

## **Bid Listing of Subcontractor Scrutinized (Transcript of a presentation)** ([Back to Table of Contents](#))

There are 1.3 million of us (contractors) and the least of our problems is that we don't get along. The real problem is we don't even try to get along. We are one industry, subcontractors, GCs, vendors, etc. and if projects don't run smoothly, we all suffer.

We are not going to solve bid listing here, but a first step is to consider the impact of any of our actions on the whole. If we all look out for ourselves without concern for the efficiency of the entire construction process it will backfire in the long run.

The bid shopping issues has been around for as long as any of us can remember, but is an issue that has never been defined, let alone actually addressed and if we can't define it we can't solve it.

Let's relax a minute and do a little role playing. You are the owner of this project. You are a large private organization that offers entertainment in a park-like setting. You are expanding and have gone out for bid for a small, but complicated building project on your site which has a critical schedule. The bids have come in--not a public opening, just you.

This was in the worst of the recent downturn and you received 25 bids. There are six bids around \$3 million; a cluster around \$6 million; and about six around \$9 million. Which do you choose? Better yet, what do you think is the correct price for this project? Is it a 3 mil, 6 mil or 9 mil project?

The director, building committee and designer were baffled. Why? Why didn't they just take the low bid and move on? You need to decide—in this exercise you are the owner. And it is not unlikely that where you live you could be on the building committee.

This is a local non-profit who asks successful business-people like yourselves to serve on their boards and some of you are already serving in those capacities so you understand that you need to make a recommendation.

For those of you who will award it to the low bidder, your work is done—you can relax. For any of us that have concerns about these bid spreads and are not ready to make a decision just yet, what are you going to do? Would you wonder if some made a mistake? What could cause this illogical bid spread?

Do you want additional information? Do you think you need additional information to make an informed decision in your professional role as director or building committee member. Some might say you have a fiduciary responsibility to gather more information.

What would you ask? Do you need more detail? Would you want to know if the several low bidders have included the entire scope of the project? Would you ask about their schedule or how they plan to deliver on time?

The real question for us today is if you make any inquires at all, are you bid shopping? Unless every one of us in this room would immediately award this project to the low bidder than we reinforce what the reality that there is no industry-wide, agreed upon definition of bid shopping.

We are here to discuss bid listing of subcontractors for the purpose of preventing an undefined activity.

Most of us do agree on the definition of bid listing and most also acknowledge that bid listing affects selection and management processes industry wide. There are admittedly pros and cons to bid listing, however identifying them is putting the cart before the horse.

Let's agree on what we are trying to prevent; before we launch the preventer. That would be too much like what the government sometimes does: put regulations in place looking for a problem to correct.

These topics: bid shopping and bid listing, have been studied to death. Noe one has more money to invest in studies than the federal government so look at their latest investment in these issues. My guess is just counting the pages is they spent \$10 million or more so we should at least give it a few minutes.

GAO-Government Accounting Office, January 2015 Report addressing subcontractor selection.

First page-*Why GAO did this study: Subcontractors have alleged that bid shopping leads to poor quality construction.* Now it is my understanding that we don't want to shopped and we don't want to be asked to lower our price, but when we through in that it leads to poor quality of construction it waters down the argument.

It may even be true, but in my research for this presentation I could not fine one subcontractor that said bid shopping leads to poor quality and when I suggested it, the answer was no—that's not an issue.

The opening line of the report under the heading: *What GAO Found* says: *GAO was not able to determine if bid shopping occurs or does not occur..., but found that the selection process could lead to subcontractors' perception of bid shopping.*

*...officials of [the] agencies reviewed stated they were not aware of bid shopping occurring on their contracts... [and] contractors said [it] occurs, but could not furnish evidence of specific instances.*

*Past analyses found it adversely affects the timeliness and cost of contract performance and increases the government's administrative expenses.*

On page 7 in a section heading: *No Conclusive Evidence on the Use of Bid Shopping on Federal Construction Projects:* is says: *Our discussion with prime and subcontractors indicates that some subcontractors may have a perception of bid shopping...*

In a section addressing evidence it says: *Most of the subcontractors stated that they had not experienced [bid shopping] for themselves. Almost all of the prime contractors and subcontractors...told us that [bid shopping] would alienate subcontractors, and a few added that prime contractors would eventually not be able to find subcontractors willing to work with them.*

On page 8 there is a section heading: *Subcontractor Buyout Process May Create Impression of Bid Shopping: Several...subcontractors...stated that a subcontractor may erroneously believe that its bid is being bid shopped, when in fact negotiation is part of the normal buyout process.*

On page 18 the report continues: *GSA testified in 2000 that bid listing would create more harm than benefit and strongly opposed bid-listing...*

The report covers state bid listing indicting: *...one state reviews bids from subcontractors and then tells the prime contractor which subcontractor to include in its proposal to the state rather than the prime contractor selecting its own subcontractors.* To the extent any of us here agree with that we are, in effect, saying it is alright with us if the GC tells us which suppliers and subcontractors we can use.

As far as state regulations go states that: *GSA dropped bid listing in early 1980s and one of the 12 states is now considering dropping it.*

The report ends with: *...we are making no recommendations.*

The report addresses last minute bids from subs and suppliers, mentions chaotic proposal preparation efforts, scope, schedule, financial and practical capability so no need to go into what we all already know.

We need to be careful of the remedies we suggest. They need to improve our entire industry, our working relationships and business practices. Piecemeal, stopgap regulations may backfire on us and most have as much chance of doing harm as doing good.

The issue of listing subcontractors has been around for a long time. There are pros and cons on both sides. The question is: "Does it do any good. Does it serve any purpose? GCs don't like it because there is never enough time to prequalify subs they don't know who submit bids they did not expect. And impossible to check scope and exclusions when most of the subcontractor bids come in two hours before the proposal is due.

It is fair to say that it's not our problem, but before we do; let's consider how frustrated we get when some government regulation complicates our business without doing any apparent good. If there is a solution to bid shopping is this it?

When you buy a car have you paid the first price quoted? Have you ever bought a car before checking the price with more than one dealer or source? Do you buy a car without asking what accessories are included?

Have you ever asked a material supplier if delivery was included or if the price was picked up from their warehouse? Do you ask your window subcontractor if they have everything in their bid? Have you ever cut a deal to use a contractor's crane, hoists, personnel elevators, access, clean up, trash removal? List them and then find out they have safety issues.

One GC I know has already had five subcontractor defaults this year.

Rules don't make dishonest people honest.

On design build need to show all bids to owner. Does the owner of a project have the right to choose? Ever not bought a car from a dealer because you had bad service from them? Do you have the right to choose who you buy from? Ever select a supplier because they give you good service or because you trust them. Have you ever offered the work to one sub or supplier? Have you the right to do that? Do we agree that the lowest price should get the job period?

Has anyone in the room ever given a different price to different GCs? Have you ever asked who of the GC's people will be running the project?

How to you screen phone bids? You have no idea if scope is complete.

Bid listing as it is currently used is totally inequitable and one sided. The GC is required to name the sub and then use them, but the sub can back out of the bid without penalty.

Other issues to consider: Long lead items and special materials; It takes weeks to buy out a job; Bid listing may impacts the GCs ability to manage the project.