

By Lindsay Minard



Stick to Your **Fastball** in **2010**

Straight Down the Ethical Line

The steroid era in baseball has left a bad taste in the mouths of a public that used to call it “America’s sport.” Many of those who would be considered great today, in the name of keeping up with the competition and gaining an edge, have an asterisk next to their names - if not in the record books then in the hearts of their fans.

So what can the players of commercial construction learn from the steroid era in baseball?

*First, **GREATNESS** is a combination not only of talent and skill, but of personal integrity and respect for the game/business you are in. Sure Barry Bonds is likely one - if not the greatest - hitter of all time; but will his greatness ever be written about or will his legacy always be his arrogance?*

*Second, **INTEGRITY** is knowing when you have screwed up and owning up to it. Do you remember that an apologetic Andy Pettitte admitted to steroid use? Maybe not, but I’ll bet you remember a defiant Rafael Palmeo pointing his finger at Congress while adamantly denying that he ever used steroids; he tested positive a year later and has not played since.*

*Third, **SKILL** in pure form still exists and wins. Albert Pujols of the St. Louis Cardinals, ESPN.com’s “Greatest Player of the Decade,” is a three-time MVP and on pace to hit 730 home runs in his career. He plays steroid free.*

*Lastly, **ETHICS** do matter. If you forget them, eventually you will get caught; and whether a baseball player or a company can repair a tarnished reputation and succeed post-ethical-slip-up in today’s uber competitive market, remains in the grey.*

“Back in the 60s and prior, the private developer was extremely ethical and contracts were rarely signed. Business was done with a handshake. Contractors were men of their word and never worried about getting paid, only about doing the work properly,” contemplates John McMahon, chairman of Miller & Long Co., Inc.

Like baseball, the commercial construction industry has changed. Doing business with a handshake in 2010 is not exactly practical and definitely not realistic. The industry is faster and more complex than it was 30 and 40 years ago and what used to be considered a gentleman’s industry is now written about, more often than not, in unfavorable terms when it comes to ethics and business integrity.

“I think the industry’s bad reputation comes from the fact that business is not always price driven as it relates to awards of contracts. In the big cities, with labor union power, there is tremendous pressure to steer contracts in a particular direction. And when business is not conducted in plain sight, there is always suspicion of something unethical going on behind closed doors; especially if a contract is not awarded in your favor. That is not to say that anything unethical took place, but that can be the perception. Bad ethics is bad for business,” states Steve Satterfield, vice president of preconstruction services at KBS, Inc.

Many in the industry say that the recession has not directly impacted the ethics, only the competition. But it stands to reason that with razor-thin profit margins and a severe lack of work in the sector of choice, the temptation to blur the ethical lines and survive to work another day is greater.

“I believe that a constructor’s ethics are the same today as they were 10 years ago; most in our industry have good ethics even though there are a very few that don’t; and they are the same guys that didn’t 20 years

The Fast Ball
The Most Pure Pitch in
Baseball

The Spitter
The Dirtiest Pitch in the Game

The Slider
Not quite a fast ball, not as
dirty as a spitter; somewhere
in between

ago. This recession has made the level of temptation greater. I don’t think a recession causes people to change their ethics, it just tempts them more. It is important to remember that in good and bad weather, you pilot the ship and you’ve got to be more attentive during the storm,” says Bruce Scott, chairman of the board, Scott-Long Construction, Inc.

So a word to the wise: while day-to-day business in a tough market makes it difficult to focus on much more than the bottom line, keeping your ethics in check should remain at the top of the priority list. Because for all the good work you have done, one borderline decision can give you an incurably bad reputation in a market that functions to remove the weak links.

“It is a huge mistake to practice bad ethics in this business. The money is big and the risk is high. If a company performs poorly, or lies about prices, they will find their business declining. There are no secrets in this marketplace,” states McMahon.

Competition vs. Ethics in 2010 - Who Wins?

While the Yankees organization has had to come to terms with the fact that their days of total domination are over and that it is completely normal to have 15 or more teams considered World Series hopefuls; contractors are still trying to acclimate themselves to today’s bid days of competitors numbering in double digits. Unfortunately the market is giving them plenty of time to get used to the idea.

In addition to the fact that you could essentially throw a decent sized party with the number of competitors showing up on bid day, companies are working at nearly zero fees and stripping down bids to the point where they have basically bought the job. While buying a job may not be exactly unethical, it surely is not a good business practice and can lead to a major ethical dilemma down the line. Can we say change orders anyone?

Ultimately, the industry needs to remain focused on the dim, but visible light at the

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“Ethics is all about individual responsibility. The individual has to live with his/her decisions. There will always be grey area; not everyone may be satisfied with your decision, but if an individual chooses to make the calls he/she feels are correct it would nearly cure any unethical practice,”

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end of the tunnel and steer clear of the ethical grey areas and of crossing the line.

“Ethics and integrity go hand in hand. A simple way to keep a check on your ethics is to recall the old saying that says something along the lines of, ‘Whatever you do, make sure it can be published on the front page of the *Wall Street Journal*,’” contemplates Steve Skinner, DPR Construction, Inc.

