EXPERT
CONSTRUCTION MANAGERS, INC.

Ethical Case Studies in Construction



What would you do?

What should you do?





CMAA Advancing Professional Construction and Program Management Worldwide

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Code of Ethics

Code of Professional Ethics of the Construction & Program Manager

Since 1982, the Construction Management Association of America (CMAA) has taken a leadership role in regards to critical issues impacting the construction and program management industry, including the setting of ethical standards of practice for the Professional Construction Manager.

The Board of Directors of CMAA has adopted the following Code of Professional Ethics of the Construction Manager, which apply to CMAA members in performance of their services as Construction and Program Managers. This Code applies to the individuals and organizations who are members of CMAA.

All members of the Construction Management Association of America commit to conduct themselves and their practice of Construction and Program Management in accordance with the Code of Professional Ethics of the Construction Manager.

As a professional engaged in the business of providing professional services to help customers plan, design, implement, manage, and construct projects, and as a member of CMAA, I recognize and agree to conduct myself in accordance with the following:

I.) Obligations to the Public

Representation of Qualifications and Availability: I will only accept assignments for which I am qualified by my education, training, professional experience and technical competence, and I will assign staff to projects in accordance with their qualifications and commensurate with the services to be provided, and I will only make representations concerning my qualifications and availability that are truthful and accurate.

Legal Compliance: I will not discriminate in the performance of my services on the basis of race, religion, national origin, age, disability, or sexual orientation. I will not knowingly violate any law, statute, or regulation in the performance of my professional services.

Fair Competition: I will represent my project experience accurately to my prospective clients and offer services and staff that I am capable of delivering. I will develop my professional reputation on the basis of my direct experience and service provided, and I will only engage in fair competition for assignments.

Public Contracts: I will not offer nor make any payment or gift to a public official with the intent of influencing the official's judgment in connection with an existing or prospective project.

Safety: I will take an active role in developing a culture of safety, consistent with the CMAA Policy Statement on Safety and the Construction Manager.

II.) Obligations to the Client

Client Service: I will serve my clients with honesty, integrity, candor, and objectivity. I will provide my services with competence, using reasonable care, skill, and diligence consistent with the interests of my client and the applicable standard of care.

Conflicts of Interest: I will endeavor to avoid conflicts of interest; and will disclose conflicts that in my opinion may impair my objectivity or integrity.

Fair Compensation: I will negotiate fairly and openly with my clients in establishing a basis for compensation, and I will charge fees and expenses that are reasonable and commensurate with the services to be provided and the responsibilities and risks to be assumed.

Release of Information: I will only make statements that are truthful, and I will keep information and records confidential when appropriate and protect the proprietary interests of my clients and professional colleagues.

III.) Obligations to the Profession

Industry Standards: I will furnish my services in a manner consistent with the established and accepted CMAA Standards of Practice, which define the parameters for the CM profession, and the laws and regulations that govern its practice.

Honesty: I will not make misleading, deceptive, or false statements or claims about my professional qualifications, experience, or performance, and shall accurately state the scope and nature of my responsibilities in connection with work for which I am claiming credit. In my business, I will not engage in bribery, fraud, or corruption in all professional services to help customers plan, design, implement, manage, and construct project activities in which I am engaged. I will be especially vigilant to maintain appropriate ethical behavior even where payments of gratuities or bribes are institutionalized practices.

Professional Development: I will continue to develop my professional knowledge and competency as a Construction Manager, and I will contribute to the advancement of the construction and program management practice as a profession by fostering research and education. I will recognize and fulfill my obligation to nurture fellow professionals as they progress through all stages of their career, beginning with professional education and continuing throughout their career.

Integrity of the Profession: I will avoid actions that promote my own self-interest at the expense of the profession, and I will uphold the standards of the construction management profession with honor and dignity.

IV.) Obligations to the Environment

Sustainability: I will conduct myself and encourage others in keeping with environmental and sustainable business practices, providing for the needs of the present without compromising the needs of future generations.

Case Study One

Cut off Your Nose

OR

Spite Your Face

You have recently received your first assignment as a project manager for a $16-million dollar public office building. You are over 70% complete with buyout and the project is tracking about 5% under budget.



Your next subcontractor for buyout is the electrician.



After reviewing the bids you notice the low bidder is an electrician that has a reputation for bidding low to win public work and then unduly demands change orders throughout the project for seemingly minor errors and omissions. Your superintendent gives you two thumbs down when you mention the name.



