

ETHICAL CONSTRUCTION PROCUREMENT

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ABSTRACT

The development of sustainable relationships grounded in ethical practice is necessary to ensure continued success in the construction industry. In order to achieve this, stakeholders need to shift from a 'low ethics' base to a 'high ethics' base in their business transactions. Ethics and principles should be integrated into every aspect of the construction procurement process as a natural thought process. This research paper focuses on the promotion, management and diffusion of ethical practices in the construction industry identifying ways in which these factors encourage widespread cultural change. This research paper presents a component of a larger research project where the major outcome is the production of an industry wide 'Code of Practice' for the provision of construction services in the whole procurement process. The project findings will foster and promote the sound practice of business ethics, help to initiate new perspectives on the future development of ethical practices and improve organisational efficiency through the adoption of ethical practices.

Keywords: Construction Industry, Ethics, Procurement,

INTRODUCTION

Is there ethics in the construction industry? According to the Royal Commission report (Gyles, 1992) into the building industry, there is a serious lack of ethics by the participants of the industry. Illegal behaviour such as theft, corruption and improper payments is rife in the industry. Vee and Skitmore (2003) indicate that there is still a growing demand for good ethical practice and that any advancement in the construction industry is dependent on the implementation and policing of ethical guidelines and policies of professional bodies, private organizations and public sector procurement agencies.

Ethics is generally defined as:

- I. A system of moral principles, by which human actions and proposals may be judged good or bad, right or wrong;
- II. The rules of conduct recognised in respect of a particular class of human actions (Macquarie Dictionary, 2000)

This paper explores business ethics in the construction industry. The purpose of this study is to assess the perceptions of construction practitioners and clients regarding the ethics of the construction industry. Project participants include senior construction managers throughout the entire supply chain and areas of 'Ethical Risk' to be examined are listed under the following general categories:

- Conflict of Interest
- External Relationships
- Operating Companies
- Customer Relations
- Relations with Suppliers
- Relations with Competitors
- Employee and Workplace

The project data will be used to develop an up-to-date picture of current ethics-related practices and issues in the two main areas of 'Ethical Risk' and 'Managing for Ethical Practice'. A section on 'Managing for Ethical Practice' will invite participants to report on their organization's experience with management initiatives associated with the business ethics such as:

- Mission Statements
- Codes of Ethics
- Role of Ethics Officer
- Upstream Communication
- Confidential Reporting
- Conflict of Interest Policy
- Ethics Process Review
- Ethics Training

The key outcome for the overall research project will be the production of a generic "Code of Practice" for the provision of construction services in the procurement process.

PROJECT DESCRIPTION

As previously mentioned, according to the Royal Commission report in NSW (Gyles, 1992) there is a serious lack of ethics by the participants in the construction industry. To some extent the industry has addressed some of the serious issues such as corruption, collusive tendering and improper payments however, ethics in the context

of a 'set moral principles' to help guide action has as yet not been incorporated into the procurement process.

The central question to be examined is "do the business entities procuring construction and the suppliers of construction services reach mutual agreements with regards to what is ethical and fair exchange?" Other issues to be examined are captured by the following statements:

- Ethics are not superimposed on business. Business is itself an ethics, defined by ethics, made possible by ethics (Solomon, 1994).
- Kidder and Lloyd (1997) suggest that we are raising an entire generation of people without their own built-in sense of ethics, in today's fast paced, high pressure, high technology society.
- The Ethics Officer Association and the American Society of Chartered Life Underwriters and Chartered Financial Consultants sponsored the survey of 1324 randomly selected workers, managers, and executives in multiple industries, including construction. The study revealed that 56 percent of workers feel some pressure to act unethically or illegally on the job. The same study found that more than 60 percent of workers feel more pressure than 5 years ago and 40 percent feel greater pressure than a year ago.
- Despite more than two decades of intense media scrutiny, public pressure, academic research and corporate ethics programs designed to teach values and integrity, the business world seems unable to curb unethical behaviour or improve its own image (Greengard, 1997).
- The construction industry is by no means immune from the trend in ethical erosion. Combine this pressure with a workforce full of ethical confusion, mixed messages, razor-thin profit margins, and cutthroat competition and it is not difficult to see why the problem seems so prevalent and has been under investigation by two Royal Commissions in Australia.