The Fast Ball

“Even though we’re kicking and fighting for the same jobs, I believe we’re, for the most part, obeying the rules of engagement for the times we find ourselves in,” asserts McMahon.

Yes, some companies may be venturing into the dark side of business, but chivalry is not dead. The commercial construction majority is trying to make something happen with the cards they have been dealt. While no company is really booming, there are smart firms that continue to *focus on their integrity*, shore up their business relationships and provide the best product at the fairest cost, because they know that while they may not be making a profit right now, they can still build on their reputation.

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projects to the companies with the best, responsible price; that is what we strive to maintain in terms of reputation,” explains Satterfield.

And if you feel like your employer is spending too much time talking about tightening the belt, take into consideration that at least you are there to hear the conversation. While the amount of loyalty in the industry may not be the same as it was 25 years ago, unlike in most other industries where loyalty has become extinct, it still exists in commercial construction. For every company that has had to make sizeable layoffs, there is another that is taking all the work they can get, counting the dollars and cents meticulously so they can retain their good people until the market reaches the other side.

“Companies are making the decision to do work at lower level fees in order to keep their people busy and employed. It may not be the best business decision in terms of the bottom line, but I believe our industry is pretty loyal to its employees; maybe to a fault. Our success is measured over a longer period of time, so we may carry employees when other businesses would cut them loose,” states Steve Smithgall, executive vice president at Balfour Beatty Construction.

To assert that this industry believes in the paramount importance of ethical business practices, a group of 13 construction CEO’s formed the Construction Industry Ethics and Compliance Initiative (CIECI) in 2008 right before the formal bubble burst. The initiative is comprised of a group of firms that are ded-

icated to a business code of ethics and want ethics to be a focal point for the entire industry. During this recession the CIECI has added another 19 companies to its ranks.

“Bad news is more interesting to read than good news. A big reason for establishing this association [CIECI] is the negative slant that journalism has put on the business practices in construction. Ethics are at the pinnacle of the values of those that belong to our initiative. Most people would think that in a recession companies might start cutting corners, but the fact is that people who have jobs want to keep those jobs; they do not want to bring disrepute on themselves or their company,” states Richard Bednar, director of the CIECI.

The Spitter

While few want to talk about it, the fact of the matter is that there is a tremendous amount of financial pressure in the industry and, as money is often the root of evil, it is also the root of the unsound ethical decision.

“The impact that this recession has had on competition trickles down to the ethics. There is such a tremendous amount of financial pressure to survive in this down market and what is typically considered unethical in business almost always relates back to money. If someone is bid shopping it’s because they want more money, if you’re being unsafe on a jobsite, it’s because you’re cutting corners because you want to make more money,” says Bill Fairchild, chairman of R.W. Murray Co.

The two most common ethical temptations in the marketplace today are bid shopping and inflating change orders. Whether or not bid shopping is rampant remains subjective, but one thing is for sure - if a company wants to teeter between the clearly right and clearly wrong lines into the world of bid shopping, they won’t be alone. Bid shopping is difficult to prove, has varying levels of grey area and instances can be found at all levels in the industry.

Bid shopping is putting a number on the street and asking who can beat it; a conversation that starts with “Will you beat it, I want to work with you”. While working with the companies that you trust and have long-standing relationships with is desirable, in a highly competitive market, it is ethically responsible to take the lowest responsible bid. That is not always the lowest number.

“Bid shopping is like a reverse auction and it is unethical. There are definitely occasions that the lowest bid is not taken and there are competitive contractors that believe you don’t always take the low number, but rather the right number. What I believe is unethical is saying, ‘Here is your competitor’s number; beat it,’” states Satterfield.

The other ethical temptation contractors are facing in this market is to inflate the change orders on a project. It would stand to reason that if a company is taking work below cost that company may try to make up those costs at the backend of the project.

“What we are seeing today is companies trying to pick up dollars more so than before. I think there may be more pressure for those companies that bid below cost to make up the difference in change orders; to find little problems with the job to make up the loss they bid themselves into. Jobs are going much cheaper than they were before and those differences will have to be made up somehow; otherwise you go out of business. That is happening too,” contemplates Bill Franczek, managing partner at Vandeventer Black LLP.

In addition, some companies and executives are not honoring their word and are allowing lower level staff or other team members to take on the burden of a mistake.

“There is often a blatant refusal to accept personal and corporate responsibility. There is a tendency for the big players to take on the risk and then spread it to everyone but themselves. It has always been that way,

but recently it has gotten more intense,” states Linda Carducci, president of Project Developers, Inc.

Industry firms need to remember that crossing the ethics line is not a necessary evil; turning a blind eye to ethics to gain an edge may be profitable in the short-term, but will not result in long-term success.

The Slider

Today’s commercial construction industry consists of a healthy amount of good, some bad and a surprising amount of grey area. It’s not that the grey area did not exist before, it’s just that companies would have never thought to wade into it before. In moments of desperation, some companies are wondering if there’s something in that grey area that might help them out.

