

# THE CONTRACTOR'S Compass

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# THE CONTRACTOR'S Compass

## EDITORIAL PURPOSE

*The Contractor's Compass* is the monthly educational journal of the Foundation of the American Subcontractors Association, Inc. (FASA) and part of FASA's Contractors' Knowledge Network. The journal is designed to equip construction subcontractors with the ideas, tools and tactics they need to thrive.

The views expressed by contributors to *The Contractor's Compass* do not necessarily represent the opinions of FASA or the American Subcontractors Association, Inc. (ASA).

## MISSION

FASA was established in 1987 as a 501(c)(3) tax-exempt entity to support research, education and public awareness. Through its Contractors' Knowledge Network, FASA is committed to forging and exploring the critical issues shaping subcontractors and specialty trade contractors in the construction industry. FASA provides subcontractors and specialty trade contractors with the tools, techniques, practices, attitude and confidence they need to thrive and excel in the construction industry.

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Contributing authors are encouraged to submit a brief abstract of their article idea before providing a full-length feature article. Feature articles should be no longer than 1,500 words and comply with The Associated Press style guidelines. Article submissions become the property of ASA and FASA. The editor reserves the right to edit all accepted editorial submissions for length, style, clarity, spelling and punctuation. Send abstracts and submissions for *The Contractor's Compass* to [communications@asa-hq.com](mailto:communications@asa-hq.com).

## ABOUT ASA

ASA is a nonprofit trade association of union and non-union subcontractors and suppliers. Through a nationwide network of local and state ASA associations, members receive information and education on relevant business issues and work together to protect their rights as an integral part of the construction team. For more information about becoming an ASA member, contact ASA at 1004 Duke St., Alexandria, VA 22314-3588, (703) 684-3450, [membership@asa-hq.com](mailto:membership@asa-hq.com), or visit the ASA Web site, [www.asaonline.com](http://www.asaonline.com).

## LAYOUT

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# PRESIDENT'S LETTER



Dear ASA Members,

August always feels like a time of transition. While in many ways we are still in the thick of summer, kids are headed back to school and those earliest leaves have started to touch the ground. Times of transition are always an opportunity to look forward, and I am glad that we at ASA are doing just that. In a year that has been like no other, new beginnings are always exciting.

ASA continues to advocate for the needs and issues important to the subcontracting community, and I am thrilled by each and every success. One such example is that ASA is currently working to make sure that Paycheck Protection Program (PPP) loans are available to all who need them. ASA members are strong, and we will fight together for what is important. The current health crisis has affected us all, and our best weapon in this fight is information. ASA's national website is constantly updated with news and guidelines on our COVID-19 page, so please make sure you are staying connected with all of the latest information.

I am also excited to share that ASA is supporting the American Infrastructure Bonds Act of 2020, designed to help local governments fund vital public projects. Those projects create the opportunity to directly support many of our ASA member companies, which shows just how important advocacy is to this organization. Each and every day ASA is working for you, and we embrace every opportunity to work with our members at the national and chapter level. Together we are a stronger organization!

As you know, registration for SUBExcel is open, and I look forward to being on the beach with you all. Don't forget that the deadline for the Sandcastle Building Competition is coming soon! I can't wait to see all of your designs and creations, and then meet up with you on the beach to build a new castle in February. Sand and fun, as well as networking and education, sounds like the perfect family vacation once we are on the other side of 2020. I hope to see you there!

God Bless,

Brian Cooper

ASA President 2020-2021





# CONTRACTOR COMMUNITY

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## Sand Castle Building Competition for SUBExcel!

Let's have some fun, play in the sand, and get ready for SUBExcel 2021 with a SAND CASTLE BUILDING COMPETITION! Entries must start with sand, but can be as creative as you like.



#SUBExcel2021  
#SandcastleChallenge

Get in the picture, post them to social media while tagging ASA National, and make sure to add #SUBExcel2021! The more creative, the better, and feel free to work ASA into your design. One Grand Prize winner and one Runner Up will be announced at SUBExcel. All entries are due by Labor Day, 9/7/2020. Get building today!

## FFCRA Applies if School is Physically Closed

This article is from SESCO Management Consultants, a Human Resource company that is one of our stellar ASAdvantage members.

The Families First Coronavirus Response Act (FFCRA) requires covered employers – those with less than 500 employees – to provide employees with paid leave if they are unable to work or telework due to a need to care for their child whose school or place of care is closed due to COVID-19 related reasons. The U.S. Department of Labor (DOL) has stated that if a school or place of care has moved fully online – where children are expected to complete assignments at home – then it is indeed considered "closed" for purposes of the FFCRA and

employers are required to provide leave to eligible employees. However, if a school or place of care has given the option to learn in-person and on-site at the school or virtual, the school or place of care will not be considered to be "closed".

## New Addition to the ASA National Board of Directors!



ASA is proud to announce that Kenneth Moore, founder of KCM Cabinets in San Antonio, TX, will be joining the ASA National Board of Directors. The ASA National Board will formalize his addition to the team at the September virtual Board Meeting, and then Kenneth will officially be part of a ballot sent to the membership prior to SUBExcel and will be sworn in during the Annual Business Meeting.

After gaining experience in the construction industry, working for cabinet and millwork companies in the San Antonio area, Kenneth Moore took a leap of faith and opened his own cabinetry company, KCM Cabinets, in 1998. Since then KCM Cabinets has grown to serve Texas and even some surrounding states. His determination, focus, and drive helped his company flourish and become one of the leading cabinetry companies in the San Antonio area.

It's that same determination, focus & drive that brought him into a leadership position within the San Antonio Chapter of ASA. Kenneth joined the San Antonio

Chapter Board in 2014 with a goal to increase communication. Kenneth knew that new energy and open lines of discussion could give the association the breath of fresh air it desperately needed after a period of decline in membership. Rising to Vice President, he then served two consecutive terms as President. As President, Kenneth quickly went to work restructuring the format of the board meetings to encourage seasoned members and experienced former board members to attend board meetings to provide guidance and feedback. This open discussion encouraged the new board members to think outside the box and be creative, but also helped them maintain a clear understanding of the chapter history and legacies they should protect. Through continued efforts to improve communication, the San Antonio Chapter grew to its largest membership total in the chapter's 35-year history! Kenneth Moore is a true leader.

## Construction Business Survey from Foundation Software

Foundation Software presents their annual Construction Business Survey, which they use every year to produce their Construction Business Report. Each year this report provides insights regarding the current state of the construction industry. To view last year's results, click [here](#).