The project fits within the Cooperative Research Centre (CRC) for Construction Innovation research program A, 'Business and Industry Development'. This study will provide the CRC with an opportunity to publish evidence that greater attention to adopting higher ethical standards of behaviour is an effective way of improving business performance. Further, the CRC will publish a 'Code of Practice' to enable companies and individuals to demonstrate their reliability as partners with common demonstrable ethical standards.

BACKGROUND

According to Cole (2003 p.3) "The building and construction industry is critical to welfare and prosperity in Australia. The total production of the industry in 2001-2002 was \$59.7 billion. In 2001-02 it directly accounted for 5.5 per cent of Australia's gross domestic product, and 7.5 per cent of employment. Indirectly it has a much greater impact. Every Australian business, and every Australian citizen, uses the built environment". As major clients of the industry Governments are providing leadership

in effecting major improvements in the way business is conducted, encouraging changes in industry production processes to raise productivity, and other actions that will help develop an industry which achieves internationally-competitive standards. (Australian Procurement and Construction Council Inc. and the Department of Labour Advisory Committee, 1997) By developing codes of practice, Governments can develop and encourage ethical behaviour in the procurement process.

In construction, inter-organisational relationships are of the highest importance and the ability to build sustainable relationships grounded in ethical practice is necessary. To achieve these sustainable relationships parties need to develop from a low trust/low ethics base to a high trust/high ethics base in their business transactions.

The global Construction Industry recognises that improving its ethical performance is important (Gyles, 1992; Latham, 1994; Egan, 1998; and Cole, 2003). These are simply the latest of a number of governmental reports highlighting the need to improve the way in which the industry companies and individuals relate to each other. Studies such as this are necessary for the improvement of the ethical standards in the industry.

The industry is eschewing competition in favour of some form of co-operative behaviour, either in response to their own business or ethical drives, or in response to client or government encouragement (Wood and McDermott, 1999). The pull from clients and the push from government for the construction industry to undertake radical cultural change culminating in ethical relationships are of the highest priority (Walker, Hampson and Peters 2000). New relationships must be forged, often from positions of some scepticism and tension, based on reciprocity and solidarity: a move from competition to cooperation. Trust and ethics are key components of any such new architecture of networks, relationships and communication, (Anderson and Narus, 1990; Morgan and Hunt, 1994).

AUSTRALIAN CONSTRUCTION INDUSTRY CODES OF PRACTICE

National Code of Practice for the Construction Industry (NCOP)

In 1997 the Australian Procurement and Construction Council Inc. (APCC) and the Department of Labour Advisory Committee (DOLAC) formulated then published the NCOP. This code set out eight national principles concerning future practices in the construction industry for the client and tenderer. They can be summarised as:

- Clients rights and responsibilities
- Relationships
- Competitive behaviour
- Continuous improvement and best practice
- Workplace reform
- Occupation Health, Safety and Rehabilitation (OHS&R)
- Industrial Relations and Workplace Reform

- Security of Payment (APCC and DOLAC, 1997)

Having outlined eight core principles for the construction industry in the NCOP, the APCC expanded on each principle. The principle concerning ethical tendering was outlined in the principle of competitive behaviour. Competitive behaviour provides the potential for unethical practices to occur, whether it is in the tendering or construction phase of the project. The NCOP set out nine key ethical principles to ensure ethical behaviour occurred at all stages of the project by all parties. They are:

