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Ethical behaviour in the South African construction industry

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An opinion survey of South African architects, quantity surveyors, engineers and contractors regarding ethical behaviour within the construction industry reveals that South African contractors seem to possess a reputation for unethical conduct. The range of problems encountered includes collusion, bribery, negligence, fraud, dishonesty and unfair practices. While bribery in the form of payments and gifts is prevalent, fraud does not appear to be as serious a problem. Most construction professionals believe that the industry suffers from unfair tendering practices, as well as over-claiming and/or withholding payment for service delivery. Negligence arises mainly from poor documentation and poor workmanship. Incidents of collusive tendering encompass cover pricing and bid cutting by contractors, while the primary form of fraudulent behaviour is deceit and misinformation. The Organisation for Economic Co-operation and Development's bribery codes conditions could be used to counter unethical behaviour in the construction industry.

Keywords: Corruption, codes of conduct, professional ethics, business ethics, South Africa

Introduction

According to Donaldson (2001), ethical practices that promote economic efficiency include respect for intellectual property, engaging in fairer competition, avoiding monopolies, avoiding nepotism and crony capitalism, not abusing government relationships, providing accurate information to the market, avoiding bribery, respect for the environment, and honouring contracts, promises and other commitments. Transparency International (2005) has shown how corruption can add up to 25% to the cost of public contracting, generating waste of public resources, missed development opportunities, an unstable environment for businesses, and therefore increasing poverty. According to this report, the scale of corruption is greater in construction than in any other sector of the economy. The factors that make the construction sector prone to unethical behaviour include fierce

competition for contracts; the numerous levels of bureaucracy for obtaining official approvals and permits; the uniqueness of many projects rendering it difficult to compare pricing; the opportunities for delays and overruns; and the fact that the quality of much work is rapidly concealed by concrete, plaster and cladding (Transparency International, 2005).

The conduct and practices of the professionals engaged in the South African construction industry are largely governed by the guidelines provided by the respective professional bodies and the South African Council for the Built Environment (CBE, 2000).

The basic principles of ethical behaviour are reflected in the South African *Code of Conduct for Persons in Positions of Responsibility* (South Africa, 2005). This voluntary code of behaviour encourages persons in positions of responsibility to act with integrity, to promote democracy and justice, to be incorruptible, to act impartially, to be transparent and to be accountable. Given the pace of changes occurring in the construction industry (e.g. use of automation, public-private partnerships, a sustainability agenda, etc.),

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coupled with greater demands for professional responsibility from construction clients, more stringent ethical challenges are now placed on the parties involved in construction.

The aim of the research informing this paper is to determine the degree to which South African construction professionals practise ethical behaviour. An opinion survey was adopted as the primary data collection method, using a survey instrument based upon that of Vee and Skitmore (2003) in Australia. The paper comprises a short background review of ethics and the construction industry, followed by the analysis and interpretation of the primary data from the opinion survey.

Ethics and the construction industry

Ethics has been defined as 'a set of moral principles'—governing the conduct for an individual or group (Allen, 1990, p. 401). Morals are 'concerned with goodness or badness of human character or behaviour', or 'with the distinction between right and wrong', or 'concerned with accepted rules and standards of human behaviour' (Allen, 1990, p. 769). However, ethics is not just about recognizing an objective good. It comprises a study of thought, language, reasoning, processes and judgement that informs the choices people make in their daily lives that affect their own well-being and that of others (Wasserman, 2000).

It is now commonly recognized that the general concepts of ethics are applicable in business, on the grounds that businesses exist not solely for the benefit of certain individuals, but because business serves society in general, and in addition, meets collective and individual needs (Vee and Skitmore, 2003).

Decision making is a fundamental component of most business management processes, entailing a process of stating the problem, analysing the issues, identifying possible courses of action, deciding on the best alternative, and then implementing the chosen 'solution'. Many decisions facing management turn out to be ethical decisions or to have ethical implications or consequences. According to Carroll (1996), four important points are pertinent to the character and nature of ethics and decision making, namely, that most ethical decisions have extended consequences, (i.e. multiple alternatives), mixed outcomes, uncertain consequences and personal implications.

Ho and Ng (2003) assert that, as a person's judgement is in essence a reflection of their true beliefs and values, the image of the organization is in reality a reflection of the value systems reflected by individual organizational members. Carroll (1996) proposes that the system of ethical business decision making should entail considerations such as: the contemplated action, behaviour or decision; norms or standards for comparison; and the guiding principles of business ethics (justice, rights, etc.). If an organization wants to promote ethical behaviour, it needs to focus on those factors that can be controlled. Yet an organization has limited control over individual employees' natural inclinations (Stead *et al.*, 1990), see Figure 1.

The cause of ethical failure in organizations can often be traced to their organizational culture and the failure on the part of the leadership to actively promote ethical practices. Brien (1998) poses the question as to what sort of professional culture promotes ethical behaviour, and how it can be implemented or improved upon within any given environment. This question is

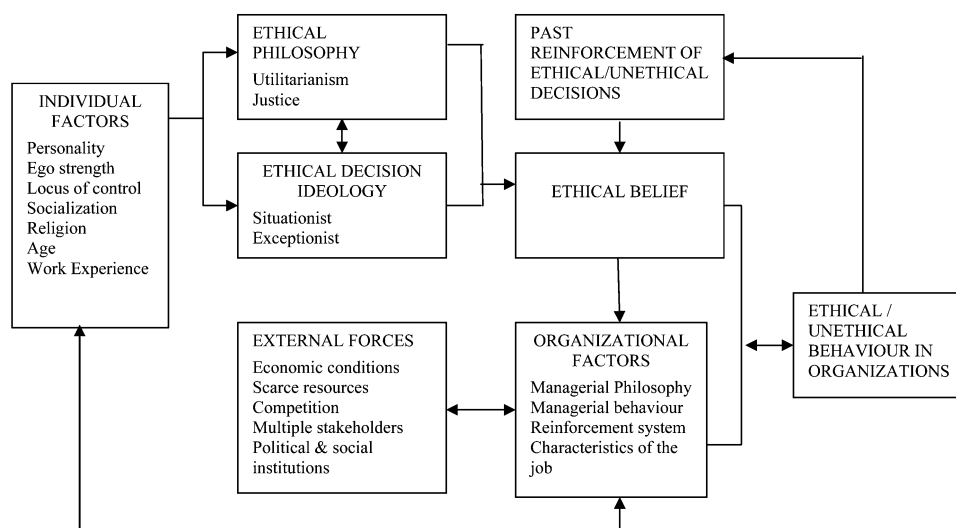


Figure 1 An integrated model for understanding ethical behaviour in business organizations (Stead *et al.*, 1990)