Last year, over 400 construction professionals responded to the 10-minute survey to share their unique perspectives. ASA members are invited to take the survey and share what they think on topics ranging from software usage, business processes and expectations for the future. This is a great opportunity to let your voice be heard and see how your company stacks up against the competition.

All participants will receive a free copy of the 2020 Construction Business Report when it's published this fall. **Take the survey!**

## Apply for ASA Awards Today!

Get recognized at SUBExcel 2021! Each year, ASA gives individuals, companies, and chapters the opportunity to apply for ASA Awards. These prestigious awards are a way to highlight those in the subcontracting community who are shining examples of excellence. **Apply today!**

ASA is proud to announce a NEW AWARD THIS YEAR, the **National Annual Safety Award!** This award represents ASA's commitment to safety and safety education. Being nominated for this award is a significant honor in your community and among your peers. Each chapter can nominate ONE company for the ASA National Safety Award. All nominations will be displayed at ASA's National SUBExcel Conference where each nominee will receive recognition on a National Level.

Other prestigious awards available are:

- ASA Certificate of Excellence in Ethics
- ASA National Construction Best Practices Awards
- President's Award
- Subcontractor Federal and State Advocate Awards
- Attorney's Council Awards
- John H. Hampshire Distinguished Lifetime Service Award
- Timmy L. McLaughlin Exemplary Leadership Award
- ASA Outstanding Service Award
- ASA Chapter and Chapter Leadership Awards

## Study to Measure Profit and Productivity Impact of COVID-19

The Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) announced its member foundation and research entity, the New Horizons Foundation, issued a

new project study that measures the impact of the coronavirus (COVID-19) on productivity across the sheet metal and HVAC industry.

The study focused on 1) the added time needed for COVID preparation (PPE, cleaning, protocols, etc.), and 2) loss of productivity. Based on information collected from sheet metal, HVAC and mechanical contractors,

- a) 8.7% of hours available on products are lost due to mitigation requirements.
- b) 9.2% average productivity impact - time lost in installation labor -and an 8.7% mitigation impact on sheet metal, HVAC and mechanical contractor productivity, resulting in almost 18% productivity impact.
- c) Almost 1.5 hours of lost productivity per day, in an employee's eight-hour shift.
- d) The financial impact of these losses can take three to six months to fully play out in a company's finances.

The report also includes a guide to help adapt to the new industry landscape, noting that those companies with pandemic mitigation processes in place saw lower productivity losses.

### **Executive Summary of the Report**

## Dodge Momentum Index Moves Higher for the First Time in 2020

The Dodge Momentum Index moved 3.4% higher in July to 124.7 (2000=1000) from the revised June reading of 120.5. The Momentum Index, issued by Dodge Data & Analytics, is a monthly measure of the first (or initial) report for nonresidential building projects in planning, which have been shown to lead construction spending for nonresidential buildings by a full year. During the month, the commercial component increased 5.3% while the institutional component was unchanged.

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# Applications are now being accepted for many of the awards offered by ASA.

## **Certificate of Excellence in Ethics**

This award recognizes subcontractors for their commitment to ASA values, such as quality construction and a safe and healthy work environment. Each applicant is required to respond to questions concerning the firm's corporate ethics policies and procedures, its construction practices, and its general business practices. Each applicant also is required to submit detailed documentation, including sealed letters of recommendation from a customer, a competitor, and a supplier.

## **National Construction Best Practices Award**

This award recognizes prime contractors that exemplify the values of subcontractors, treat subcontractors fairly through use of level-playing-field contract terms, and consider subcontractors part of their core project teams. The program's rigorous criteria include the use of a standard subcontract whose provisions substantially reflect the best practices incorporated into the ASA-endorsed ConsensusDocs 750 Standard Agreement Between Constructor and Subcontractor, as well as highly favorable evaluations from three specialty trade contractors, based on 20 project management factors.

There are many more awards available through ASA, and more information about all of them can be found by [clicking here](#). All award winners will be recognized during the 2021 SUBExcel conference on February 24–27, 2021, in Miramar Beach, Florida. We highly encourage all ASA members to get involved in our awards program. These valuable recognition opportunities are only available to ASA members.





# LEGALLY SPEAKING

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

by Tim Woolford, Esq., Woolford Kanfer Law, P.C.



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.

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#### **About the Author**

*Timothy Woolford, Woolford Law, P.C., is a construction attorney in Pennsylvania that represents subcontractors and other construction professionals. He is also an adjunct professor of law at the Penn State Law School where he teaches construction law to second- and third-year law students. He can be reached at (717) 290-1190 or [twoolford@woolfordlaw.com](mailto:twoolford@woolfordlaw.com).*



## What Can Be Done About Bid Shopping?

by Don Gregory, Kegler, Brown Hill & Ritter

"Bid shopping" occurs when a general contractor discloses the bid price of one subcontractor (or suppliers) to its competitors in an attempt to obtain a lower bid than the one on which the general contractor based its bid to the owner. Put another way, bid shopping occurs when a general contractor uses the lowest bid received to pressure other subcontractors to submit even lower bids.

The Associated General Contractors of America ("AGC") calls the practice of bid shopping "abhorrent" and proclaims that it is "resolutely opposed" to it. The American Subcontractors Association ("ASA") calls these practices not only "abhorrent" but also "*unethical*" and anticompetitive. Other contractor trade associations share such strident opposition (the AGC, ASA, and ASC have issued Joint Guidelines decrying the practice), and the courts that have opined on bid shopping tend to agree with the prevailing sentiment.

Perhaps nothing is more widely condemned in the construction industry than bid shopping. But, regardless of the stated consensus against bid shopping, the practice remains common.

Bid shopping almost necessarily forces subcontractors into post-award negotiations. A subcontractor that is approached by a general contractor with a competitor's lower bid naturally assumes that it won't get the job unless it reduces its price. The subcontractor now knows that it stands to lose the subcontract and the recovery of its initial costs, so there is strong incentive for it to reduce its bid and cut corners, to avoid losing the subcontract.

As the Court of Common Pleas of Cuyahoga County, Ohio, noted in *Sheet Metal Employers' Ass'n v. Giordano*, "[m]any hours are invested . . . in preparing a bid to the . . . contractor. The latter may then proceed to play one bidder against another, getting each in turn to shave its bid as much as it will. Estimated profit is drastically reduced and financial loss threatens. There is little satisfaction in such

a contract. The temptation of the [ultimate subcontractor] to do inferior work and to cheat is strong."

