

Ethical Bidding Practices – Why ASPE Promotes Them

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In a down economy, such as the construction industry has been facing in 2010, the importance of ethical bidding practices has never been greater, and the challenges facing those intent on practicing them become even greater still.

ASPE was founded on the principles of professional development for construction estimators, including continuing education, standardization, fellowship, certification, and ethics. Everything we do in ASPE has one or more of these core principles at the root of its execution. Each principle is important as a standalone concept, but taken as a whole, they provide a solid foundation on which a construction estimator can build a meaningful career and bring a tangible benefit to his or her employers or clients.

Perhaps the most important of these principles is ethics. Without giving ethical professional practice their due consideration, none of the other principles can survive on its own, or are at least rendered less significant. The founding fathers of ASPE recognized this fact, and developed what we know today as the ASPE Canons of Ethics. These nine simple rules help us understand the importance of a level playing field, fair competition, and even the basic but widely understood concept of the “golden rule”. Many of us are familiar with the Canons, as they are more widely known, but the reasoning behind them are very well explained in the introduction and preamble to the Canons, which are published each year in the annual ASPE Membership Directory and Buyers Guide.

From the introduction, we read “The distinguishing mark of a truly professional estimator is acceptance of the responsibility for the trust of the client, employer, and the public. Professionals with integrity have therefore deemed it essential to promulgate codes of ethics and to establish a means of assuring their compliance”.

From the preamble, we read “Estimating is a highly technical and learned profession and the members of this society should know that their work is of vital importance to the clients and to the employers they serve. Accordingly, the service provided by the estimator should exhibit honesty, fairness, trust, impartiality, and equity to all persons involved”.

Whether we work as an estimator for a general contractor, subcontractor, supplier, a government agency, utility, or as a consultant, the work we do will always and ultimately be subject to the scrutiny of the bidding marketplace. We demonstrate professional competence by preparing realistic estimates of cost and duration for every project to which we are assigned. Cost estimates which include artificially high or low cost components (material costs, production rates, labor and equipment costs, etc...) give rise to many kinds of problems, from unrealistic budgets in the preconstruction phase to depressed pricing in the bidding marketplace to poor performing construction projects, which can include jobs with unsafe working conditions all the way to failed projects and surety takeovers.

Ethically prepared and professionally competent construction cost estimates can solve all these problems before they ever begin. ASPE’s Canons pave the way for success in your project and in your career.

Canons 1, 2, 3, and 6 deal with the professional competence, capabilities, integrity, and overall professionalism of the construction estimator, discussing such items as experience and training, areas of specific expertise, continuing education, cooperation and good relations among members of our profession and those directly related to our profession.

Canons 4 and 5 generally deal with the professional integrity as it relates to safeguarding intellectual property a construction estimator possesses due to his or her position within a company or as a consultant. Canon 5 also encourages the “establishment of guidelines for setting forth prices and receiving quotations that are fair and equitable to all parties”. How many of us have developed and practice such procedures? Even with the best of intentions, operating without such procedures in place opens us up to the possibility of treating subcontractors and suppliers inconsistently, which can lead to hurt feelings at best to reputation damage to litigation at worst.

Canons 7, 8, and 9 are the heart of ASPE’s prohibitions against acts of bid peddling, bid rigging, and bribery. Bid peddling and bid shopping are not necessarily illegal; bid rigging and bribery (fraud) most certainly are. The October and November 2004 issues of Estimating Today contained an excellent two part article entitled “Bid Shopping and Suggested Remedies”, written by Michael J. Cook, JD of the University of Florida. In this series, Cook examined other “types” of unethical bidding practices, all of which fall outside the spirit of Canons 7, 8, and 9. Without discussing them in greater detail, these include “Bid Pleading”, “Bid Chopping”, “Bid Piracy”, “Bid Discounting”, and “Bid Beating”. A more widespread and ethically acceptable (at least to those who practice it, but an equally unfair practice in the opinion of this writer) that Cook also discussed is the concept of “Reverse Auctions”, typically utilized by owners but widely disdained by contractors.

At the recent ASPE National Convention and Estimating Academy held in Grapevine, Texas, ethical bidding practices were given significant highlight. A Wednesday Estimating Academy session entitled “The Changing Face of Ethical Bidding Practices in a Challenging Economy” was conducted by this writer. We discussed many of the above topics in greater detail, and focused on

how the current economy is enabling the more widespread practice of the unethical bidding behavior. Fewer jobs to bid, increased competition for those fewer jobs, lower profit margins, increased material and labor costs, and risk of loss of market share are some of the many challenges facing contractors of all types in this current economy, which has not been friendly to our industry for more than 24 months now. As a group, we asked and answered questions like:

- Does the increasingly widespread practice of bid peddling/shopping make it acceptable?
- Does business survival in the current economy necessitate drastic measures?
- Does the legality of bid peddling/shopping make it acceptable?
- Is only a limited practice of these activities acceptable? “Just for this one job, but after that, never again - we need this job to stay alive!
- Is it acceptable if you were not the initiating party - do we play the game?