The number two low bidder is a known performer who has delivered for your company in the past.

Select the next step:



<u>Option A</u>

The difference in price is well within the 5% buyout savings …so you can afford to buy the better electrician within the original budget.

<u>Options B</u>

Call the # 2 bidder and ask for a revised quote that is a few thousand dollars lower then # 1.

<u>Option C</u>

Use the low bidder.

The Textbook Answer

Option A – (*The difference in price is well within the 5% buyout savings …so you can afford to buy the better electrician within the original budget.)*

Public contracts require the use of the lowest responsive bidder. If the company is qualified for the work and places a responsive bid, the contractor is obligated to accept the low bid unless the owner has reason to object.



The Textbook Answer

Options B – (*Call the # 2 bidder and asked for a revised quote that is a few thousand dollars lower then # 1*)

This practice is called bid shopping. Companies caught shopping lose their opportunity to compete on future pubic projects. Subcontractors may also refuse to bid a GC / CM with a reputation which further erodes the GC's ability to be competitive in the future.



The Textbook Answer

Option C - ***(Use the low bidder)*** **– Correct answer…. But mitigate the expected problems with exacting the scope, add unit prices for common conflict areas and consider adding allowances to cover any possible gaps in the contract documents.**



The Real World Discussion

Option A – (*The difference in price is well within the 5% buyout savings …so you can afford to buy the better electrician within the original budget.)*

Public contracts require the use of the lowest responsive bidder; however, you could argue that selecting the low bidder is not in the best interest of the owner, project, or the taxpayer.



The Real World Discussion

Options B – (*Call the # 2 bidder and asked for a revised quote that is a few thousand dollars lower then # 1* **)**

Yes, this could be bid shopping; however, if you have determined the owner's best interest is not served in hiring the low bidder, then shouldn't you minimize the damage to the owner by making the #2 bidder match the low price?



The Real World Discussion

Option C - ***(Use the low bidder) – Is this the*** **"correct answer"? Aren't you rewarding the low bidder's unethical practice of lowballing his bids and making up with change orders?**



Ethical Choices

Option A – (*The difference in price is well within the 5% buyout savings …so you can afford to buy the better electrician within the original budget.)*

You get what you pay for. If you are have facts and experience that back up your opinion of the low bidder then convince the owner to pay more for the "better" electrician.

Option C - *(Use the low bidder)* – Do the extra work in contracting to avoid or at least minimize the success of the low bidder's unethical practices.