Another negative consequence of bid shopping is that the practice interferes with how the free market fairly sets prices. This may occur where a subcontractor artificially inflates its bid to compensate for expected bid shopping. Once again, the owner is harmed because its costs will have been artificially inflated. Any deflation of a subcontractor's price inures solely to the benefit of the bid-shopping general contractor, not to the owner or taxpayer footing the bill for the project.

Another way bid shopping interferes with the free setting of competitive prices is to discourage otherwise interested subcontractors from spending the time and resources to prepare and submit competitive bids when bid shopping is expected. This reduces overall competition, with the potential effect of increasing construction prices. This benefits only the general contractor, to the detriment of both the subcontractor and the owner.

One court that took on the "bid shopping" issue is the Ohio 10th District Court of Appeals, which in 2009 found that a general contractor that "bid shops" releases subcontractors from a mistaken bid or inequitable subcontract language. *Complete General Construction Co. v. Kard Welding, Inc.* The court found that the general contractor was obligated to timely accept the subcontractor's offer because delaying, in hope of obtaining a better price, would similarly release the low bid subcontractor from its bid.

The legal reasoning given by the Ohio 10th District Court of Appeals in the *Complete General* case provides authority for courts in other states. Under traditional concepts of offer and acceptance, if a general contractor discloses a low subcontractor bid, requests a price reduction, insists on concessions that contradict terms in a conditioned bid, or bid shops, it rejects the subcontractor's bid and

loses any promissory estoppel protection to compel the subcontractor to its bid.

Subcontractors who want to minimize the risk of "bid shopping" can condition their bids and state the bid is valid for "the earlier to occur of: (a) 30 days from the date of the bid; or (b) one business day after opening of the general contractor's bid and notification of the Award of the general contract." Another provision could clarify that the bid "is submitted and must be kept confidential except for disclosures required by law. Failure to keep that confidentiality, through disclosure of the attached bid or its material terms, will operate as a general contractor's rejection of the bid."

Owners, like subcontractors, do not gain from bid shopping. Owners control the bidding process and therefore could insist that bidding general contractors provide with their bids a list of names of major subcontractors (those providing over a certain dollar amount or percentage of the work on each job), with language that precludes substitution of such subcontractors without good cause or prior approval from the owner.

Although bid shopping is unlikely to disappear, favorable court rulings, and self-help by owners and subcontractors in their bid and contract language, can go a long way to discourage the practice.

---

### About the Author

*Don Gregory is well known for his experienced and pragmatic advice and is highly rated as one of Ohio's very best construction lawyers. He maintains a Band 1 ranking by Chambers USA, the highest ranking possible for his practice. Don stays abreast of cutting-edge developments in the industry by serving many of the leading national construction trade associations as their general counsel. For more information, please email Don at [dggregory@keglerbrown.com](mailto:dggregory@keglerbrown.com) or click [here](#).*



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## Has Right and Wrong Changed After COVID?

by Jack Rubinger

The whole concept of right vs. wrong has changed since COVID, and will likely keep changing after COVID — if the virus ever 100 percent goes away.

We're all moving cautiously or recklessly in a sea of chaos and confusion — guidelines instead of laws, protocols instead of mandates, suggestions instead of requirements.

From a contractor's perspective, what is ethical vs. unethical? Is it ethical to expect employees to work without adequate safety equipment and gear? Who should supply it?

Safety precautions are heightened because of real fear and paranoia, such as plumbers who must remove human waste from customers' homes, explained Desiree Grosman who consults with HVAC and plumbing contractors. "Boots and gloves are standard, but the standard should be even higher now," she said.

### Internet Marketing Impacted

Access to technology has leveled the playing field for many contractors, which benefits customers, but relying on Google reviews for some has become risky business. At one point during the pandemic, Google dropped its review process, which many contractors used as a marketing tool.

A positive Google review puts you higher in the search rankings. After all, who wouldn't want a positive review? Was this right? Doesn't Google reserve the right to exercise its own rights about running a business? Maybe it's time to consider other ways to generate positive reviews — which can be critical during a pandemic when consumer spending is impacted by high unemployment.



### Paradigm Change in the Construction Industry

Deb Hilmerson, the owner of a construction firm in Minnesota, feels like she's doing everything in her power to comply with the ever more complexing array and introduction of new rules, which can be difficult in the construction industry.

"We're keeping it clean, compared to the days when we'd be sitting on buckets eating sandwiches with dirty hands," she said. "This is a complete paradigm change, but we can now eat off the floor and be productive as well," she said.

Explaining to workers that they can't ride share now because of social distancing is a minor disappointment.

After all, when three guys live near each other, and they're all going in the same direction, it makes sense to ride share.

Best practices that were once applauded because they were good for the environment, practical and even fun, are now either wrong or unethical.

Hilmerson was used to having 25 guys sitting in a construction trailer. Now there's maybe five in the office, all meeting on Zoom. It's a fundamental change in an industry when everyone spends most of their time outdoors.

Hilmerson gives kudos to the construction industry for managing daily changes and communicating changes to 3,000 people. "That's difficult, but occupational health and safety leaders are doing a great job," she said.

### State Work Guidelines

New COVID-related requirements are negatively impacting construction workers' livelihoods, arising from conflicting state rules, according to Victor Tyler who lives in Texas and has worked in many states, including Alaska.

Many professionals rely on applying for and accepting out of state jobs, but not every state has the same rules for hiring out of state workers. Some will do it. Some will not.



Where do you get up to the minute information about this? What if your home state doesn't have any work despite your qualifications and training, but you can't go out of state? Is that right? And states are changing their requirements daily, depending on infection rates. Some require 14-day quarantining for anyone entering from certain higher-infection states. Not many companies can afford to hire an out-of-state crew to hang out on their dime for two weeks.

More and more construction companies are also using third parties to hire workers and oversee temperature checks and COVID screening at job sites. While this practice may be practical, workers are impacted by less than qualified screeners, who may double as job recruiters. Some third parties even place sales people on site to pitch products like hand sanitizer.

## OSHA

OSHA's stance on acquiring and reporting COVID infections on the job site has shifted several times over the past few months. There hasn't been a consistent approach about reporting and recording practices, like the OSHA Form 300, which is used by employers to record all reportable injuries and illnesses that occur in the workplace, where and when they occur, the nature of the case, the name and job title of the employee injured or made sick, and the number of days away from work or on restricted or light duty, if any.

Certainly, OSHA has had to adapt, but should it be up to individual EHS professionals to make judgement calls without OSHA? Is that right?