particularly relevant to the ethical standards of professional consultants in the construction industry. Martin (2002) presented four vantage points for viewing engineering ethics (professional codes of ethics, business and business ethics, social impact of technology on society, and personal commitment and meaning) and argued that each of these four vantage points yields insight and complements the others. He noted that since engineers have moved from exclusively providing technical expertise in design, into more management-oriented responsibility, tensions have arisen between business values and the professional standards of engineers. The two should be reconciled.

Ray *et al.* (1999) reported major ethical considerations in the Australian construction industry associated with the tendering process: for example, bid withdrawal, bid cutting, cover pricing, compensation of tendering costs, and collusion. Their research shows that the ethical principles and guidelines contained in the tendering codes are not completely observed by all the key players involved. They argued why this could be the case from both the emotivist view (that players follow their own ethical inclinations either in conjunction with, or in opposition to, the formal prescriptions) and a rationalist view (that the code must stand until either an alternative *a priori* set of principles is proposed or the empirical evidence is forthcoming). They suggested that a code of practice framework for tendering processes should be developed and empirically tested.

May *et al.* (2001) examined the nature of bid cutting in construction bidding in south-east Queensland from economic, legal, ethical and management perspectives. They found that all the main contractors surveyed considered the practice to be ethical while all the respondent subcontractors considered it to be unethical. Various means of countering the negative effects of bid cutting (e.g. legislation and bid depositories) were considered. A construction management procurement option was suggested as a solution, but this could not be demonstrated conclusively.

Fan *et al.* (2001) investigated the ethical behaviour of quantity surveyors in the Hong Kong construction industry. Their research shows that the two groups of quantity surveyors involved in the study generally favour the ethical theory of justice by advocating fair process and equitable distribution of benefits and burdens among project stakeholders. The more experienced and older quantity surveyors believed that the interests of the general public are more important in decision making. Younger quantity surveyors are more likely to consider employer, self and client in their overall decision making, suggesting different ethical standards between these two groups. The research conclusions recommended a decision-making model for the

construction/surveying professions for guiding younger surveyors towards developing higher standards of ethics.

A survey of construction industry ethical practices in the USA conducted by FMI in conjunction with the Construction Management Association of America (FMI/CMAA, 2004) found that, in 2003, 84% of the responding building owners, architects, A/E firms, construction managers, contractors and subcontractors had experienced, encountered or observed construction industry-related acts or transactions that they would consider unethical. Sixty-one per cent of the respondents claimed that unethical behaviour affects the public perception of the industry; 74% that it affects the level of trust between owners and contractors; and 60% that it adversely affects the level of trust between contractors and design professionals. The five most critical unethical issues identified by the survey respondents were bid shopping, change order games, payment games, unreliable contractors and claims games. The report noted that changes in business practices resulting from mergers and acquisitions, competitive pressures in a low-profit margin industry, outsourcing of resident engineering on government-owned projects and other industry dynamics often led to unease regarding where the line between competitive business practices and unethical conduct should be drawn.

Williamson *et al.* (2004) considered the nature of unacceptable client behaviour in competitive tendering, based on theoretical, legislative and moral considerations. Malpractices were identified through reported abuses, and a case study illustrated some of these practices and the difficulties faced by those wanting to resist them. The authors concluded by suggesting that a practical solution may be found by requiring clients to make a more direct contribution to tenderers' costs.

London and Everingham (2006) reported on levels of ethical behaviour in the construction procurement process with a key emphasis on the role of the construction client in the formulation of good ethical practices in the industry. The main finding was concern for the ethical culture of the industry, particularly in relation to the impact on subcontractors, and client/government behaviour and practice. The report concluded that, given the disparate nature of the construction industry, which makes it difficult to monitor behaviour on an individual level, codes of practice seem the best way to bring about a change in practice.

Forms of unethical behaviour

Australian research has shown that most unethical behaviour in the construction industry takes the form of unfair conduct, negligence, conflict of interest,

collusive tendering, fraud and bribery. Furthermore, in terms of professional conduct, it has been identified that the majority of professionals believe that obligations between the client and public are of equal importance (Vee and Skitmore, 2003).

Unfair conduct

Unfair conduct may occur in competition (unfair competition), in contracts (unfair contract terms), in staff promotion/dismissal/demotion (unfair labour practices) and in business practice (unfair business practice). For example, the following features of unfair conduct have been noted (Commonwealth of Australia, 1997):

- Little or no ability to negotiate terms of the contract (pro forma 'take it or leave it' contracts are used).
- Inadequate disclosure of relevant and important commercial information which the weaker party should be aware of before entering the transaction.
- Inadequate and unclear disclosure of important terms of the contract, particularly those which weighted against the weaker party.
- The dominant parties seek to vary the nature of a long-term relationship so that it is more favourable to them but which affects the viability of the weaker party.
- When disputes do arise there is often no quick, cheap and market-sensitive way of settling them and, even where such interventions do exist, there is a reluctance by weaker parties to access any remedial action through fear of reprisal.