- All aspects of the tendering process must be conducted with honesty and fairness at all levels of the industry
- Parties must conform to all legal obligations
- Parties must not engage in any practice which gives one party an improper advantage over another
- Tenderers must not engage in any form of collusive practice and must be prepared to attest to their probity
- Conditions of tendering must be the same for each tenderer on any particular project
- Clients must clearly specify their requirements in the tender documents and indicate criteria for evaluation
- Evaluation of tenders must be based on the conditions of tendering and selection criteria defined in the tender documents
- Confidentiality of all information provided in the course of tendering must be preserved
- Any party with a conflict of interest must declare that interest as soon as the conflict is known to that party (APCC and DOLAC, 1997, p.4)

Collusion can involve many forms of improper practices. The NCOP outlined some prohibited practices. They include:

- An agreement between tenderers as to who should be the successful tenderer
- Meetings of tenderers to discuss tenders prior to the submission of the tenders if the client is not present
- Exchange of information between tenderers for the payment of money or the securing of reward or benefit for unsuccessful tenderers by the successful tenderer
- Agreements between tenderers to fix prices or conditions of contract (this means any collaboration between tenderers on prices or conditions to be included in contracts or commissions without the consent of the client)
- Assistance to any tenderer to submit a cover tender (that is, a tender submitted as genuine but which has been deliberately priced in order not to win the contract or commission)
- Agreement between tenderers prior to submission of tenders to fix the rate of payment of employer or industry association fees where the payment of such fees is conditional upon the tenderer being awarded the contract or commission (APCC and DOLAC, 1997, pp4-5)

The Commonwealth, State and Territory Governments developed the NCOP. The Commonwealth Government requires all parties working on government projects to comply with its ethical principles. The various State and Territory governments agreed to use the code as a minimum requirement with latitude to add to the compliance requirements relevant to that specific State or Territory

New South Wales

The NSW Government extensively sets out the requirements of clients and tenderers in doing business with the government. They have published the:

- Code of Practice for the Construction Industry [NSWCOP] (NSW Government, 1996a)
- Code of Tendering for the Construction Industry [NSWCOT] (NSW Government, 1996b)
- Implementation Guidelines for the Code of Practice and Code of Tendering
- which expands on key aspects of the NSW Government's Code of Practice and Code of Tendering for the Construction Industry with the objectives of ensuring uniform implementation.' (NSW Government, 1996c)
- Capital Project Procurement Manual, 1993

The principles set down in the NSWCOP are the same as those in the NCOP. The ethical principles in the NSWCOT contain the same nine principles as well as the principle 'parties must not seek or submit tenders without a firm intention to proceed'. (New South Wales, Construction Policy Steering Committee, 1996)

Victoria

The Victorian Government has published the Code of Practice for the Construction and Building Industry (VCOP). 'The Victorian Government supports the national approach for the development of the construction industry. This has been reflected in its endorsement of the NCOP (Department of Infrastructure, 1999, p.3). The publication contains a section called the Selection of Contractors. This section contains six subsections and within three of these subsections: General principles; Obligations of clients; and Obligations of contractors, without defining them as ethical principles, the nine ethical principles set out in the NCOP can be found. A principle not contained in the NCOP is 'to have regard to the cost of tendering and seek to constrain such cost' (Department of Infrastructure, 1999, p.19)

Queensland

The Queensland Government published the QLD Code of Practice for the Building and Construction Industry (QCOP) in August 2000. The publication contained a section called Tendering Ethics. The ethical principles outlined in the section are based on the Australian Standard Code of Tendering (AS 4120 – 1994). The QCOP makes no reference to the NCOP. The ethical principles outlined in the QCOP contain

all the ethical principles outlined in the NCOP except 'parties must not engage in any practice which gives one party an improper advantage over another' (APCC and DOLAC, 1997, p.4) The QCOP contains the following ethical principles not contained in the NCOP:

- The Principal shall have regard to the cost of tendering and the number of tenderers, recognising that the cost of tendering is a significant industry overhead;
- Tenderers shall only tender when they intend to carry out the work;
- The Principal shall call for tenders only after the Principal has arranged funding for the project and has made a firm commitment to continue with the project.