Also, if someone has to go home, there's no law that requires the employer to pay that employee while he's home. It's not illegal to not pay the employee, but it might be wrong. How does that kind of decision impact employer/employee relations?

"I'm predicting that contractors and others will continue to cite COVID conditions to skirt safety issues in the future. It's a troubling trend, especially since we've seen so much progress in the industry with respect to safety," said Mark Briggs, Safety Management Resources.

## The Stigma of Wearing Masks in Public

Jay Jamali has dealt with Ebola and SARS. With 30+ years of occupational safety consulting experience, sometimes it seems like he's seen it all — until now.

"My family and I went out to Idaho and you'd never imagine the dirty looks we received from people who couldn't believe we were wearing masks," he said. "We went out for pizza, we tried a Chinese restaurant. No one wore masks."

Costco was the only place in Coeur d'Alene that required customers and employees to wear masks. Is that ethical? Is Costco the only place that cares about the safety and health of the public?

There are also tremendous ethical and economic disparities between industries. While many have seen occupational safety up its game during the pandemic, ironically, the healthcare industry in some cases, seems to put the onus for infection control practices on the doctors, as some administrators

are reluctant to spring for masks for doctors — citing expense and availability.

While we're five months into the pandemic, the safety scene is still largely left up to individuals, companies and states. And not all necessarily agree on what's safe. This makes for an ethical mess that may or may not be settled in the courts or further down the road from the federal government.

While many companies strive to "do the right thing," how do you define, "the right thing"? It's a moving target. At this point, OSHA rules. While they may not be enforcing safety standards, and while these standards may change in the coming days, weeks and months, companies and crew need to do everything they can to keep each other safe from infection.

But it will still be up to the individual to make sure that if the state, company, or fellow crew members aren't adhering to prescribed safety protocol, they'll just have to do it themselves. Meanwhile, lives are at stake.

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### About the Author



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***call 503-964-4877.***



## Pandemic Business Ethics

by Brendan Keating, IntegTree, LLC

The year 2020 has been a rollercoaster in many ways, from geo-political drama, stunning stock market swings, civil unrest, presidential primary chaos, murder hornets, and, of course, the COVID-19 Pandemic. There is an art in life of trying to find some kind of good in the bad, and in the case of the pandemic, we do not have to look too far. Beyond an increased focus on the general importance of handwashing, another small fringe benefit of the pandemic is the open societal discussion on the concept and importance of business ethics within the public sphere. From broader social discussions about whether grocery store workers deserve hazard pay, to when retail businesses should be allowed to reopen, large numbers of the public are, often unwittingly, engaging in very practical discussions about 'the right thing' in regards to business conduct. At the same time, businesses are grappling with internal policies in relation to the pandemic, namely how to safely facilitate the return to work.

For many companies, the answer is simply: no time soon. Tech giants like Google and Facebook have amended corporate policies to allow individuals to voluntarily work from home until the summer of 2021, with Facebook even giving workers a stipend to offset costs for at-home office needs<sup>1</sup>. Twitter and Square have also gone down this road, with the CEO of both companies, Jack Dorsey, toying with the idea that his employees may be allowed to work from home in perpetuity<sup>2</sup>. The magnitude of this type of shift cannot be understated, with Google's announcement affecting around 200,000 workers alone, while dozens of other large companies like

Amazon, Microsoft and Paypal are also making significant changes to their remote work policies<sup>3</sup>.

As companies struggle to navigate the health risks their customers and workers are exposed to in relation to the pandemic itself, they may be opening themselves up to considerable organizational risks with such policy changes. Productivity concerns aside, the continuity of organizational climate poses a very real challenge to businesses with remote workers. Broadly speaking, organizational climate could be defined as a perceived feel and affective experience of workers, while organizational culture encompasses the traditions, stated values, beliefs, and so on, of an organization<sup>4</sup>. These concepts are slightly more nuanced and intertwined, but even with such an oversimplification, it is obvious to see how both may be altered in a remote-work environment. Providing a continuity of climate and culture - that is maintaining social connections in a sense - is just as important for organizational health, as it is for individual psychological health. And yet, as companies focus on the practical, logistical elements of remote work, they often ignore these latter concerns - the effects of which may echo for quite some time, especially in relation to the ethical climate of a company where insidious behavior can fester.

### Repercussions

A great many of these issues are difficult enough to grapple with even when it is business as usual, and organizations do have proper policies and procedures in place. Therefore, it is understandable that many companies

feel overwhelmed and unable to address 'fringe' concerns related to fostering and maintaining an ethical business climate, especially when workers are remote, when they have more seemingly pressing concerns on their hands. Unfortunately, concurrently when these lapses in organizational culture and ethical climate are potentially occurring, the economic reality of concerns about unemployment, decreased economic activity, and so on, all apply even more pressure on workers to squint, look the other way, or outright engage in unscrupulous behavior, from which they might normally refrain, but for the unique situations we find ourselves in -- a 'just this once...' kind of mentality. Kickbacks, bribes and other forms of unethical business behavior to secure critical contracts may (wrongly) seem like reasonable courses of action in desperate times, and actors may rationalize their behavior by thinking that these issues can be rectified when things calm down. Workers may even feel pressured to engage in time sheet or billing fraud for their own benefit with an economic downturn. Across the board, there is more pressure and incentive to engage in unethical behavior, there is less oversight for those working remotely, and less overall connection to a firm and its values due to the physical distance between staff -- a perfect storm for wrongdoing.

### Integrity Report Results

The threat of this is very real; Ernst & Young recently released an integrity report, which surveyed business leaders to get a sense of the ethical challenges faced in the pandemic environment. The report found that "90% of respondents believe that disruption, as a result

<sup>1</sup><https://nypost.com/2020/08/07/facebook-to-give-employees-1000-as-wfh-extends-to-july-2021/>

<sup>2</sup><https://www.forbes.com/sites/jackkelly/2020/07/27/google-employees-will-work-from-home-through-next-summer/#1b17c19f3268>

<sup>3</sup>*ibid.*

<sup>4</sup><https://www.oxford-review.com/blog-research-difference-culture-climate/>

<sup>5</sup>[https://www.ey.com/en\\_gl/news/2020/06/global-businesses-divided-on-implications-of-covid-19-crisis-for-company-ethics](https://www.ey.com/en_gl/news/2020/06/global-businesses-divided-on-implications-of-covid-19-crisis-for-company-ethics)

of COVID-19, poses a risk to ethical business conduct”, while a little over a half of board members “have confidence in management teams to demonstrate professional integrity”, but at the same time “only 37% of junior employees share the same sentiment”<sup>5</sup>. The distinction between board members and junior employee sentiment is striking -- those closest to the ground feel less comfortable with their own managers ‘doing the right thing’, which makes

identify deeper employee beliefs and motives, as well as organizational bottlenecks, which could impact the effectiveness of ethics training programs, and by extension your ethical business climate.