In their survey, Vee and Skitmore (2003) combine unfairness with dishonesty. It could be argued that dishonesty constitutes illegal behaviour and is thus more appropriately linked to fraud. Instances quoted by Vee and Skitmore (2003) as being 'unfair' include actions by government agencies, such as 'biased tendering evaluation systems, the process of re-tendering and shopping for prices after tenders have closed', as well 'making it difficult for private businesses to compete'. Other instances relate to difficulties experienced with consultants' professional fees, such as 'non-payment of consultants' fees by clients and developers after engaging consultants'. The latter type of complaint is easy to prevent if consultants employ defensive contractual strategies, thereby helping to distinguish between business practices that are 'unfair' and those that are illegal.

Professional competence comprises efficiency (in doing a task economically), sufficiency (in providing a full service to a client) and capacity (which is the ability

or capability to undertake the commission). In contrast, negligence is the want of proper care, and also the omission of such duty of care for the interests of others as the law of delict may require (Boberg, 1984).

Allen (1990, p. 794) defines negligence as 'lack of proper care and attention; or carelessness'. Professionally, this would be the failure to exercise the degree of care considered reasonably warranted by the circumstances, resulting in an unintended injury to another party. To be negligent, the professional must have had the ability to be competent, but has disregarded the crucial importance of exercising this ability. The negligent professional disregards the course of action which is in the client's best interests.

Conflict of interest

This is a situation in which someone in a position of trust, such as a lawyer, a politician, or an executive or director of a corporation, has competing professional or personal interests which could make it difficult to fulfil his or her duties impartially. Even if there is no evidence of improper action, a conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his/her position. Conflict of interest involves a personal interpretation of whether or not certain behaviour is commonly acceptable, rather than if it is illegal. The onus should clearly be placed upon individuals to declare all possible instances of potential negative interpretation, before proceeding with projects. The Vee and Skitmore (2003) study suggests that there is a high incidence of unacceptable behaviour of this type in the Australian construction industry.

Collusion

Allen (1990, p. 222) defines collusion as 'a secret understanding, especially for a fraudulent purpose'. Collusion is contrary to the principles of free competition. It benefits only the parties to the collusive agreement at the expense of those not privy to the arrangement. Sheldon (1982) examined collusion in the United Kingdom. He holds that tendering may be conducted *a priori* through collusive agreements because such agreements are 'an attractive means of maintaining a steady flow of work and achieving higher joint, risk-adjusted, discounted profits' (Sheldon, 1982, p. 12). Lee (1990) investigated collusion in the US highway construction industry, and found that it causes a reduction in the number of available builders, an increase in the average bid price, and a reduction in bid variance. This could lead to artificially increased building prices, quality compromises, company failures through unfair competition, a negative industry image,

and decreased employee productivity through moral dissatisfaction. Zarkada-Fraser and Skitmore (2000) note that, from an economic perspective, collusion corrodes the basis and attacks the rationale of the competitive tendering system by restricting competition. Their study identified the internal and external (environmental and situational) factors that influence the moral decision-making process that leads to participation in collusive tendering agreements. The three most important factors are in the external environment: whether I would be held legally liable for the action, whether the action could be perceived as illegal, and whether there is a legal issue involved. Their research indicates that the professional's decision whether to become involved or not in collusion is determined primarily by the legal implications. Conscience (what my intuition told me to do) was rated fourth out of the 25 factors identified in the study.

Fraud and bribery

Fraud and bribery are forms of corruption. Amundsen (2000) distinguished between political and bureaucratic corruption, 'individual' and 'collective' forms of corruption, and corruption as a mechanism of either 'upward extraction' or 'downward redistribution'. The main forms of corruption identified are bribery, embezzlement, fraud and extortion. These concepts are partly overlapping and at times interchangeable with other concepts. The Danish Ministry of Foreign Affairs (2006) identified the common forms of corruption involved in the procurement process as: bid-rigging, collusion by bidders, fraudulent bids, fraud in contract performance, fraud in an audit inquiry, product substitution, defective pricing or parts, falsification/misrepresentation of costs, bribery and acceptance of gratuities, misuse of government funds, travel fraud, and theft and embezzlement. Gordon and Miyake (2001) argue that it is not always easy to define exactly what constitutes bribery and other corrupt practices, but identified facilitation payments, gifts and hospitality, conflicts of interest, and the use of intermediaries as falling within these practices. They identified three difficulties associated with defining bribery, namely: (1) drawing the line between acceptable relationship building and corrupt practices or bribery; (2) a difference between extortion and facilitation payments; and (3) tolerance of different practices in different cultures as an excuse for bribery and corrupt practices.

Shakantu (2006) defines corruption as the 'offering, giving, receiving or soliciting of anything of value to influence the action of an official in the procurement or selection process or in contract execution'. Bribery is therefore at the core of what is commonly viewed as

unacceptable, corrupt practice. Amundsen (2000) listed synonyms for 'bribery', such as kickbacks, gratuities, baksheesh, sweeteners, pay-offs, speed and grease money, and regarded fraud as an economic crime that involves some kind of trickery, swindle or deceit and has a broader legal and popular term that covers more than bribery and embezzlement.

Hamra (2000) is of the view that bribery inhibits economic development and distorts competition. In addition, it disrupts distribution channels, destroys incentives to compete in quality and prices, undermines market efficiency and predictability, and ultimately denies many people the right to a minimal standard of living. Powpaka (2002) argues that bribery becomes an ethical issue rather than a legal issue where there is either a general lack of law to prosecute those engaged in bribery or where there is law but it is not being used as often as it should.

Given the context of modern South Africa, and the background review above, it is appropriate to investigate ethical behaviour in its construction industry.

Research methods

The survey explores the opinions of a sample of South African construction professionals in relation to unfair conduct, negligence, conflict of interest, collusion, fraud and bribery. The data collection instrument followed closely that prepared by Vee and Skitmore (2003) for the Australian construction industry. The Vee and Skitmore (2003) findings were based on a small survey of 31 project managers, architects and building contractors practising in a major Australian conurbation.

