

# Construction Ethics?

You Bet!

By Thomas L. Rosenberg

**D**octors, lawyers, and many other professionals are subject to specific codes of ethics that govern their performance and conduct. Architects and engineers are often governed by codes of ethics. What about construction contractors? Sometimes, when we work on public construction projects, we have to sign an ethics statement. The ethics statement may be something as simple as affirming that we have not provided campaign contributions over a certain amount to the officials of the awarding authority. Sometimes, it is simply a non-collusion affidavit. But what about true construction ethics? In our daily performance as contractors, are we ethical?

## DISCUSSION ON ETHICS

I have studied this issue for years. I have developed a program for our local builders' exchange on construction ethics. We convene young and veteran personnel from construction companies representing construction managers, general contractors, subcontractors, suppliers, and even architects and engineers. I pose numerous scenarios for discussion. Lively debate follows as we ask whether or not the practice is

ethical, common in the industry, and even occurs in one's own company. Consider the following:

- The general contractor accepts a bid from the subcontractor to include in the general contractor's bid submitted to the owner. The owner accepts the general contractor's bid. After learning of this acceptance, the general contractor calls the subcontractor demanding that it reduce its bid in order to receive the work.
- A general contractor front-loads or increases the alleged amount of work performed during the initial stages of the project in order to obtain more money upfront from the owner.
- The owner requires the general contractor to review the details of the design and assume responsibility to provide work omitted from the design, but claimed to be needed for a "complete" system.
- A subcontractor or supplier gives different bid estimate amounts to general contractors in order to favor one general contractor over others in getting the work from the owner.
- The contractor is aware of defects in the plans, but bids anyway without telling the owner or architect because it knows it can form the basis of a claim for additional compensation during the project.

In analyzing the above scenarios, it was common for our participants year-in and year-out to say that these practices are unethical, yet common in the construction industry. Often, they generated lively discourse. For example, the first one sounds improper, but could it be nothing more than value engineering? Most would say no. Second, should the subcontractor acquiesce to a demand to lower its bill to get the work? A subcontractor who gets known for agreeing to reduce its bid will probably be asked to do so time and time again. However, a subcontractor faced with such a dilemma may feel it has no choice in order to obtain the work. This was a primary concern during the recession when subcontractors realized that work was at a premium.

## ABOUT THE AUTHOR

Thomas L. Rosenberg is a partner at Roetzel & Andress, LPA, which is a full-service law firm with offices throughout Ohio and Florida and in Chicago and Washington, D.C. Based in Roetzel's Columbus, Ohio, office, Mr. Rosenberg has more than 30 years of experience as a construction lawyer and leads the construction law practice at Roetzel, which has been recognized regionally and nationally as one of the top law firms for construction and construction litigation. Mr. Rosenberg has received numerous honors as a construction lawyer and is actively involved in local, state, and national construction law organizations. He can be reached at [trosenberg@ralaw.com](mailto:trosenberg@ralaw.com).