3. Finally, **refresher courses and online modules** related to ethical business practices can help reiterate the values your company wishes to reinforce. Particular focus should also be paid to the onboarding process of new

of ethical climate despite the physical distance between staff. And for those more nefarious types that may feel that they can take advantage of the chaos and upheaval of the traditional office environment, you are sending a message that you are watching, even from afar.

As organizations navigate the difficult straits ahead, they would be wise to spend time and effort on fostering, and perpetuating, their ethics program. Well kept gardens, tended day in and day out,



Ninety percent of respondents believe that disruption, as a result of COVID-19, poses a risk to ethical business conduct.

one wonder what behavior or attitudes they are observing that make them so skeptical of the climate? These concerns have not even targeted specifically the challenges faced by remote teams, where the risk of ‘lack of oversight’ moves from merely conceptual, to also a physical problem!

## Preemptive Actions

What can businesses do to address these potential challenges?

1. Taking additional time out of hectic days for webinars or virtual meetings to **discuss the broad cultural values and ethical climate** your organization wishes to foster can be very impactful - think of them like an inoculation against an illness.
2. Additionally, utilizing **psychometric testing** to discern if you have an incipient problem in the attitudes and beliefs of your workers may be worth exploring in some instances, or as a random audit. Psychometric testing is an assessment methodology to

employees, or contract workers, who may bring with them baggage from their prior organization – and who now are working side by side with people they very literally have never met. Ensuring that these employees know the way that your company does business, the expectations and oversight management has, and so on, can all help bring them into the fold of the values by which your organization strives to do business.

4. For long standing employees, **virtual company-wide meetings and events** can help reinforce the feeling of connectedness, while smaller teams can reiterate and reinforce their organizational culture via facilitating remote, safe connections between employees and their supervisors.

In essence, remind workers that they are not alone (even if they are apart), but are still integral, interconnected elements of a larger organization with good values and a proper ethical orientation. This will help organizations maintain a continuity

produce plants that flourish with deep roots. Similarly, businesses that carefully tend to their programs on a regular basis, root their businesses practices in ethical behavior, and so are best situated to weather the storms ahead.

## About the Author



*Brendan M. Keating is president of **IntegTree LLC**, an ethics, compliance and sustainability consulting company. He has worked on ethics and compliance courses for university programs, and has published a variety*

*of works in several fields, including articles in the Society of Corporate Compliance and Ethics' Compliance and Ethics Professional Magazine. He can be reached at [Brendan.Keating@integtree.com](mailto:Brendan.Keating@integtree.com).*





## FEATURE

# Dealing with Ethical Dilemmas in Construction During the COVID-19 Era

*by Patrick Hogan, CEO, Handle.com*

When the COVID-19 pandemic significantly crippled the economy, ethical considerations in the construction sector also took a hit. Closures of ongoing construction projects and the economic uncertainty have put many construction companies on a rocky financial foundation. This financial insecurity, among other reasons, may push construction parties to engage in questionable practices,

if only to keep their companies afloat during the pandemic.

The most common ethical issues in construction include unfair tender negotiations, questionable bidding processes, and late and short payments. These ethical issues are considered to be in the "gray area" between right and wrong, and even though they are perceived to be mostly

undesirable, there are still people who might defend them and say that this is just how business works.

But among these ethical concerns are two key elements: 1) that at least one party tries to make more money at the expense of other participants, and 2) that there are no legal programs or sanctions to regulate such activities. When parties engage in unethical



behavior, those on the lower end of the contracting chain are usually the ones who bear the brunt.

With the ongoing public health crisis, it is imperative that parties, especially subcontractors, stay vigilant and alert against potential unethical malpractices. Let us dive deep into some of the most common ethical issues and how you can navigate around them as the economy continues to reel from the economic devastation brought about by the pandemic.

## 1. Bid shopping

Now that many businesses are out of work, they might resort to bid shopping to secure a project. Bid shopping is when an owner or a contractor “shops” for the lowest bidder by divulging the offers made by the bid participants. By revealing to you the amount that the other parties have offered, they are spurring you on to beat those offers and make a lower bid. They may also do the reverse and disclose your offer to other parties.

This practice is highly questionable, but is not necessarily illegal. It only benefits the “shopper” and puts subcontractors at a great disadvantage. You may be tempted to reduce your offer once you are informed of your competitors’ bids. Unfortunately, there is also no easy way to know if an owner or contractor is divulging your bid to other parties.

However, you may want to consider including a provision in your proposal stating that your bid price may not be disclosed to any third party, and that doing so would automatically make the subcontract binding.

## 2. Overbilling

Overbilling happens when a party bills a payment that is worth more than what is actually accomplished. If, for example, a contractor has finished 20% worth of a project but asked for payment that is worth 30%, that is

overbilling.

Some parties may say that overbilling is acceptable, especially since running a construction business depends on having a continuous cash flow. The “overbill” may therefore be used to purchase materials to be incorporated into the same project. During a pandemic, many contractors may choose to engage in overbilling just so they can augment their dwindling cash flow and also as a financial cushion in case a project closes down.

However, note that while overbilling may be justified depending on whom you talk to, this practice may lead you to run out of money to bill altogether. Running out of billing may happen if you keep “borrowing” money until you have no funds to bill. This issue can lead to further concerns, including late payment to your subs and even failing to deliver on your contract.

You must not lose track of your finances, especially during an ongoing crisis. Take advantage of all the legal protections you’re entitled to--like ensuring you’re filing documents like the **preliminary notice in California** and notices to owner in FL and WA to protect your lien rights--but limit stepping onto the gray areas. Engaging in small ethical gray areas may be tempting in the beginning, but they are always detrimental to your business in the long run.

## 3. Change order abuse

Change orders are a legitimate part of the construction business. When the scope of a project changes or when additional work needs to be done, change orders are issued to reflect these modifications.

An ethical issue typically arises when the change order system is abused during a bidding process. Parties may collude in order to make a lower bid, but once they secure a project, they will ramp up the amount that they can earn through change

orders. Collusions among parties may happen between a project owner and a contractor, and also between a contractor and their subcontractors.

