

## Subcontractor Bid Listing

### Exploring Subcontractor Bid Listing ([Back to Table of Contents](#))

#### Introduction

The issue of listing subcontractors has been around for a long time and while there are pros and cons, the big question is: “Does it do any good? Does it serve a purpose?” Its origin is that bid listing was proposed to stop bid shopping, something that in itself is controversial. While the term “bid-shopping” has also been around for a long time, we don’t seem to be able to identify it clearly. There is no industry-wide accepted definition. If we can’t define it, we can’t solve it. Therefore, it might be fair to say that bid listing is proposed to prevent an undefined activity.

There seems to be general (if not universal) agreement on the definition of “bid listing” as: the prime contractor being required to list in their bid proposal the major subcontractors that will be engaged to perform the work. We should all understand that this has a substantial impact on prime contractors’ subcontractor selection and management processes. This should concern all construction professionals because it is a step in the direction of having those who define the work we will be doing (owners and designers) telling us “HOW” to do it. Owners and designers should be concerned about it because if they tell us “what to do and how to do it”, it has the potential to confuse the issues of who is liable for the results. There are admittedly pros and cons to bid listing, however, attempting to identify them may be putting the cart before the horse. We should probably agree on what we are trying to prevent before we launch the preventer. Otherwise we may end up with a solution looking for a problem to correct.

In exploring this topic it may be helpful to review prior inquiries into the subject. Bid listing and bid shopping have been addressed by the federal government numerous times over the years; most recently in a January 2015 Government Accounting Office (GAO) report which states: *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.*

The report continues: *Our discussion with prime and subcontractors indicates that some subcontractors may have a perception of bid shopping...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.*

In a section of the report headed: *Subcontractor Buyout Process May Create Impression of Bid Shopping*, it says: *...a subcontractor may erroneously believe that its bid is being bid shopped, when in fact negotiation is part of the normal buyout process.* The report also states that the General Services Administration (GSA) testified in 2000 that bid listing would create more harm than benefit and strongly opposed bid-listing...GSA dropped bid listing in early 1980s and one of

*the 12 states that has bid listing in now considering dropping it. The report ends with: ...we are making no recommendations.*

It is prudent to be cautious of remedies suggested to correct industry problems that invite third parties into our business decisions and that impact the working relationships between prime and subcontractors which may influence other business practices. Stopgap regulations have the potential to do as much harm as good. It may be well to remember how frustrated all of us get when a government regulation complicates our businesses without doing any apparent good. If there is a solution to bid shopping, is bid listing it?

We are not going to settle the question here, but a first step may be to consider the impact of our actions on the construction industry as a whole.