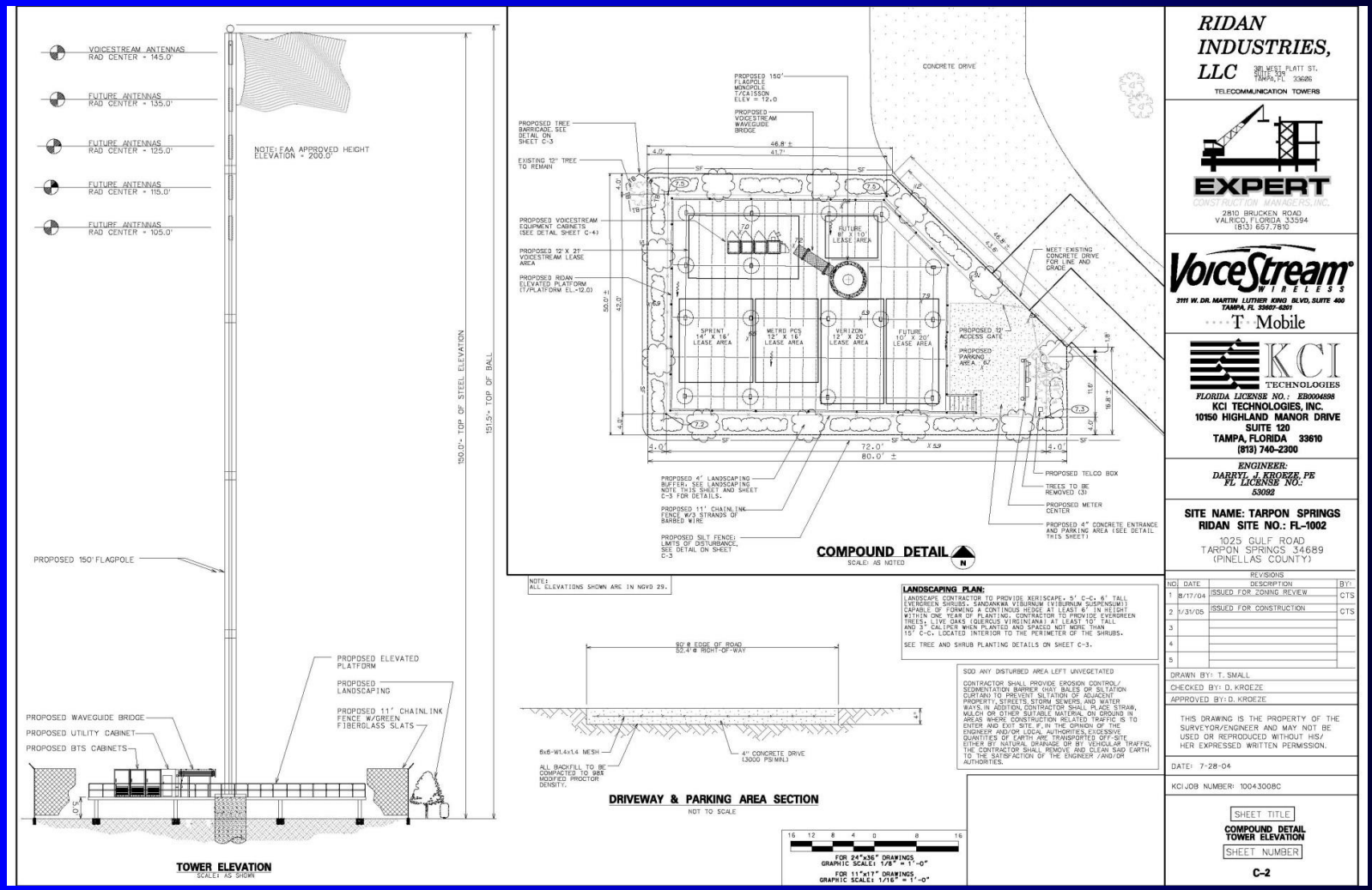


Would it make a difference if it was a private owner?