The scarcity of available projects during a pandemic may push parties to abuse the change order system. It doesn’t help that change orders are rarely checked and verified, and there are no systems in place to strictly monitor them, unlike in the bidding process.

However, note that as with any ethical malpractice, abusing the change order system is largely frowned upon and it can cost you your reputation. It may be tempting to collude with a contractor so your business can stay afloat, but dilemmas like this require you to think long-term and make an ethical decision.

## Conclusion

Even though these unethical practices may be common in the industry, there are serious risks that come up when you constantly engage in fraudulent activities. You may end up losing money and also damage your brand and entire business. Not only must you keep away from participating in such activities, but you are also encouraged to be wary of them -- to be mindful when people around you are doing the wrong thing.

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### About the Author:



*Patrick Hogan is the CEO of **Handle.com**, where they build software that helps contractors, subcontractors, and material suppliers with late payments. Handle.com also provides funding for construction businesses in the form of invoice factoring, material supply trade credit, and mechanics lien purchasing.*



# FEATURE

## "Why Don't More People Apply?!" Two Ethics Award Winners Share Their Thoughts

*Interview on ethics with Courtney Little (President and General Counsel, ACE Glass) and Walter Bezan, Jr. (Bezan Painting)*

Now's the time to start thinking and applying for the coveted awards presented annually at the ASA Conference. The deadline for applications for the ethics award is December 6. Best practices award applications are due November 1. Application forms and details for all awards can be found [here](#).

ASA chatted with two past recipients of its annual ethics award. Here's what they said.

**Q: For companies implementing an ethics program, what do you think is the toughest area to get right?**

**Little:** Most contractors try to be ethical. But sometimes it's tough to get it right. It takes constant input from employees as to what issues they're facing day to day. What crosses the line? A lunch here? A trip there? Open memberships? Bid shopping and peddling is definitely an issue. You need to discuss all the gray areas – as to what could be considered an ethical issue. It's important to have discussions and make sure the boundaries are well known throughout the companies. You also need to check in periodically as to what looks suspicious. Is one vendor hanging around a lot? You just have to know why.

**Bezan:** The toughest thing is just sitting down and writing out the program. Most people operate in an ethical manner. There's really nothing hard about it, to be perfectly honest. The whole thing about ethics is how do you act when people aren't watching. It's easy to do the right thing when someone's watching. But what happens when there's no one around to check? When applying for the ASA award, you have to ask a competitor to send in their opinions about you as well. You have no clue what they're going to say.

**Q: Where do you see most companies having to re-do or amend their ethics programs?**

**Little:** We really had no formal ethics program outside of the "DO RIGHT RULE," until we applied for the award. At that point there was a lot of little stuff to clarify as to what's acceptable and what's right. You just have to realize that if a company will do it FOR you, they'll also be willing to do it TO you. Why is a person giving you an inside tip? Is it a thank you, are they trying to grow the relationship, or do they want something more? You have to make sure you're doing the right thing – whether someone's watching or not. You draw a line in the sand and in your heart that you're not going there for any ulterior motive. We all want to get contracts, but when I do a favor for someone, I go out of my way NOT to ask for anything. If they have to say "no" to you next time, will they feel weird? Will you feel weird? That can't be the case.

**Bezan:** If you've been talking about various issues on an ongoing basis, there shouldn't need to be a whole lot of change. We talk about ethics issues weekly. My general superintendent, estimators, project managers, they handle any customer issues. It's part of our regular discussion on Thursday morning. We have a pretty free-flowing discussion and information exchange in our office. If you don't feel good about it, it's probably something you shouldn't do.

**Q: Do you think the current pandemic has changed -or will change - companies' ethics programs? In what way?**

**Little:** Yes. In particular, in enforcing and upholding those ethics. If you're hungry, there are definitely more

temptations. If competitor has dropped their ethics, how do you compete on an unfair playing field? We've had some potential customers contacting us – those that may not pay as fast, and while before we were busy enough to say, no, now, we're willing to look at these tier two customers. Do we bid that work? It's the same thing with ethics. It's so easy to drop some of those lines and cut corners. It will cause stress to change some ethical beliefs to get some of the work done.

Owners and contract architects are pushing the envelope – you have to hold or absorb the cost of added safety measures.

For example, we can't have shared water dispensers any more, so we were creating all of this plastic bottle waste. It was not sustainable. It was also expensive. The workers came up with the solution that we embraced. We gave gallon containers for people to fill at home with water and ice. It's much more sustainable. The workers owned the solution. The team became engaged. COVID PPE is not that bad for us. Yes, there's more time spent – separate drivers, etc. But those are the rules. Workers need to abide by them to stay safe.

**Bezan:** The basics haven't changed, but since more people are working virtually, and you don't have that discussion time in the break room or just chatting, "how would you handle this situation?"...there's just not as much informal conversation to hash things out. From March through mid-May we worked virtually, but since then, we've been back in the office full strength.

What I wish, is that the states and officials would be more ethical in reporting COVID case numbers. The agencies that are reporting the numbers



are just so far behind. The cases drop, then spike, and I've learned it's just due to when they get the test results back, rather than when the test was taken. But each state, county, region is different in how they count the numbers. There's no overall system.

*Q: What do you see as the biggest benefit to having an ethics program at your business?*

**Little:** The biggest benefit is having something formal you can share with others. These subjects come up in conversation with others. Having a written policy gives it more teeth. We've all discussed it – and we can adjust as necessary. If you don't write it down and track it, it doesn't get done most of the time.

Another good thing is having a third-party check and verify it – for example with the ASA award. We sometimes overestimate our actions, so it's good to have a third party verify and compare our program with other companies. It gives it more validity, and shows we care that we're doing it right.

**Bezan:** Having an ethics program gets us all on the same page, thinking the same way. I'm one of seven guys in my office that can go out and get work. Having an ethics program and having everyone thinking the same way, guarantees that we're all doing it the right way. Sure, everyone has their own touch and manner, but the guidelines are there.

*Q: How do you make sure that all employees are aware of your company's ethics standards, and after the onboarding process, how do you keep it top-of-mind?*

**Little:** That's a challenge for everything. Repetition, repetition, repetition. Sales and purchasing see where things come from, who's doing it. You need good accountability. It's also

important to give other companies a chance. If you've been working with one vendor for a while, and a colleague says he knows and trusts a competitor...give them a chance.

During safety meetings – this is when you bring up ethics as well. You've got to make sure you do that right thing when no one's watching just as much as when someone is watching. It's good for the community and builds trust. You've got to be looking out for them and reminding them.