When documents are altered, sufficient time shall be allowed for all tenderers to review and revise their tenders' (Queensland Government, 2000, pp.9-10).

RESEARCH OBJECTIVES

The aim of this research is to address the issues outlined above. This research will focus on the promotion, management and diffusion of ethical practices in the construction industry and identify ways in which these factors could encourage widespread cultural change. This will require a comprehensive examination of the construction culture and the development of a set of benchmarks against which the ethical performance of the construction industry participants can be gauged.

This investigation is divided into three areas, namely a pilot study (local industry workshop), a literature review and, using these two elements as a foundation, an extensive industry partner based set of national workshops from which a series of benchmarks can be generated. The national workshops will compare a range of organisations from the construction industry

The general proposition, this research will test, is that there are a number of significant differences between the culture in regard to ethical performance of individuals and firms in the construction sector specifically in terms of the organisational make-up, the use of codes of practice and a range of ambience and situational characteristics including organisational focus. Further, it is argued that the organisational objective of cost efficiency is far more dominant in the construction sector than ethical behaviour. The research findings emanating from the pilot study and the literature review will also be used together with the industry survey to develop a framework for cultural change.

The reference points for this work will consider (but are not limited to) the following cultural attributes associated with a more conducive environment for construction innovation:

- flexible management structure grounded on ethics;

- organisational structure promoting ethical behaviour;
- managerial commitment to ethics;
- diverse human resource profile;
- system of communication utilising ethical practices;
- identifiable, open and dynamic culture;
- system of setting of cost performance goals and a system of cost management that promotes business ethics and innovation; and
- strategic relationships with clients, financiers, suppliers and subcontractors founded on business ethics.

RESEARCH AIMS

The ultimate aim of this research is to present a strategic model of requisite organisational and managerial changes necessary for the generation of a business ethics culture in the construction industry. This model can then be used as the basis of recommendations for the development of a culture more conducive to innovation in the construction industry.

Specifically it is envisaged that this research will aid the construction industry's efforts to improve its overall performance and image by suggesting ways in which it could:

- Adopt more long term industrial strategies utilising trust and ethics and focus less on uncontrolled variables such as market forces;
- Develop an 'innovation culture' underpinned by the adoption of corporate objectives such as continual process improvement, improved productivity and flexibility at the management level;
- Establish a strong national centre to obtain and diffuse technological intelligence, innovation and inventions to the industry at large and;
- Establish new thresholds of performance to a point where the industry continually redefines itself against moving norms.

STRATEGIES EMPLOYED TO MEET OBJECTIVES

Pursuing the research objectives will require an examination of the issues relating to the existing culture. The following issues will be investigated:

- What is regarded as ethical practice in the industry, and what is the current level of ethics awareness in construction companies?
- Does the current internal environment which includes factors such as low capital intensity, rigid contractual frameworks, varying procurement strategies and risk aversion limit the capability of construction companies to achieve a realistic level of ethical performance?
- What are the mechanisms, forces or work practices that encourage unethical behaviour in the construction procurement process?

- Do the current external environmental factors such as market uncertainty and fluctuations in the level of finance prevent the industry from developing a mature culture founded on ethical practice?
- What mechanisms are in place for the diffusion of ethical processes and practices and are they adequate?

ORGANISATIONAL NEEDS

The CRC industry participants have identified that to retain a competitive position they need to maximise the value of the people who work for them by providing a sound platform of business ethics. Everyone from management to operators need to develop ethical approaches in their allocated tasks and also seek out ways to improve all aspects of their business operation.

Changing the way the construction and related industries operate involves challenging accepted ways of thinking and behaving across the industry.

Although concepts such as collaboration, team building and partnering are gaining acceptance in the industry there is a need to increase the momentum. In attempting to bring about change, the established culture must be challenged on a number of fronts. Few companies have in-house team building training, interpersonal skills development or project management courses and ethics training, relying on learning on the job training.