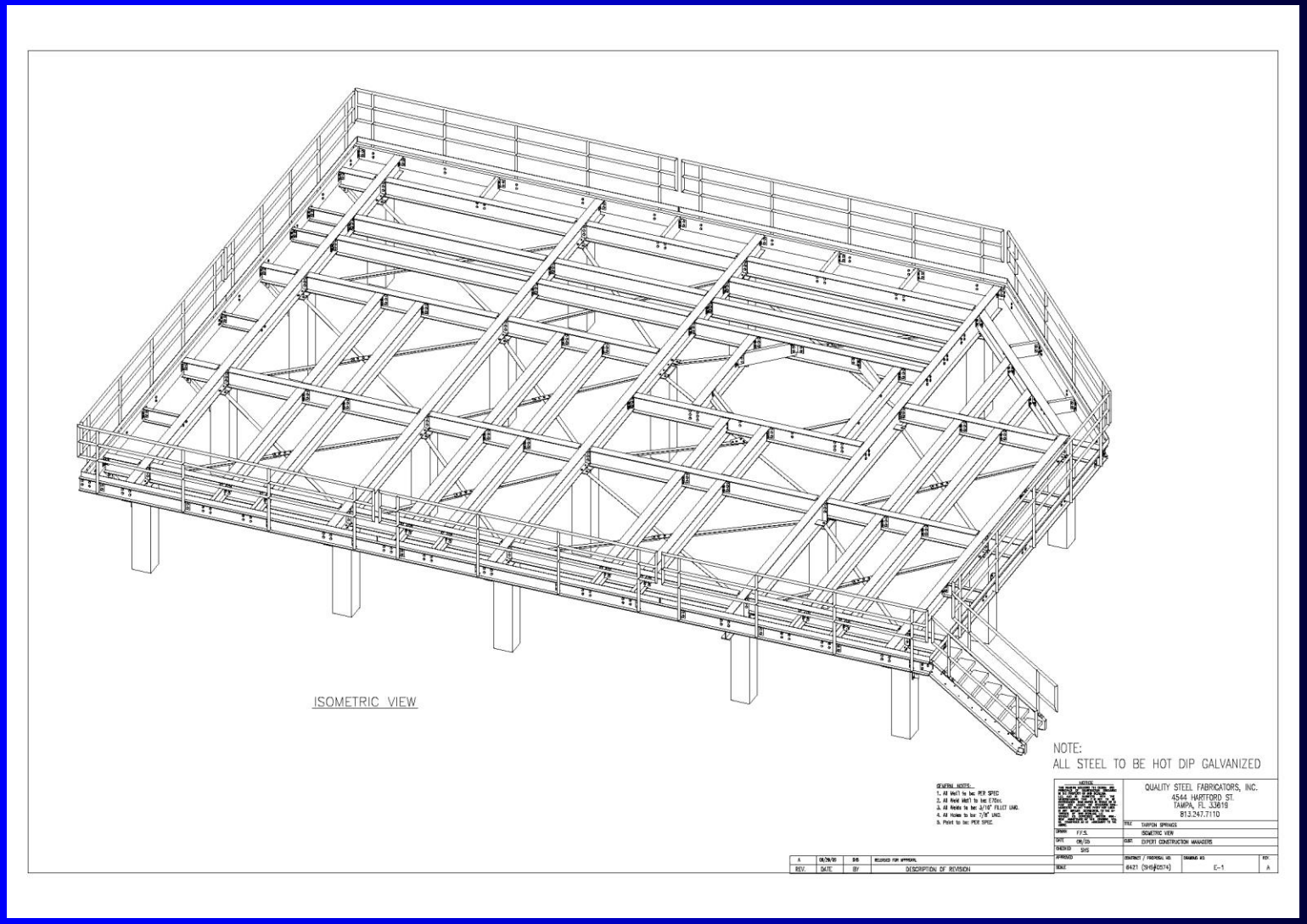
Case Study Two

Don’t judge, evaluate.

You are a General Contractor building a cell tower site at a Tarpon Springs Fire Station. The cell phone companies want to be “on-air” as soon as possible. Customer pressure is applied.



The contract was normal and the pressure to perform is too. The critical element was the steel platform on concrete piers.



So who builds the piers was an important decision. You call many subs for prices, but only get two. Everyone's busy.

Subcontractor A at $9,000 or Subcontractor B at $14,000





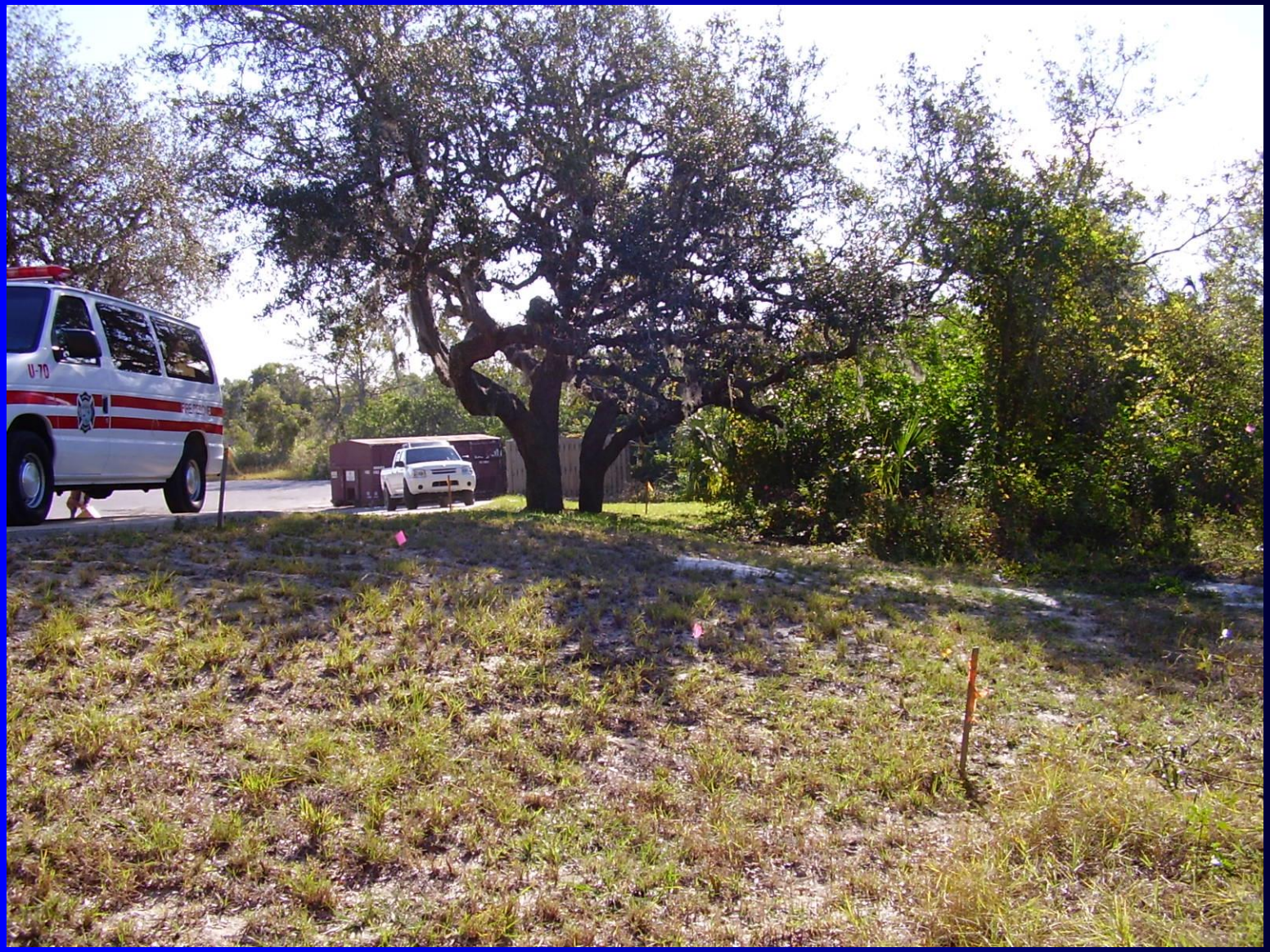
$9,000 was significantly lower than you figured the work was worth; however, the bidder seems more professional so you subcontract with him thinking even if you have to cover a few thousand dollars of extras, you still come out ahead.