Even if you're dealing with people outside of your company on a job site, you've got to do the right thing. If you see something, say something. You tell them directly, but if they don't change, you've got to report it. The safety of one reflects on the safety of everyone. If a job gets shut down due to a preventable injury, then everyone suffers.

**Bezan:** During our weekly meetings, ethics is treated the same as safety, quality, production, etc. It's just one of the ingredients in the mix. It's kept top of mind that way – just as all the other areas that are vital for a business to succeed.

*Q: What have you had to change – or add to/remove from - your ethics program as it has evolved?*

**Little:** We were fairly comprehensive. The basics haven't changed, but we've had to discuss situational changes due to a new vendor or customer that may do things differently. We'll discuss how to do things right. And of course, new situations will come up where you might need to adjust your initial thoughts.

When figuring out what's the right thing to do, even the possible perception of impropriety – can't be overlooked.

**Bezan:** Our ethics document is fairly short and simple. And it's pretty much stayed the same. We discuss situations at our weekly meetings to hash out any gray areas, but it's all about doing the right thing.

*Q: What business benefits has your ethics program provided your company?*

**Little:** Severalfold – we tell our customers about how we do things. Vendors, customers, employees have a better level of trust with us. Employees stick to us more, and are proud to be part of an organization that is trying to do the right thing. If an employee leaves a company, it's usually because of the company culture. Employees are also more productive if they trust and believe in you.

I also give my employees a high level of accountability. A crew that trusts each other are more open and can discuss something that may have been perceived differently than it was intended. We've been in business 34 years, and we've had a very low turnover because we've treated people right, and asked them to tell us when we're not.

**Bezan:** The way we operate has definitely gotten us business. We have a good reputation, and customers understand that we operate in an ethical manner. Standing alone, it won't get you the job, but it is important. We do an e-newsletter, and I've talked about our program in one of them. Some government contractors want to know if you have an ethics program and have won any awards. I always mention the ASA award.

What I don't understand is why more people don't apply for the award. There are plenty of companies that qualify. While we had an ethics program before we applied, we had to formalize it a bit in order to apply. The whole application process looks daunting, but a little bit over a couple of months, and it's not that hard. It is definitely doable.

Ready to apply? Read the steps on page 21 of this issue, and find the application online at [asaonline.com/awards](https://asaonline.com/awards).

Courtney Little is president and general counsel of **ACE Glass**, in Little Rock and Lowell, AR. Walter Bezan Jr, is president of **Bezan Painting Co.**, based in St. Louis, MO.





## Report on Crane Operator Certification and Safety

The NCCCO Foundation (National Commission for the Certification of Crane Operators) has just published a report compiled from a survey on how employers have been responding to the OSHA requirement to evaluate their crane operators.

The NCCCO initially distributed the survey at the end of 2019. It consists of several questions drawn directly from the November 2018 OSHA crane operator qualification rule, and the NCCCO's goal was to try and gauge how employers were (a) understanding and (b) complying with this "third step" in the crane operator qualification process. The survey has been kept open, and the results of NCCCO's analysis are contained in the report.

We think you'll find the results interesting. The **survey remains open** for anyone who has not completed it yet, as the NCCCO continues to update the results. **Please let your voice be heard.** A quick link to the entire study is here: <https://bit.ly/39rKkiq>

The **NCCCO Foundation** is a 501(c)3 charitable organization formed by the National Commission for the Certification of Crane Operators (NCCCO) in 2018 to promote industry safety by conducting research, educating about-and advocating for-personnel safety and certification, and facilitating access by youth, military personnel, and underserved communities to education, training and certification through scholarships and grants.

# The Devil's in the Details—But That's What You're Good At! Get Recognized for Your Excellence

Are you proud of your company? It's policies and practices? Do you want to show the world that despite COVID-19, you're doing things right? Then apply and be proud to the whole world of your company. Yes, you're busy. But a little each day, and you'll have no problem getting your application in by December 6.

The ASA Certificate of Excellence in Ethics, is not an awards competition, but rather a program recognizing subcontractors for their commitment to ASA values like quality construction and a safe and healthy work environment. Each applicant is required to respond to questions concerning the firm's corporate ethics policies and procedures, its construction practices, and its general business practices. Each applicant also is required to submit detailed documentation, including sealed letters of recommendation from a customer, a competitor, and a supplier.

ASA will honor selected firms that demonstrate the highest standards of internal and external integrity during an awards ceremony at the ASA annual convention, SUBExcel 2021, February 24-27, 2021 in Miramar Beach, Florida.

- Watch the [\*\*Certificate of Excellence in Ethics Video.\*\*](#)
- Download the [\*\*2020 ASA Certificate of Excellence in Ethics Brochure\*\*](#)
- Download the [\*\*2020 ASA Certificate of Excellence in Ethics Application.\*\*](#)
- ASA provides useful model documents to help with your submission and your ethics program. Download the [\*\*2020 ASA Certificate of Excellence in Ethics Resources Guide.\*\*](#)

- Download the [\*\*2020 ASA Certificate of Excellence in Ethics Timeline.\*\*](#)
- [\*\*ASA's Certificate of Excellence in Ethics Program Q&A LinkedIn Group\*\*](#)—a forum for getting answers to your questions about the awards and application process. This forum includes current award recipients who have been through the application process and are willing to help guide new applicants through their application process. (Be sure to log-in to your LinkedIn account first.)
- Recipients of the 2019 ASA Certificate of Excellence in Ethics may re-apply for 2020 using the Recertification Form. Download the [\*\*2020 Recertification Form.\*\*](#)
- Download the [\*\*ASA Model Code of Ethics for a Construction Subcontractor.\*\*](#)

Application deadline: Dec. 6, 2020.

Don't Forget Other ASA Awards:

There are many more awards available through ASA, and more information about all of them can be found by clicking [\*\*here\*\*](#). All award winners will be recognized during the 2021 SUBExcel conference on February 24-27, 2021, in Miramar Beach, Florida. We highly encourage all ASA members to get involved in our awards program. These valuable recognition opportunities are only available to ASA members.







## How Construction Technology Supports an Ethical Culture

by Michelle Turner, Procore

### Technology Today

Construction technology has long been a key factor in businesses becoming more efficient, safer, and profitable. Instead of manually updating information with pen and paper, which can take days, construction technology enables teams to communicate in real time. It allows teams to easily collaborate from anywhere, helping ensure continuity of work between the field and office.