MARKET INDUSTRY ANALYSIS

The construction and related industries cannot afford to focus exclusively on cost effectiveness, planning and control in their search for competitive advantage. There is an urgent need for change in the perception of the role of people in industry projects and of the importance of developing effective working relationships, promoting on-going learning and encouraging the development of a climate of innovation based on trust and ethical behaviour. It is a risky business to invest resources in ambiguous areas using strategies whose results cannot easily be measured, but organisations that underestimate the importance of starting this process will be left behind in the change process. And despite the fact that there is no simple approach to suit all and miraculously turn unethical business practices around, there are general principles and tools that can be developed and used to good effect, it is these that we wish to discover.

The expected outcome for this project is for industry participants to understand the sound practice of business ethics with organisations developing new perspectives on future development. A further outcome is a better understanding of the business ethics of all of the other organizations in the supply chain and groups such as owners, suppliers, governments, and customers.

KEY ASSUMPTIONS AND EXCLUSIONS

Ethics has never been a clear-cut issue in the business environment. There have been many attempts in the last two decades to curb ethical transgressions. The number of firms with ethics training programs has increased from 7 percent to 40 percent in 1994 in the United States. Companies with ethics codes have swelled from 13 percent to 73 percent during the same period in the United States (Greengard, 1997).

As individuals make decisions and are the ones to take actions, it is the individuals who possess the ability to change the ethical environments in companies. Individuals are the ones who must be grounded in ethics. The project will design a Code and provide case studies of good and bad ethics so as to educate and guide the individual on 'ethical protocol'.

An ethical industry environment makes a difference in measurable terms, influencing quality, time, costs, and long-term business dealings, and is the major area offering productivity increases in future.

Increased focus on ethics in the construction procurement process translates into:

- Increased innovation
- Quicker identification and resolution of problems (and potential problems) before they become costly (people talk, are prepared to acknowledge when things not working, work together to solve them rather than putting energy into apportioning blame and litigation.)
- Reduction of conflict - problems between stakeholders are inevitable, but can be nipped in the bud.
- Better outcomes for all - commitment to working together to make project a success.
- Includes the best return possible for all involved, challenges the 'screw everyone you can to get the lowest possible price' approach - potential to deliver higher quality for the price, more innovative strategies to achieve goals.

RESOURCES

It is felt that with the topic being the subject of two Royal Commissions then it is of sufficient importance to warrant significant industry interest and support.

Participants directly involve in the project include:

Industry partners

- Rider Hunt

- John Holland
- QLD Department of Public works
- VIC Building Commission

Research partners

- University of Newcastle
- Queensland University of Technology

CONCLUSION

This study attempts to identify the gap between typical and ethical behaviour and determine whether there is a need to take a proactive approach to ethics education in the industry particularly in the procurement process. By addressing the "real" concerns of the industry and discussing the implications of certain ethical behaviours to all parties involved and to the industry as a whole, it is hoped that we influence the client decision making process. Ethics and principles should be integrated into every aspect of the construction procurement process as a natural thought process. In other words, ethics should be involved in the decision making process automatically and shown to be an issue of personal and professional accountability. The emphasis in instruction should be on developing individual ethical thinking processes rather than on presenting answers to ethical issues or listing rules for behaviour.

The major outcome is the production of a "Code of Practice" for the provision of construction services in the procurement process incorporating training courses for industry clients. The courses will focus on individual accountability and understanding individual principles and ethics as they relate to success in business and the concept of teams involved in the procurement process.

If construction clients are interested in closing the gap between ethical and typical behaviour then they need to make known their concerns about the issue and lead the industry. Since it is the client who initiates the tender process and selects the tenderer they maintain a great deal of authority on a project. Likewise construction companies and their trade contractors possess a degree of authority and they need to increase their efforts to make aware and promote ethical conduct and decision-making at all levels. Top executives need to set standards and model ethical behaviour for their companies, and encourage open communication and discussion regarding ethical concerns. A real effort must be made by the construction leadership to clarify the ethical parameters within which all parties associated with the construction project are to operate.