The $9,000 sub asks for a cash advance of $2,000 to get the form brackets and materials. You send it with the subcontract on Thursday. He agrees to start Monday next week.

You and your 13 year-old son lay out the site for footings that Sunday. Everything is ready.

It’s now Monday:


U-70

There is no one there.

You call the $9,000 sub and the phone is disconnected.

You check his company listing with myflorida.com and the company doesn’t exist.





Feeling lonely about now?

What do you do? What did you do wrong?

What do you do about the lost deposit?

And what does any of this have to do with ethics?





Not many choices on what to do. Because of the time constraint you are forced to go to the $14,000 subcontractor.

He shows up on time, a few days later. Does a good job and is paid promptly.





It is obvious you selected the wrong subcontractor.



You picked him because of appearance.

Don’t judge a book by its cover.



Even worse, you didn’t pick him because of appearance.

“Stop judging by appearances, but judge justly.” Jn 7:24

And what should you have done?



You should not have let yourself be influenced by appearance. So you should have asked the right questions of both characters and not the self fulfilling questions you asked.

This alone may have avoided the problem and saved $7,000.

Still you may have chose wrong.

What do you do about the lost deposit to the first sub?









Forgive and forget.





What about the feelings you have for this person in your heart?

What about the injustice done to you?

Aren't you justified in not forgiving?

How can we let him get away with it?

“To understand everything is to forgive everything”

Gautama Buddha







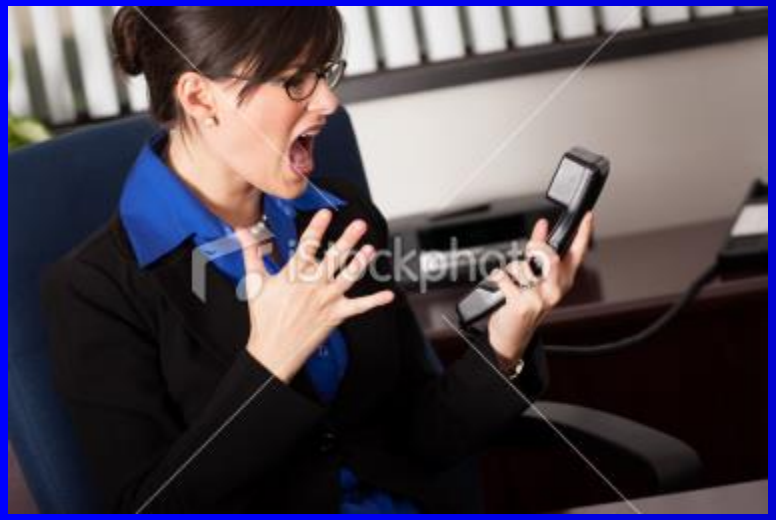
Case Study Three

Rrrrrrrrrriiiiiing!!!!!!!