The South African opinion survey involved a random selection of potential participants from the available listings of professional consultants and main contractors. The professions represented included architects, quantity surveyors, consulting civil engineers and contractors.

One hundred and ninety-three questionnaire packages were sent out to contractors (55), architects (50), quantity surveyors (45) and engineers (43). The firms were selected using a stratified, random sample. Responses totalled 107 (55% response rate), comprising 33 contractors (60% response), 26 architects (52% response), 28 quantity surveyors (62% response) and 20 engineers (47% response). Table 1 provides general information on the respondents to the questionnaire.

Almost all the respondents (98%) belong to one or more professional bodies with professional codes of conduct. This finding accords with the Australian survey in which 90% of the respondents belong to professional bodies that have an ethical code of

Table 1 Respondents' experience in the construction industry

Years' experience	Architects	Contractors	Quantity surveyors	Engineers	Total	%	Cumulative %
1–10	3	1	2	0	6	5.61	5.61
11–20	5	8	6	5	24	22.43	28.04
21–30	10	17	11	12	50	46.73	74.77
31–40	6	6	9	3	24	22.43	97.20
41–50	2	0	0	0	2	1.87	99.07
Not specified	0	1	0	0	1	0.93	100.00
Total	26	33	28	20	107	100	

conduct. According to Vee and Skitmore (2003), this is an indication that most respondents had some form of ethical infrastructure to guide them in making decisions, for judging their ethical content and to guard them against unethical behaviour. The FMI/CMAA (2004) survey found that only 30% of the US companies represented had ethical programmes that were formally known to everyone in the firm compared with 45% of the Australian and 56% of the South African surveys.

The survey findings

Collusive tendering

Seventy-two per cent of the respondents report having had some contact with collusive tendering practices; this is far higher than the Australian survey (44%). Further analysis shows that 79% of the South African quantity surveyors have either witnessed or experienced collusive tendering, with 76% of contractors observing the same phenomenon. Sixty-five per cent (65%) of consulting engineers and 46% of architects had also witnessed or experienced such behaviour. Compared with the Australian survey, these results indicate unethical behaviour is more prevalent in the South African construction industry.

Table 2 shows the forms of collusive practices witnessed. The most common forms of collusion are

'cover pricing' (39% of positive reflections), bid cutting (23%), hidden fees and commissions (17%) and compensation tendering costs to unsuccessful bidders (13%). The South African survey findings, taken in conjunction with the Ray *et al.* (1999) survey, suggest that the issue of cover price collusive tendering is a major unethical practice internationally in the construction industry. London and Everingham (2006) note how the Australian construction industry's codes of tendering have been written in order to deal with ethical problems such as withdrawal, bid cutting, cover pricing, compensation of tendering costs and collusion.

Unlike the Australian survey, where collusion primarily occurs between the contractor and the client, in South Africa collusion seems mainly to occur between two contractors (62%—see Table 3). Winning tenders by any means is thought by contractors to be more important than abiding by ethical codes of conduct that deter such behaviour.

The survey provides no conclusive evidence that the practice of collusive tendering has increased over the past 10 years in South Africa. Although 32% of the respondents believed that there had been an increase in the practice over this period, 64% believed that it had remained constant. Only 4% (all contractors) felt that collusive tendering had decreased over the period. Because the South African construction industry was in severe recession during this period, collusive tendering may have been a response to potential financial disaster, with contractors forming groups to spread the

Table 2 Forms of collusive tendering

Forms	Architects	Contractors	Quantity surveyors	Engineers	Total	% of grand total
Cover pricing	8	23	20	8	59	39.3%
Bid cutting	9	7	8	11	35	23.3%
Hidden fees and commissions	5	6	8	6	25	16.7%
Compensation of tendering costs to unsuccessful bidders	7	5	5	3	20	13.3%
Others	5	3	1	2	11	7.3%
Total	34	44	42	30	150	

Note: Others: shared work, bid fixing, lower pricing of provision sums, etc.

Table 3 Parties to collusion

Parties to collusion	Architects	Contractors	Quantity surveyors	Engineers	Total	% of grand total
Contractor and contractor	8	21	18	7	54	62.1%
Contractor and client	1	3	2	5	11	12.6%
Contractor and consultant	0	2	5	2	9	10.3%
Contractor and QS	3	0	2	1	6	6.9%
Contractor and architect	1	1	1	0	3	3.4%
Client and consultant	0	0	1	2	3	3.4%
Architect and suppliers	0	0	1	0	1	1.1%
Total	13	27	30	17	87	100%

available work among themselves. However, such a scenario does not appear likely, given that many insolvencies and company liquidations occurred during this period and tendering price inflation lagged behind actual cost increases (Pearl *et al.*, 2005).

Bribery

Forty-one per cent of respondents had witnessed or experienced bribery in the workplace (compared with 26% in the Australian survey). Ten (39% of sub-group) architects, 11 (30% of sub-group) contractors, 10 (39% of sub-group) quantity surveyors and 10 (50% of sub-group) engineers, noted that they have witnessed or experienced bribery being used to influence consultant/contractor selection. This is higher than comparable responses in the Australian survey. Table 4 indicates the form by which bribery is alleged to have occurred, with gifts and payment (cash) inducements being the two bribery methods most frequently indicated by respondents.

Quantity surveyors experienced or witnessed the most instances of bribery. When asked whether they perceived the extent of the instance of bribery to have increased over the past 10 years, 26% of respondents to this question noted an increase, 29% believed that there had been no discernible change, while 6% perceived a decrease. While the response rate of respondents was

100% regarding the trend in collusive tendering over the past 10 years, nearly 40% of respondents declined to complete the bribery trend question.