The Commonwealth, State and Territory Governments are major clients of the construction industry. By adopting a common Code of Practice for the industry participants and requiring compliance with the principles set out in the Code would go a long way to achieving the Code's objectives. This investigation of the ethical principles required in the procurement process, set out in the Codes of the

Commonwealth, State and Territory Governments, shows commonality between the Government Codes. Using the NCOP as a base to work off, some of the State Governments go further in defining ethical principles to comply with. By adopting the NCOP as a template to work from, achieving ethical practices in the procurement of construction projects is enhanced if compliance is enforced.

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REFERENCES

- Anderson J.C. and Narus, J.A. (1991) Partnering as a Focused Market Strategy, *California Management Review*, Spring, pp.95-113.
- Australian Procurement and Construction Council Inc and Department of Labour Advisory Committee, 1997, National Code of Practice for the Construction Industry, http://www.apcc.gov.au/docs/code_of_practice.pdf
- Cole, T.R.H. (2003), Final Report of the Royal Commission into the Building and Construction Industry. Volume One, February, Summary of Findings and Recommendations, http://www.royalcombc.gov.au/docs/finalreport/V01Summary_PressFinal.pdf
- Egan, J. (1998) Rethinking Construction, Department of Trade and Industry, UK.
- Greengard, S. (1997), Cheating and stealing. *Workforce*, October, 1997 pp. 46-53.
- Gyles, R. (1992) Royal Commission into Productivity in the Building Industry, NSW Government.
- Kidder, R.M., and Lloyd, B. (1997), Ethics for the new millennium. *Leadership and Organizational Development Journal*. 18 (3), 145-148.
- Latham, M. (1994) Constructing the Team: Final Report of the Government/Industry Review of Procurement and Contractual Arrangements in the UK Construction Industry. HMSO.
- Morgan, R.M and Hunt, S.D. (1994) The Commitment-Trust Theory of Relationship Marketing, *Journal of Marketing*, Vol. 58, July, pp.20-38.
- New South Wales Government (1993) Capital Project Procurement Manual, Construction Policy Steering Committee.

New South Wales Government (1996a), July 1996, Code of Practice for the Construction Industry, Construction Policy Steering Committee, <http://www.construction.nsw.gov.au/docs/codes/cprac.pdf>

New South Wales Government (1996b), Code of Tendering for the Construction Industry, Construction Policy Steering Committee, July 1996, <http://www.construction.nsw.gov.au/docs/codes/ctend.pdf>

New South Wales Government (1996c), Implementation Guidelines for the Code of Practice and Code of Tendering, Construction Policy Steering Committee, July 1996, <http://www.construction.nsw.gov.au/docs/codes/impguide.pdf>

Queensland Government (2000), Queensland Code of Practice for the Building and Construction Industry, <http://www.ir.qld.gov.au/publications/b&cocodeofpractice.pdf>

Solomon, R.C. (1994). *The New World of Business: Ethics and Free Enterprise in the Global 1990's*. Littlefield Adams.

Wood, G. and McDermott, P. (1999) Searching for Trust in the UK Construction Industry: An Interim View. In Ogunlana, S. (Ed), *Profitable Partnering in Construction Procurement*, CIBW92, E and F.N. Spon, London, UK, pp. 107-116, ISBN 0-419-24760-2.

Walker, D.H.T., Hampson, K. and Peters, R. (2000) *Relationship Based Procurement Strategies for the 21st Century*. AusInfo, Canberra.

Victorian Government (1999) Code of Practice for the Building and Construction Industry, Department of Infrastructure, http://www.buildingcommission.com.au/asset/1/upload/Code_of_Practice_Building.pdf