But today's construction teams also have another new, unexpected challenge facing them. When the COVID-19 pandemic hit, the industry had to confront a new reality—one in which remote work was not just a nice-to-have but a necessity. The reality is, implementing technology is no longer simply about faster turnaround times or protecting the bottom line. Today, it's also about keeping employees safe while continuing to ensure projects are able to move forward.

Construction has always been an industry accustomed to frequent changes. But with the pandemic, many teams are now dealing with new, never-before-seen changes that require them to pivot quickly, sometimes within the hour. Relying on slow, manual processes often results in delayed responses, or worse, details slipping through the cracks. Digital solutions, on the other hand, keep employees more accountable, ensure faster resolutions, and help teams maintain quality throughout the project.

What's more, construction technology also helps keep jobsites safe and ethical. With a centralized,

streamlined solution, teams can easily communicate, share and update information, and better understand risks. Plus, this can all happen in real time to ensure resolutions are timely.

Construction is an industry built on trust—and maintaining that trust when it comes to ethical and safety standards is vital to business success.

### Technology and Ethics

Here are three tips on how to leverage construction technology to promote ethics and safety.

#### **Tip 1: Ensure better documentation and accountability.**

Leading construction technology solutions enable teams to easily document project information and assign accountability. Better yet, when teams leverage a platform (as opposed to single point solutions), they are able to consolidate all project information into one centralized solution. Namely, change management tools, field reporting tools, and safety programs are all easily accessible from one place.

#### **Tip 2: Ensure clarity with real-time communication.**

The other benefit of digital solutions, and more specifically platforms, is that they provide a single source of truth for all collaborators. Long gone are the days of outdated drawings on site or wondering where someone placed a hand-written note. Everyone—from the field to the office—has one shared system for the most up-to-date information.

#### **Tip 3: Prevent future incidents with greater visibility and insights.**

With powerful analytics and reporting

tools, teams have greater insight into risks and areas of improvement. This enables them to course-correct before it turns into costly rework. Unlike manual solutions, digital solutions provide greater visibility into project performance across teams and projects, enabling them to better forecast and avoid future missteps.

### Build an Ethics-Based Culture

Ethics and safety go hand in hand. That's why creating a safer workplace starts with building a culture focused on ethics. To do this, construction leaders must transform the way their teams value safety on the jobsite. Providing teams with the tools they need to easily document work, communicate, and predict future outcomes will not only boost your bottom line—it will also lead to a safer, more ethical workplace.

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### About the Author

*Michelle Turner is the product marketing manager for Specialty Contractors at Procore. Over the past two years, Michelle has worked with the Preconstruction product team at Procore but recently pivoted her focus to launch Procore solutions aimed to drive success for Specialty Contractors. Procore is a leading provider of construction management software with a platform that connects every project stakeholder to solutions built specifically for the construction industry. To learn more about Procore and how you can help create a safer, more ethical jobsite, visit [procore.com/asa](https://procore.com/asa).*



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# Complimentary Webinars

SEPTEMBER 15, 2020, 1:00 PM - 2:00 PM ET

## ASA Legislative and Regulatory Update

Presenter: Michael T. Oscar

Michael T. Oscar is a managing partner at Gray and Oscar, LLC, a firm with more than three decades of combined Capitol Hill experience. Prior to this partnership, Mr. Oscar worked in the public sector for twelve years, most recently as senior legislative and political staff to U.S. Sen. Arlen Specter, where he worked for eight years. His tenure as Congressional staff has spanned both Republican and Democratic offices, giving Mr. Oscar a unique set of contacts and networks to access on behalf of his clients.

*Mr. Oscar's diverse political experience began as a Deputy Political Director to Congressman Borski and continued as a policy analyst for Governor Edward Rendell's first gubernatorial race. While serving on Sen. Specter's staff, Mr. Oscar served as his Central Pennsylvania Political Director during his 2004 campaign and continued as his Southeastern Pennsylvania Political Director in his 2010 campaign. Additionally, Mr. Oscar served as Campaign Manager for Congressman Michael Fitzpatrick in 2006. **Register here.***

OCTOBER 13, 2020, 1:00 PM - 2:00 PM ET

## Resources to Recruit the Future Construction Workforce

Presenters: Jessica Gray & Holly Mathis, NCCER

With a shortage of 1 million craft professionals expected by the year 2023, Build Your Future (BYF) aims to be the catalyst for recruitment. It takes a village — to truly solve the workforce shortage, we need to work together. BYF has created resources such as student scholarships, free downloadable recruitment collateral, success videos and more. Join us to find out how you can get involved.

*Jessica Gray is the Marketing Project Manager at NCCER. Her roles at NCCER include managing vendor relationships and organizing annual contests and special projects. She also assisted with launching new NCCER programs such as the testing system, pipeline program and training workshop series.*

*Holly Mathis is from the Build Your Future (BYF) initiative at NCCER. She comes from a recruitment and event planning background and has been working in her current role as the BYF manager since September of 2019. She is very motivated in leading BYF as she works to shift the negative public perception about construction careers and recruit the next generation of craft professionals into the construction industry. **Register here.***

**For all upcoming ASA events, go to [www.asaonline.com](http://www.asaonline.com)**

# Coming Up

in the September 2020  
Issue of ASA's



Theme:

## Cultivating the Next Generation

- Shifting the Business Model to Ensure Future Success
- Future Generations - Attracting and Keeping Trade Workers
- Good News Travels - Update on BeProBeProud Initiative
- And more...

Look for your  
issue in September.

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ASA underwrites the legal costs of filing "friend-of-the-court" briefs to inform the Court regarding the broader impact of relevant cases throughout the country. We have won dozens of these cases since 1997, vindicating subcontractor rights today and into the future!



# **WE NEED YOUR SUPPORT**

## **Funding YOUR Legal Defense**

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Each year, courts across the country hand down hundreds of decisions on federal and state laws, as well as court-made or "case" law, that apply to subcontractors' businesses. Many of the decisions impacting subcontractors interpret the contract provisions of subcontract agreements—provisions like pay-if-paid, hold-harmless, duty-to-defend, and no-damages-for-delay. Some of these decisions are precedent-setting and carry significance for subcontractors across state lines.

ASA's Subcontractors Legal Defense Fund supports ASA's critical legal activities in precedent-setting cases to protect the interests of all subcontractors. ASA taps the SLDF to fund amicus curiae, or "friend-of-the-court," briefs in appellate-level cases that would have a significant impact on subcontractor rights.

From its inception, the SLDF has been involved in many landmark decisions, starting with its first case in 1997, Wm. R. Clarke Corporation v. Safeco Ins., which prohibited pay-if-paid clauses in California.

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