Professional negligence

Asked whether they had experienced or observed instances of professional negligence, 93% of architects and 96% of quantity surveyors, respectively, stated that they had. In addition, 75% and 76% of consulting engineers and contractors, respectively, had experienced the same. Overall 86% of the respondents reported having experienced or observed professional incompetence (compared with 67% from the Australian survey). The nature of the perceived negligence, according to the opinion survey respondents, is shown in Table 5.

Where negligence is ascribed to consultants, poor documentation from architects and quantity surveyors appears to be the most common form encountered. Overall, negligence experienced or observed is mainly in relation to poor documentation (63% of all respondents) and poor workmanship (52% of all respondents).

Fraudulent behaviour

Few respondents (23%) had experienced/observed instances of fraudulent behaviour, with quantity

Table 4 Forms of bribery

Forms of bribery	Architects	Contractors	Quantity surveyors	Engineers	Total	% of grand total
Gifts	4	5	7	4	20	33.9%
Payments	4	6	5	5	20	33.9%
Trips (incl. overseas and holidays)	2	1	4	4	11	18.6%
Special favour/privileges	1	1	2	1	5	8.5%
Affirmative appointments	1	0	0	0	1	1.7%
Never concluded	0	1	1	0	2	3.4%
Total	12	14	19	14	59	100%
% of grand total	20.3%	23.7%	32.2%	23.7%	59	100%

Table 5 Forms of negligence experienced/observed

Forms of negligence experienced/observed (N=Yes)	Architects	Contractors	Quantity surveyors	Engineers	Total	% of total
	24	25	27	15	91	
Poor documentation (contract, drawings)	14	17	21	5	57	62.6
Poor workmanship	16	9	16	6	47	51.6
Inadequate safety standards	12	9	9	5	35	38.5
Poor material quality (including substitution of specified materials with inferior products)	7	8	10	1	26	28.6
Poor supervision (incl. site), administration, project management and management skills	3	3	7	2	15	16.5
Poor quality control	5	4	1	2	12	13.2
Inadequate compliance with standards	5	1	1	1	8	8.8
Bad/poor design			1	3	4	4.4
Poor specifications and design errors by consultants (including conflicting dimensions on architect and engineering drawings and incomplete drawings)	0	4	0	0	4	4.4
Principal agent with no management ability (incl. incompetence and lack of experience by staff)	1	1	1	0	3	3.3
Poor handling and control of contract		1	1	0	2	2.2
Inadequate coordination between design professions	1	0	0	0	1	1.1
Inadequate coordination of services	1	0	0	0	1	1.1
Permitting the absence of guarantees	0	0	0	1	1	1.1
Poor or inadequate information	0	1	0	0	1	1.1
Inadequate scaffolding	0	0	1	0	1	1.1
Lack of interest	0	1	0	0	1	1.1
Lack of planning	0	1	0	0	1	1.1
Late payments and short payments	0	0	1	0	1	1.1
Misreading of tender document	0	0	1	0	1	1.1
Poor insurance provisions	0	0	0	1	1	1.1
Subcontractor (lack of supervision)	0	1	0	0	1	1.1
Subcontractor (no safety ethics)	0	1	0	0	1	1.1
Taking advantage of uninformed people	0	0	1	0	1	1.1
Unfair treatment of contractors in tender/final account negotiations			1		1	1.1
Total	65	62	73	27	227	100%

surveyors (29% of this respondent group) being the only group that had observed significant unethical behaviour of this type. In comparison, 35% of the Australian survey respondents had experience or observed fraudulent behaviour. The most common forms of fraud identified (Table 6) were 'deceit' (40% of all respondents) and 'misinformation' (37% of all respondents), while other forms included 'covering up poor workmanship, falsifying documents/invoices, and constructing with poorer substitute materials'.

Dishonesty and unfairness behaviour

Table 7 shows instances of dishonesty and unfairness identified by the respondents, with the circumstances in which these were committed. The responses derive from individual survey respondents. Architects believe that contractors are not always honest in abiding by contractual specifications, and that they commonly used cheaper, inferior alternatives. Contractors believe that the tender adjudication process is unfair, and that professionals act with bias when pressured by clients. The latter perception is supported by the responding consulting engineers who similarly commented on unfair tender procedures—in their case predominantly public sector related. Quantity surveyors believed that contractors repeatedly over-claimed and that clients pressurized consultants to make savings on projects or cut their fees.

Table 7 highlights situations where dishonesty and unfairness have been witnessed, covering most areas of construction activities and processes including those related to:

- materials: the contractor lies about materials used; use of inferior materials; and loss of materials on site;
- professional dishonesty: poor practices by consultants; inexperience; blaming contractors for incompetence; deliberately increasing contractor cash flow through unmerited payment awards; and recommending friends for tender awards;
- documentation: poor and incomplete documentation; over-onerous tender conditions;
- poor workmanship by the contractor;
- contractors' dishonesty: price fixing; maltreatment of subcontractors by main contractors (price squeezing of subcontractors by main contractors; main contractors failing to pay the full amount owing to subcontractors; failing to pay subcontractors timeously);
- client dishonesty: pressuring consultants to make decision in their favour; forcing consultants to cut fees (unfair fee negotiation); withholding payment certificates; and poor procurement policies;
- government dishonesty: misuse of state affirmative action programmes; government officials fronting to get contracts; unfair choice of consultants; awarding of contracts based on race; unfair allocation of work; and contracts repeatedly awarded to the same set of known contractors;
- payment: failure to pay agreed fees; alteration of invoices; unfairness in the adjudication of claims; over-invoicing of claims and variation orders; quantity surveyors not recommending payments that are due to contractors; clients withholding payments from contractors;
- tendering: bargain hunting after the tender has been received; unfair processes of tender adjudication; secrecy in contract negotiations; tender disclosure to competitors; lowest tender not selected in selective tendering.

