



Don't Overlook Ethics and Social Responsibility in 2020 and Beyond

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Corporate social responsibility and ethics are more important than ever before, particularly in light of recent events that have garnered national attention this summer. Subcontractors that fail to recognize the importance of being perceived in their communities as socially responsible and ethical will eventually experience damage to their bottom lines. Nowadays, any practices that are perceived even by a vocal few as unfair can lead to a variety of social and business punishments.

In the past, many construction companies have honed their reputations for doing good primarily by giving to community organizations and charities, but that may no longer be sufficient as owners and developers are looking for more intensive efforts to address perceived social ills. Owners and developers are seeking to partner with companies that they believe are advancing the proper social objectives and conducting business ethically. Construction companies are therefore well-advised to commit as

never before to conducting all aspects of their business with the highest degree of ethical standards. Ethics in construction is often measured by the degree of trustworthiness, integrity and honesty with which a company conducts business. If you are perceived as failing to live up to their standards or not committed to these objectives, you are likely to be left out in the contractor selection process. Owners and developers increasingly want to select a construction team whose purpose aligns with their beliefs and objectives. An increasing number insist that the contractors and subcontractors they hire to build their projects practice socially responsible behavior, that they be environmentally sensitive and demonstrate sustainability, that they source responsibly and that they provide safe, welcoming and inclusive workplaces. Some want to see that their construction partners take a stand on social, cultural, environmental and political issues. Contractors and subcontractors that are on the cutting

edge of these efforts will be attractive to many owners and developers who will want to do business with them as a result. A solid reputation for ethics and social responsibility may be the deciding factor in contractor and subcontractor selection in the future.

As a result of this reality, all subcontractors should carefully analyze the way they are doing business and make sure they are adhering to the highest ethical practices and conducting all business as a socially responsible corporate citizen. Every employee has an important role to play in ensuring socially responsible and ethical conduct. Here are some areas where adherence to the highest ethical standards will be crucial in the coming years. If a subcontractor's lack of ethics becomes public knowledge, the loss of credibility is almost certain to cause significant financial damage.

Safety. Utmost consideration should be given to ensuring the health, safety and welfare of employees and all others on the jobsite and in the company office. With tight schedules, cutting corners to save time can be tempting, but the consequences of an OSHA violation or, worse yet, an actual job site injury and the perception of not adhering to safe work practices can be very damaging to a subcontractor's reputation. In the present environment, rigid adherence to all CDC and other relevant protocols for preventing COVID transmission both at the company office and at the jobsite is a must.

Work Quality. Performing work to the highest quality standards, which has always been historically important, is now more critical than ever. Perform all work in strict accordance with the requirements of the plans and specifications. Avoid or limit substitutions, and when they are used, obtain written authorization from the customer before installing the substituted

item. If repairs are to be made to installed work, consider acquiescing to a greater scope of repair than necessary. Customers can sometimes be unreasonable in the scope of repairs demanded for work they perceive to be non-conforming. Contractors and subcontractors recognize the reality that perfect performance is often impossible. Some customers don't understand this and may insist that non-conforming work be removed and replaced when only a portion might actually need to be replaced. In other cases, the work may substantially comply with applicable standards, but the customer is dissatisfied nonetheless. Within limits, subcontractors should consider acquiescing in order to enhance the perception that they will do whatever is necessary to ensure the final product is of the highest quality and satisfactory in all respects to the customer. When installing materials, ensure that all specifications and manufacturers' installation instructions are strictly followed. If a customer uncovers work and determines that the installation was not in perfect compliance with the manufacturers' installation instructions or the specifications, it can feed a perception that corners were cut and that the work quality is poor.

Employees. Subcontractors should ensure workers are paid market or "living" wages, and that all employment regulations are followed including paying all employment taxes and ensuring full workers' compensation insurance coverage is in place. The use of so-called independent contractors, although attractive to the bottom line in some cases, should be minimized or avoided altogether, particularly in states that are cracking down on their use. Many states have enacted laws and regulations sharply limiting or prohibiting the use of independent contractors in construction. Being the target of an investigation by the state labor department can easily lead to serious reputational damage and contribute to a public perception of worker mistreatment. Although the use of independent contractors is by no means mistreatment of workers, your local media could allege that it is and you will have little or no effective way

to publicly rebut it. Strict compliance with prevailing wage and Davis-Bacon laws is also critical. Make sure that any subcontractors you hire are also paying their employees and complying with all laws and regulations. Finally, make sure your handbook and other policies emphasize the importance of ethics and foster a culture and policy of requiring full compliance.

Paying Subcontractors and Vendors.

Developing a reputation of failing to timely pay subcontractors and vendors can result in serious damage and be perceived as an unethical practice. Paying lower-tiers on time can be challenging when subcontractors often do not receive payment until their customer gets paid (pay when paid/pay if paid). If you are going to defer payment to lower-tiers until you receive payment from your customer, make sure your subcontract or other written agreement is crystal clear in this regard to avoid any argument that you are delinquent in payment.

Environmental Practices. Society is more conscious than ever concerning environmental conservation. Strict compliance with all erosion and sedimentation controls and all other environmental requirements applicable to the project is essential. Nothing can damage your reputation in the community more than being cited for a violation of environmental requirements. Even if they are minor, the public perception may nevertheless be that your company does not care about protecting the environment.

Change Orders and Additional Work.

Make sure you provide clear and polite written notice in strict compliance with your contract regarding any additional and extra work that you are being asked to perform. Be accurate in every statement, record and document that you prepare. Pricing for change orders must be thorough, accurate and fully substantiated. Otherwise, the customer or end user may erroneously believe they are being gouged.

Clean Hands. I frequently emphasize to my clients the importance of having clean hands on a construction project. By this I mean making sure that you follow the subcontract in every

possible respect, even when it may seem unnecessary or overly formal. Similarly, if you are being mistreated by the customer or the end user, avoid responding in kind and continue performing your work just as you would if the customer was adhering to the contract. Except in the most egregious cases, you are better off completing all your work and then resorting to the dispute resolution processes in order to obtain the money to which you are entitled. If you wind up in court, you want to be presenting a case that despite non-payment and/or unreasonable refusal to sign change orders, you nonetheless persevered and completed the project. When you are being abused by a customer, it is tempting to want to walk off the job, reduce manpower or take other actions to force the customer's hand. In some cases, such steps are necessary but by and large, keeping your hands clean and completing your work in the face of abusive and unreasonable conduct by your customer or the end user is preferable and ultimately makes for a compelling case in court or arbitration.

In conclusion, there is an old saying that it takes 20 years to build a reputation and five minutes to ruin it. In the world we live in today, the value of a reputation for ethical and socially responsible business practices cannot be overstated. A good reputation can be undermined in an instant in our highly technological society where information concerning all aspects of a business is readily available. Company leaders must set the example each and every day in every decision they make.

About the Author

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