We all get telephone solicitations, especially at work.





Even worse, they seem to come when we are busiest.





How do we handle them?

If it’s a computer I say:



So what if it’s a person?

"TO GET ALONG WITH ME, DON'T INCREASE MY TENSION."

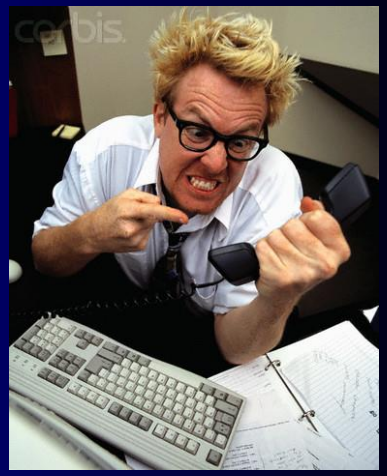
TY COBB



But, that is a person on the other end.

Discussion:

How do we handle them:



- Are we rude?



- Are we curt?



- Are we business-like?



- Are we nice?



Suppose they are in another country, taking a job you think an American should have?





Does that make a difference?

We are all one - or at least we should be - and it is our job, our duty, and our great challenge to fight the voices of division and seek the salve of reconciliation.



Roy Barnes
American Political figure
Born 1948

QUOTEHD.COM







"TO THE PEOPLE HERE, WE ARE OUTSIDERS. FOREIGNERS."

ROBERTO CLEMENTE

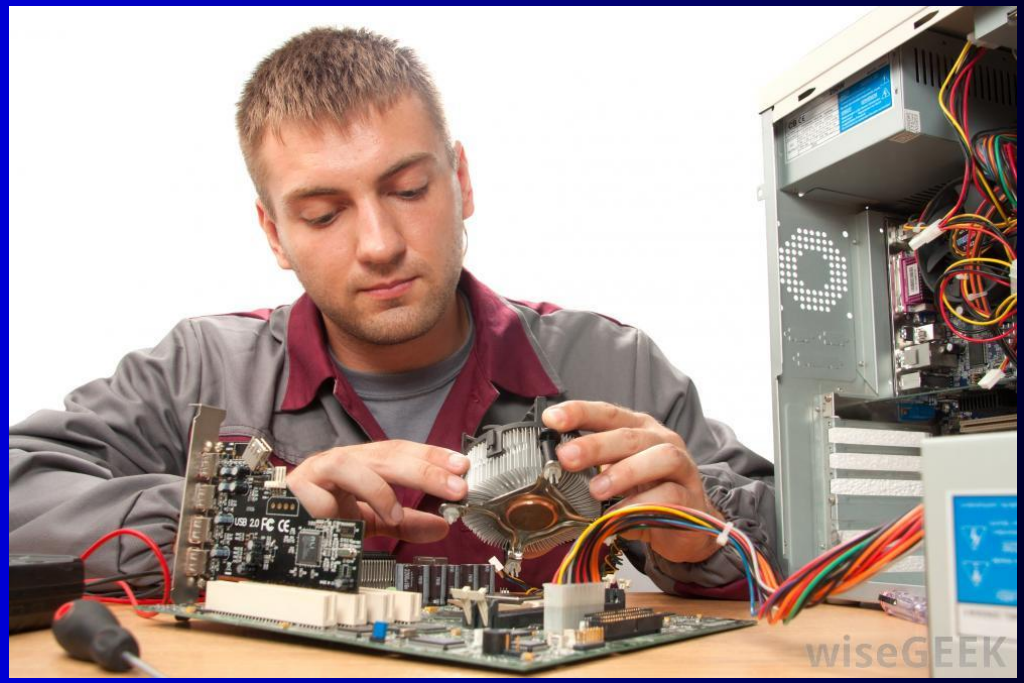
Case Study Four

The life of an Invoice

We all deal with invoices in our businesses.