Table 6 Forms of fraud experienced/observed

Forms of fraud	Architects	Contractors	Quantity surveyors	Engineers	Total	% of grand total
Deceit	3	5	2	2	12	40.0%
Misinformation	1	2	4	4	11	36.7%
Invoiced and paid for materials never received	0	1	1	0	2	6.7%
Kickbacks	1	0	0	0	1	3.3%
Spurious request for an time extension	1	0	0	0	1	3.3%
Deliberate intention to mislead and withhold information	1	0	0	0	1	3.3%
Alteration of documents	0	0	1	0	1	3.3%
Theft of materials	0	0	1	0	1	3.3%
Total	7	8	9	6	30	100%
% of grand total	23.3%	26.7%	30.0%	20.0%	100%	100%

Table 7 Types of dishonesty and unfairness behaviour witnessed or experienced by the various respondent groups

Architects	Contractors	Quantity surveyors	Engineers
Attempts by fellow architects to persuade the Provincial Architect to change an architectural appointment	Quantity surveyors who manipulate standard agreed documentation; quantity surveyors who are poor at budgeting pass the 'buck' to the contractor; inability of most architects to act as principal agents	Contractors squeezing subcontractors after they have submitted a price	Government officials being dishonest in how they calculate points for the award of contracts
Inviting proposals from several architects without disclosing this; use of a shell company for development and subsequent failure to pay the agreed fees if the scheme does not proceed; invitation to submit proposals and then proceeding in-house	Should a contractor submit claims arising from poor contract documentation or poor handling of contract, the principal agent indirectly threatens not to invite the contractor to tender again—unfairness Client refuses to pay and withholds payment Consultants influenced by clients, leading to bias	Very onerous tender documentation; non-payment of agreed variation orders by clients; over-claiming by contractors	In the case where the client has appointed an established consulting firm and has requested that they share a percentage of the work with a 'black' firm as an empowerment effort, the established firm abuses this opportunity to 'fob off' the less lucrative part of the work and uses the black firm as a 'work horse'—this is very prevalent. The 'black' firm has to 'take it on the chin' as they need the work
The state's affirmative action programme	Loss of materials on sites which cannot be explained; suppliers of materials and equipment exploiting deliveries and returns	Details of subcontract tendering being disclosed to preferred tenderers	District municipalities continuing to give all the work to the same 2 or 3 firms for the past 18 years
Dealing with politicians who spearhead projects by using outside influences such as Black Economic Empowerment (BEE) as determinants of tender awards	Probably on every job where architects/designers have not provided sufficient detail and cover their trails by 'you should have allowed for this'	Lowest tender not accepted by the client on a selected tender list	Consultants do all the preliminary work for the client at risk, and then the client uses that information to go out to tender
Fronting to get official work	When lowest tender is not used, negotiations occur behind the scenes after tender submissions	Contractors engaged in price fixing with other contractors	In tendering processes, contracts being awarded to 'friends'
Clients bargain hunting after tenders have been received	Adjudication of claims by consultants who have a financial interest in the budget	Pricing of variation orders by inflating item prices in bills of quantities with a well-contrived story to 'justify' the increase	Procurement policy outcomes by the client not always fair

Table 7 (Continued.)

Architects	Contractors	Quantity surveyors	Engineers
Manipulation of the contractor and consultants by the project manager	Addendums to contracts written in such a manner so as to be prejudicial to the contractor	Employers 'trading' among consultants when working 'on risk'	Unfairness in awarding tenders to the lowest tenderer
Contractor dishonest in respect of materials used—uses cheaper alternatives	Unfairly awarding contracts to contractors who have not submitted the most competitive bid	Misuse of consultants by developers—non-appointment for initial work undertaken; share in development not declared	Unfair negotiation of fees
Contractors treating subcontractors unfairly	Contractors who price a job, but exclude certain items and then claim extras from their client	Clients pressurize consultants to make unreasonable savings	Favours in the form of giving jobs to 'friends'
Contractor lies about materials used to claim higher costs	Client dishonesty—does not pay the contractor	Not revealing all correspondence of decisions	Concept of 'you help me now and I will help you later'
Tender processes and results unfair	Clients appear to have no understanding of construction methods and the building contract	Quantity surveyors and engineers increasing certified amounts to give the contractor an increased cash flow	Contractor not pay subcontractor as per certificate payments
Award of tenders or choice of consultants by government—unfairness	Poaching of personnel with in-depth knowledge of in-house work procurement systems	Unfair allocation of work by public bodies; unfair tender processes; secret organization membership	Unfair procurement procedures
Contractor substitutes inferior materials to those specified	Contractors not being awarded a contract having submitted the lowest price—reasons given not acceptable	Pressure from clients to cut fees	Unfair tender practices
Making deals with suppliers without disclosure	Contractors going behind the scenes to secure work after tenders have closed; government policy is race discriminatory and is leading to less job creation for the average person	Contractor dishonest in respect of claiming for work not actually done; claims for fictitious extras	Contractor not paying the subcontractors the full amount due
Contractors altering invoices	Architect and quantity surveyors not acting impartially when under pressure from the client	Contractor misrepresentation: over-claiming and the substitution of inferior goods	Architects blaming engineers for certain design discrepancies

Table 7 (Continued.)

Architects	Contractors	Quantity surveyors	Engineers
	Client and consultants negotiation with each other	Contractor and subcontractor: withholding of payments	
	Awarding of tenders unfairly to the second lowest a tenderer	Client and consultant: fee negotiation	
	Quantity surveyors not paying what is due to the contractor	Contractors altering invoices when submitting claims	
	Lowest tenderer is not awarded contract	Construction not a true reflection of the work claimed (i.e. over-claiming)	
	Consultants cover their own incompetence by blaming contractors	Contractors claiming variation orders without supporting documentation, e.g. site instructions	
	Unfair tender adjudication and the rigging of tenders		
	Final account prepared by the quantity surveyor is not a fair reflection of the work done		
	Going to tender and thereafter negotiating: unfair to the contractor		
	Manipulation by the project manager of the client and the contractor		

Other unethical conduct

Respondents were asked whether they had ever experienced/observed any other forms of 'unethical conduct' not specifically mentioned in the survey questionnaire. Table 8 lists the responses.