What lies in the grey area? Discussions about aggressive procurement vs. bid shopping; relationships vs. lowest bidder; who is really squeezing who (the bank? the client? the general contractor?); and the concept of best and final.

“Defining ethics is the difficult part. Ethics is not black and white, cut and dry. What you may think is ethical, someone else may not. Things that are illegal are clearly unethical, right? So what about going five miles over the speed limit? Is that unethical?” contemplates Fairchild.

In that grey area, where there is no clear right or wrong, lives suspicion and questionable reputations. In theory taking the lowest responsible bidder is the right thing to do in a competitive bid market; but aren’t contractors supposed to be accountable to their relationships, too? After all, in good times, relationships are what define this industry. Why else are you doing all this networking?

“Someone once told me that he could buy a lot of aspirin for his headaches with the difference between my price and a lesser qualified competitor’s; and we’re seeing a

lot of that today. However, I do feel solid relationships should hold up, since they’re not solely based on price. However that does mean there is extra pressure on pricing if you want to help those companies. The difference being that those companies take the time to get those prices apples to apples and realize that the lowest price may not always be the best value,” explains Richard Franey, vice president at Southland Concrete Corp.

Sure, aggressive procurement may not always be a smart business decision, but is going after a number to meet a budget really bid shopping? You see, it’s all in the wording. Oh, and “best and final.” How many times is it appropriate to receive a “best and final?” Is it ethical to continue hammering at responsible pricing?

“When a sub gives me a number, I consider it best and final. If a client insists I give them a new number I ask them what corner they want me to cut,” affirms Carducci.

So here’s the thing, if the client is indeed squeezing the general contractor (which eventually trickles down to the whole team)

“I have to be honest with myself when I ask the question ‘How would I like to be treated in this situation?’ After I come up with the ethical solution then my next challenge is finding the proper way to communicate why we are taking that direction. Honesty in those discussions is paramount. I believe that twisting the truth will only get me in trouble,”

*John Scott, president,
Scott-Long Construction, Inc.*

is it unfair to give everyone another shot at a number? Especially when projects are few and far between? You see? Major grey area.

“Let’s say you have a deal with a subcontractor and the owner has come back to you and said, ‘I am going to change a few things and then I want your best and final number.’ I can choose to not do anything with the number the subcontractor gave me and lose the job for both of us, or I can call the guy up and tell them the situation. I think it’s wrong not to go back and give them the opportunity. How would that sub feel if they lost the job?” contemplates Smithgall.

So how does a company find its way in a sea of grey? Establish clear expectations and then empower your managers and your front line employees to believe in their own decisions and ability to decide what is right and what is clearly wrong.

“Ethics is all about individual responsibility. The individual has to live with his/her decisions. There will always be grey area; not everyone may be satisfied with your decision, but if an individual chooses to make the calls he/she feels are correct it would nearly cure any unethical practice,” contemplates Fairchild.

The Ethical Home Run

Being honest is essential and will ultimately keep companies’ reputations and relationships intact, in any market.

“We try to live the Golden Rule – treat others the way you want to be treated. But today’s market makes it easy to put our self interests above the interests of our clients, designers, subcontractors and suppliers. When we are faced with an ethical dilemma we try to consider how the other person would like to be treated. I have to be honest with myself when I ask the question, ‘How would I like to be treated in this situation?’ After I come up with the ethical solution then my next challenge is finding the proper way to communicate why we are taking that direction. Honesty in those discussions is paramount. I believe that twisting the truth will only get me in trouble,” ponders John Scott, president of Scott-Long Construction, Inc.

Greatness, integrity, skill and ethics start at the top. Regardless of whether or not a company has a formal code of ethics, if its leaders practice fair, ethical business it trickles down through the organization. The key is being an overt example of integrity.

“My Dad talks about losing millions of dollars because he was doing the right thing. He’s lost probably a lot more than he’s made by being honorable and doing what he considers to be the right thing. We spend a lot of time getting our employees on board with that type of mentality; we’ve been blessed with a good reputation because of Dad’s efforts and we intend on keeping it,” states John Scott.

CODE OF ETHICS

Associated Builders and Contractors, Inc.

As a member of the Associated Builders and Contractors, Inc., I will strive to observe the following principles in the conduct of my business:

- Maintain a standard of performance with the Owner's best interest and my obligations.
- Quote only realistic prices and completion dates and perform accordingly.
- Cooperate to the fullest extent with the Architect and other agents of the owner toward fulfillment of a common goal.
- Solicit quotations only from firms with whom I am willing to do business.
- Make all payments promptly within the terms of the contract.
- Observe and foster the highest standards of safety and working conditions for my employees.
- Establish realistic wage schedules for my employees commensurate with their ability and their industry so that they may enjoy the dignity to which they are entitled.
- Actively participate in the training of skilled tradesmen for the future welfare of the Merit Shop industry.

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Bylaws Reference:
Article I
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