> No implications                        | <input type="checkbox"/> Improved relationships among construction professionals |
| <input type="checkbox"/> Increased competition                  | <input type="checkbox"/> Severed relationships among construction professionals  |
| <input type="checkbox"/> Decreased competition                  | <input type="checkbox"/> Increased integrity of contractors and subcontractors   |
| <input type="checkbox"/> Increased quality of work              | <input type="checkbox"/> Decreased integrity of contractors and subcontractors   |
| <input type="checkbox"/> Decreased quality of work              | <input type="checkbox"/> Improved reputation of contractors and subcontractors   |
| <input type="checkbox"/> Increased safety measures              | <input type="checkbox"/> Tarnished reputation of contractors and subcontractors  |
| <input type="checkbox"/> Decreased safety measures              |  |
| <input type="checkbox"/> Increased value of the contract amount |  |
| <input type="checkbox"/> Decreased value of the contract amount |  |
| <input type="checkbox"/> Increased number of inflated bids      |  |
| <input type="checkbox"/> Decreased number of inflated bids      |  |

4. Why do contractors and subcontractors practice bid shopping? Please check all that apply.

- To save time when preparing bids
- To save money once the project is awarded
- Lack of honesty and integrity
- To compensate for underbidding work items
- To compensate for craftworker mistakes
- To compensate for design omissions
- To compensate for unethical practices by the project owner
- To compensate for future price increases when vendors, contractors and subcontractors will not hold their prices, or will only hold their prices for a specified length of time before the project is set to begin.
- Fear of not being able to get the contract because the company is new to the market, and wishes to build reputation
- Desperation for work, therefore underbidding projects just to carry the company and keep crews busy during fluctuations in construction job market
- Other (Please specify.) \_\_\_\_\_

5. Has your company experienced any of the following (Please check all that apply.):

- |  |   |
|--|---|
| <input type="checkbox"/> Untimely responses to requests for proposals        | <input type="checkbox"/> Accuracy of proposals submitted to you |
| <input type="checkbox"/> Lack of itemized detail for activities in bid price | <input type="checkbox"/> Accuracy of quantities in proposals    |

6. Does your company participate in continuing education programs covering bid shopping?

- Yes
- No (please continue to Question 8.)

7. If your company does participate in such a program, how is it administered?

- Through continuing education courses
- Through construction education seminars
- Through on-site training
- As part of another course
- Other (Please specify.) \_\_\_\_\_

8. What penalties or legislation should be taken to levy against contractors and subcontractors who use bid shopping as a business practice?

- None
- Imposing liquidated damages or fines
- Suspension of licenses or permits
- Legislation to cover not just federal projects, but private projects as well
- Disqualifying "winning" bidders who are immediately found guilty of bid shopping
- Other (Please specify.) \_\_\_\_\_

9. Judging from your company's experience, what would you consider to be the most difficult challenges

facing contractors and subcontractors today in the area of bid shopping?

- Preventing bid shopping from occurring
- Recognizing that the practice is happening
- Training staff members to recognize when they have been shopped
- Training staff members to not use the practice
- To make penalties as severe on private jobs as they are in government jobs
- Other (Please specify.) \_\_\_\_\_

If you would like to receive a hard copy of the results of the study, please provide your name, company name and address in the spaces below. If you would like to have the study results e-mailed to you, please provide your name, company name and e-mail address.

Name \_\_\_\_\_  
Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State & Zip Code \_\_\_\_\_  
E-mail address \_\_\_\_\_

Thank you again for your assistance and participation in this study.