Several respondents believed that the implementation of joint ventures (essentially a form of enforced affirmative action and transformation in the industry) had not achieved one of its primary objectives, namely, to actively increase entrepreneurial participation from historically disadvantaged segments of society, and to increase capacity within this sector. With regard to Black Economic Empowerment (BEE)/Equity (a fundamental aspect of national political and business policy), respondents believed that the selection process was not always fair and equitable.

Other unethical behaviours identified are mainly associated with clients, particularly the various levels of government, and include nepotism, abuse of the tendering process, awards of contracts to acquaintances, clients taking advantage of contractors, and professional consultants being major investors in projects they were dealing with. Other unethical behaviours on the part of consultants (architects, quantity surveyors and engineers) include the doctoring of contract documentation to cover professional incompetence, conflicts of interest in the award of contracts, practising without being registered with an appropriate professional council (a statutory requirement) and practising without professional indemnity insurance cover.

Parties that engage in unethical conduct

Survey respondents were asked to identify stakeholders in the construction process who were most commonly involved in unethical behaviour. Table 9 shows the perceived propensity to breach ethical standards of conduct by the various parties involved in construction projects. Contractors are considered to be most likely group to participate in unethical practices. While it could be argued that bias is introduced into this question through an imbalance between the numbers of respondents representing consultants in comparison to contractors, detailed inspection of the individual responses shows that the results reflect the opinions of contractors themselves. Table 9 also shows that, while contractors are perceived to have the most propensity to engage in collusive tendering, bribery and negligence, clients are thought to be most associated with dishonesty and unfairness. Architects and engineers are also thought to be associated with negligent unethical conduct. Overall, Table 9 indicates that contractors have the highest perceived propensity for unethical

behaviour, followed by clients, architects, quantity surveyors and engineers. No professional grouping is perceived as being above unethical behaviour, albeit to different degrees. The perceived propensity for unethical conduct appears to be a function of the amount of involvement in the construction process, with the clients and contractors being the main contractual parties to a contract. The propensity for unethical behaviour is less among the consultants (professionals) compared with the contractors.

Discussion

Construction professionals are expected to behave with professional integrity, including honesty and fairness. The codes of professional conduct promulgated by the various professional statutory councils create an expectation on the part of clients and the general public with respect to professional ethics and behaviour. For example, the Association of South African Quantity Surveyor's (ASAQS, 2006) code of professional conduct expects members to have full regard to the public; uphold the dignity, standing and reputation of the profession; comply with the laws of the country in which they operate; discharge duties with efficiency, competence, confidentiality, fidelity and without undue delay; be fair and impartial in the provision of service; disclose and resolve conflicts of interest; have an appropriate level of skills; and respect others.

All respondents to the opinion survey belong to one or more of the professional bodies in South Africa, and thus should be ethically behaviour compliant. This survey has shown that such is not always the case. The findings tend to support Collier's (2005) assertion that professional and organizational codes are 'toothless tigers', even risible, without the active adoption by individual members.

The construction industry in South Africa is prone to unethical behaviour as a result of the competitive pressure placed on it, from the prevalence of the lowest cost bidding strategies and the abolition of mandatory (statutory) professional fee scales. These pressures have resulted in intense competition occurring in the delivery of professional and construction services—an economic policy adopted by many governments constantly attempting to drive costs to lower levels.

The need for trust and cooperation between participants in the construction industry, as a guard against unethical behaviour, is clearly important. London and Everingham (2006) have advocated key roles for the client in the ethical practices of the industry, given that they can set the environment for ethical or unethical behaviour through procurement strategy, higher level

Table 8 Other forms of unethical conduct experienced or witnessed by the various respondent groups

Architects	Contractors	Quantity surveyors	Engineers
Architects attempt to gain work through involvement in heritage vetting bodies	Qualified tenders sometimes rejected even if lowest and with fair qualifications	Acceptance of tenders after closing date	Not to my knowledge
Approaches with bribes	Consultants changing standard contract documentation to cover themselves: resulting in the documentation losing its value and becoming a legal minefield	Consultants attempting to 'poach' clients with longstanding relationships and abuse of the 'previously disadvantaged' situation	Consultants bad mouthing competitors to clients in order to gain more work
Unregistered practitioners; no professional indemnity	Calling for prices and then not proceeding with the works (use contractors for budget purposes)	Professionals having a business interest in subcontractors or suppliers being recommended to the employer/main contractor	Payment procedures by quantity surveyors sometimes not fair
Fellow consultants approaching clients to do a project already awarded	Contractors hiring plant from an acquaintance at a higher than market rate	Client abuse of moral responsibility to appoint consultants for risk work	Withdrawal of tenders
Nepotism	Clients taking advantage of contractors	Joint venture for the purposes of Black Economic Empowerment (BEE)	
Tenderers submitting false claims	Qualifying tenders, thus opening the door for negotiation if that tender is the lowest	Contractual claims submitted to delay payments to subcontractors	
Abuse of the roster system by the Department of Public Works	Collusion between contractors and subcontractor; clients not abiding by contract conditions	The government appointing favoured consultants to do work that those practices are incapable of doing without help from more capable firms	
Payment of fees with respect to client appointing another consultant	Awarding jobs to acquaintances	Overloaded marketing campaigns by contractors Spreading of rumours about the competition: unprofessional conduct Banks foreclosing on developers and introducing personal acquaintances to project	