They start with an order or agreement to do something for a price.

For this case study you are a GC on a large project. You hired a subcontractor to supply one technician for an hourly rate. He was selected because he was doing other work for the Owner on the same project.



While doing that other work, he did his work for you. Much of it overlapped. He discussed the hours with your on-site supervisor and they agreed to ~$5k in charges. He said his company would send an invoice.

It didn’t come.

The job was completed.

The invoice didn’t come.



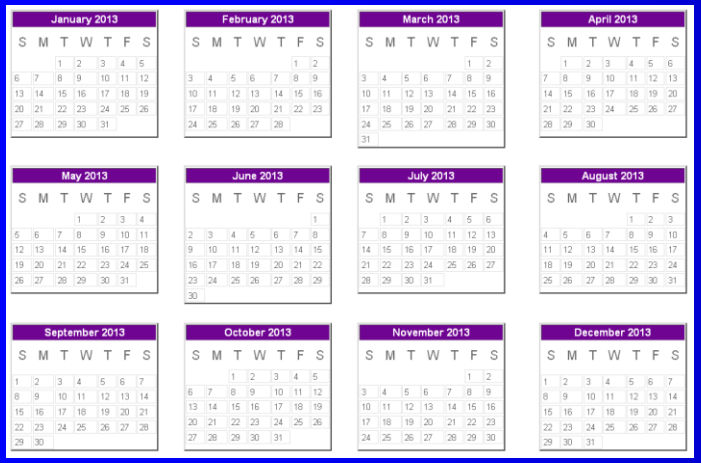
Many months passed. The invoice was forgotten.

The job's books were closed out. Taxes were paid.

No invoice.

Many more months passed… then a year.

Then another year.









Yeah – you guessed it.

The invoice showed up 2 years later. The sub admitted they never sent it. It slipped through their cracks.

Oh yeah – the invoice is now $18k, not $5k.





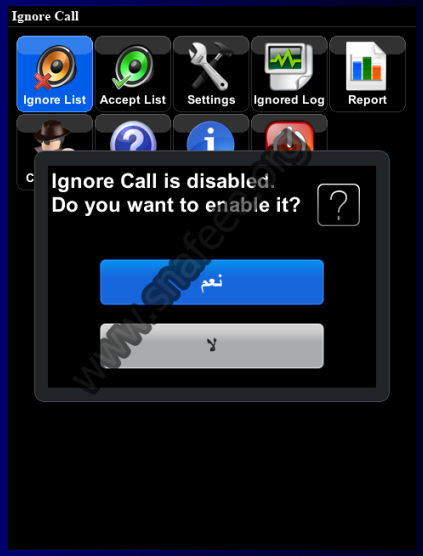
Discussion:

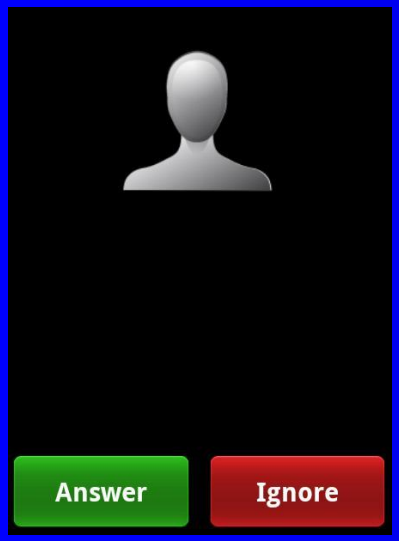
What do you do?

Ignore it? Discuss it?

Pay all, some or none?