Also in Grapevine, a Thursday professional discussion group was conducted and led by ASPE Southeast Region Governor Mark Puente. On the panel were fellow ASPE members and professional estimators Gary Gilbert of Chapter 38, Tim Fradeneck CPE of Chapter 17, and Sherry Malott of Chapter 38. This panel presented a very interesting program of hypothetical bidding scenarios and the ethical dilemmas that resulted from them.

ASPE is committed to maintaining Ethics as a core principle of its foundation. Our membership in ASPE commits each of us to practice our profession in an ethical manner. By doing so, it is less likely that unethical bidding practices will be used against us. The best way to NOT get caught up in unethical bidding practices:

- DO NOT ENGAGE IN THEM
- Ever
- Not even a little
- Not even just once
- Not even if you need a job badly

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Is it possible to refuse to “play the game” and survive in this economy? Of course it is! GCs - tell your subs – “we protect your prices”. Subs and Suppliers – tell your GCs that you expect your prices to remain confidential. Make it well known that your firm operates under the ASPE Canons of Ethics (make this point on all RFQs to subs and suppliers; post this policy in your plan room and on your website). Use peer pressure to make ethical bidding practices the norm instead of those unfair bidding practices that are dirty little secrets that nobody talks about but are practiced seemingly widely. If more people talk about ethical bidding, it will become risky to do otherwise.

By developing and promoting ethical bidding practices, ASPE has provided another tool for their members to develop and grow in their professional careers. Even professions that require licensing from each state (architects, engineers, accountants, teachers, doctors, and lawyers among others) all have their own professional code of ethics and conduct by which their practitioners must abide. Construction estimating is an unlicensed profession, but the work we perform and the manner in which we perform it can have far reaching impacts on the success of our employers and clients. To do our jobs successfully, we must possess a very diverse set of skills, many of which are in common with those of licensed professions, especially architects, engineers, accountants, and lawyers. ASPE's Canons of Ethics give us something more in common with these other professions with whom we work regularly. This helps us to be taken more seriously, enhances our credibility, and allows our employers and clients feel more comfortable that they are being served by true professionals who have accepted the responsibility for the trust given them in determining the cost of the construction project to which they have been assigned. ■

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yard. If only one sub-number is received, the Estimator needs to determine if the number is good rather than blindly plugging it into an estimate with the assumption that if it's a sub-number it's a good number.

This still leaves the application of indirect costs to the direct costs as another variable between competing contractors. General Conditions and General Requirements are driven in large part by the project's duration which is usually defined for all the bidders. The quantity of G.C.s and G.R.s applied over this duration is the variable. Those indirect costs for your company to oversee the direct costs account for a whole lot of money. Now, my theory about an Estimator's confidence and humility comes into play and the wheels can come off the estimating bus. Indirect cost estimating is not merely formulaic but experiential. This should not be left up to age-old formulas based upon “That's the way we've always done it”. A good Estimator needs the confidence to know when to rely on others' input and when to rely on his own experience. To rely on his instinct that there's too much supervision being asked for on the estimate or that one laborer can't do clean-up for the entire building. A large part of General Conditions estimating uses a best-guess approach without much historical data to back it up.

If your estimator merely throws gathered information into his estimate, this isn't really estimating. This is divorcing himself from ownership of the estimate and is assembling numbers relying upon his confidence in others' information rather than in himself. To say that Estimators compile numbers derived from outside sources is selling estimating short. This concept of “experts in their trade” falls apart when a sub number comes in that is just too high or low to rationalize, when a scheduler's schedule is just too long or short to justify or there is too much supervision on a job to provide a competitive number. Relying on everyone else's input is like letting the

fox guard the henhouse. The person at the wheel needs to have the confidence to jump in and make decisions that may run contrary to the data gathered. He must also have the humility to relent and follow the data.

A good Estimator's personality is a mix of confidence and humility. This is getting out of the measurable science of estimating and delving into the immeasurable art. Any estimator can be low on a project. This, in and of itself isn't a skill. A quality estimate falls within the “sweet spot” between where it's worth constructing the project and still remaining competitive. Your Estimator is “driving the bus” when his work is tempered with the confidence to stand by his estimate and the humility to admit his limits. My Uncle will have to sit in the back of the bus. ■

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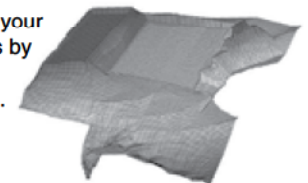
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