Table 9 Parties most frequently considered to engage in unethical conduct

Unethical conduct	Respondents	Parties that transgress ethical conduct most frequently										
		Architect	Contractor	Client	QS	Engineers	Subcontractor	Consultant**	Project manager	Developer	Supplier	Bank
Collusive tendering	Architect		14	2			1					
	Contractor	2	25	9	3		1					
	QS		26	1	1							
	Engineer		13	2	3			2				
	Total	2	78	14	7		2	2				
Bribery	Architect	1	5	2	1	1	1	2				
	Contractor	3	4	6	3	3		4				
	QS	1	13	2	2	1	2	5				
	Engineer	1	7	5	1	1		5				
	Total	6	29	15	7	6	3	16				
Negligence	Architect	10	16	3	1	4						
	Contractor	10	9		5	6	1	3	2			
	QS	13	14	1	5	7		6				
	Engineer	7	11	3	4	7		1				
	Total	40	50	7	15	24	1	10	2			
Fraud	Architect		4	2					1			1
	Contractor		3		1		1	1				
	QS	2	9		1		1		1			
	Engineer	1	2	1								
	Total	3	18	3	2		2	1	2			1
Dishonesty and unfairness	Architect	1	8	7	2	1				2		
	Contractor	9	3	13	7	3		4		1	1	
	QS	3	10	9	3	1	2	3	1		1	
	Engineer	1	1	7	1	1						
	Total	14	22	36	13	6	2	7	1	3	2	
Propensity to breach ethics	Grand total	65	197	75	44	36	10	36	5	3	2	1
	%	13.7	41.6	15.8	9.3	7.6	2.1	7.6	1.1	0.6	0.4	0.2

Note: ** Unclassified consultants.

engagement of consultants and contractors, and actual contractual terms.

The survey found that the level of unethical behaviour on the part of the contractors is perceived as higher than that of other professional groups. This is most probably a function of business survival. Schwartz (2004) notes the tension between ethical practices (dealing with fundamental principles relating to obligations to protect public health and safety, high standards of honesty, integrity, impartiality, fairness, and equity) and competitive bidding and contracting. According to Schwartz (2004), competitive bidding and contracting are generally considered to be exclusively market-driven concepts based solely on financial and commercial considerations without serious regard to ethical principles, except to the extent that some business practices may have legal or regulatory compliance ramifications. It is contended that the majority of contractors who do engage in corrupt practices tend to do so, not because they want to, but because they feel they are forced to by the way the industry and the political environment operate. One reason for being susceptible to unethical conduct is the large number of participants engaged in complex contractual undertakings; the huge cost of projects of this nature makes it easier to hide bribes and inflated claims, a factor compounded by the fact that many construction projects are one-off and therefore costs are difficult to compare.

The issue of ethical behaviour in South Africa (across all sectors of the economy) is of major concern to the government, leading to the poll of 2000 (Camerer, 2001). The expert panel found that practices effective in combating unethical conduct included: greater transparency in government tender processes; schools placing more emphasis on moral values; legal protection for 'whistle blowers'; prosecution of high-profile individuals; barring corrupt officials from holding public office; greater financial controls and internal audits of government spending; a national anti-corruption hotline; and vigorous news media investigation of corruption.

The range of ethical problems in the South African construction industry (collusion, bribery, negligence, fraud, dishonesty and unfair practices) include those which Donaldson (2001) attributed to market imperfections. He points out that, by overcoming market imperfections, morality and ethical behaviour should play a central role in achieving economic success; and in this case not only for the parties involved in construction development but also for the industry at large. He believes that in order for ethical factors to function effectively, market participants must value the factors and duties for their intrinsic worth and not their instrumental value.

Conclusion

The opinion survey shows that there are significant areas of concern regarding ethical standards practised within the South African construction industry. Notwithstanding the various codes of professional conduct and ethical behaviour, construction professionals, especially contractors, possess a reputation for unethical conduct.

The range of ethical problems evident includes collusion, bribery, negligence, fraud, dishonesty and unfair practices. While bribery in the form of payments and gifts, particularly to consultants, is prevalent, unethical behaviour in the form of fraud does not appear to be as serious a problem. Most construction professionals believe that the industry displays a high incidence of unfair tendering practices, as well as overclaiming and/or withholding payment for service delivery. Fombrun (2001) points out that a company's reputation cannot be divorced from its ethics and trustworthiness.

Given the nature and impact of unethical behaviour on an industry, it is important to address it at personal and professional/business levels. The provisions of the Bribery Convention of the Organisation for Economic Co-operation and Development (OECD) tackle this problem. For example, the OECD conditions under which entertainment and gift giving is prohibited include: excessive entertainment and gift giving, being seen as inducement to business, exceeding business practice, violation of laws, damaging corporate image and requirements for internal reporting of gifts.

The survey findings support the view that the various professionals in the South African construction industry exercise different ethical standards in their normal working lives.

The unethical behaviour reported in this study could emanate from competing ethical choices (individual consciences and pledges to professional institutions) in relation to meeting the company goals associated with economic and financial targets. The situation is exacerbated when the very survival of the company is at stake—a common situation for construction companies and increasingly for professional consultancy firms operating in a climate of continually increasing competition. Typically, ethical behaviour issues are looked at from the moral and legal perspectives. However, the entire issue of ethical behaviour needs to be reconsidered and expanded to encompass the interplay between the cost and benefits of ethics compliance given the economic and management pressures that bring about the level of unethical behaviours in the construction industry. Gagne *et al.* (2005) have suggested that there should be an optimal

amount of unethical behaviour that an organization should tolerate. They proposed a framework based on the classical U-shaped total cost curve which constitutes the intersection of the upward-sloping curves of compliance costs of prevention and appraisal activities of unethical behaviour and the downward-sloping curves of non-compliance costs of internal and external ethical failures. They also asserted that as an organization ethics programme becomes well established and accepted, these costs will decrease leading to improved ethical compliances within the organization.

Limitation and future work

The current study has not focused on philosophical considerations relating to the relationship between ethical behaviour, moral values and individuals' value systems. Interested readers are referred to Lieberman (1998) and Hinman (2003). It is suggested that future research could consider how the concept of moral realism underpins meta-ethics.

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