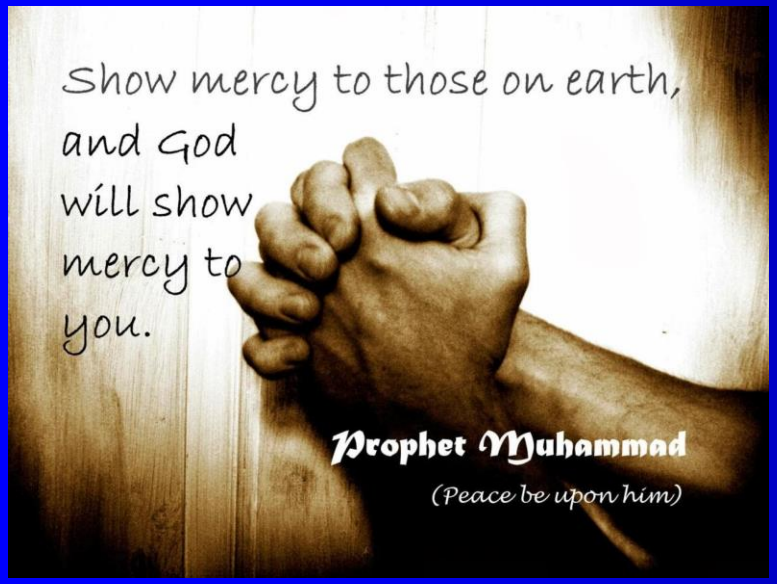


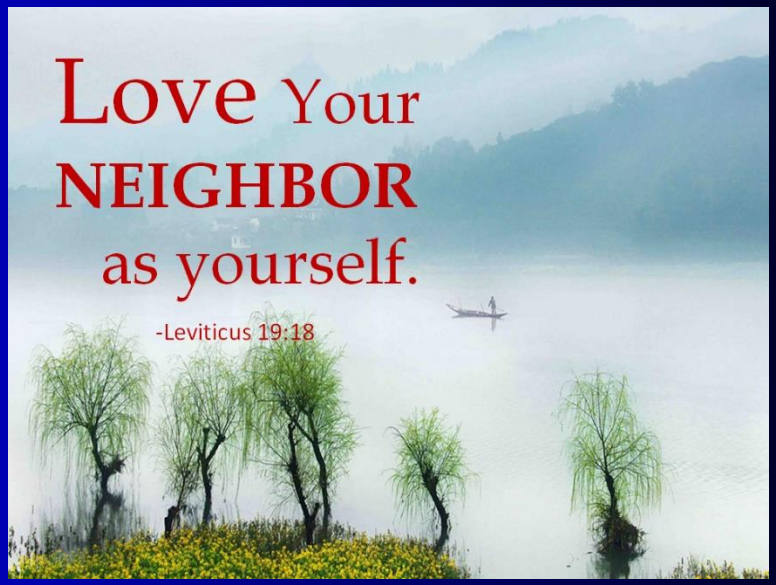
What does the golden rule say?

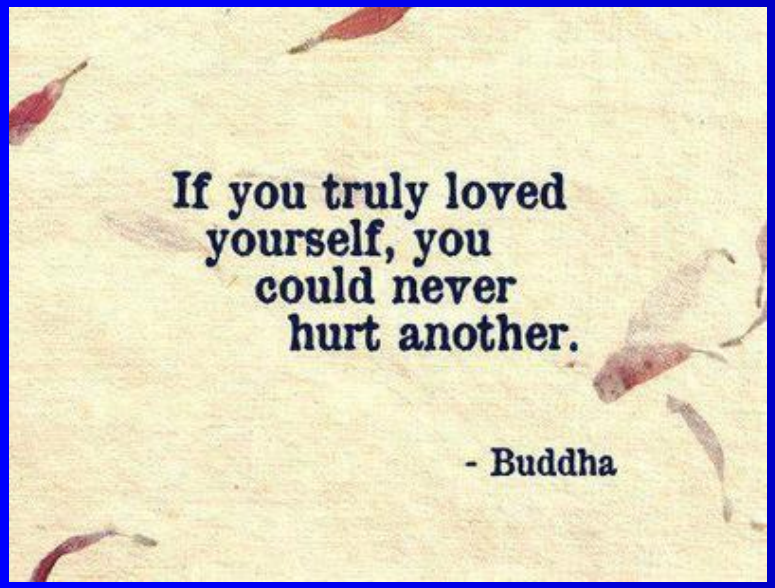


What does the golden rule really say?

What else is asked of us?









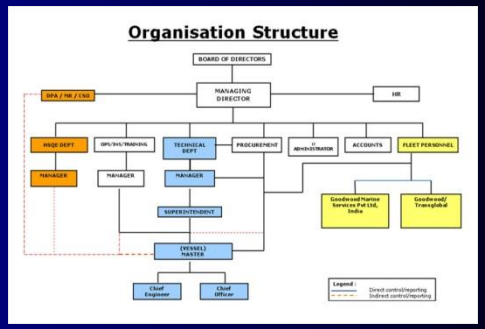
More discussion:

What is a company?

Is a company my neighbor?

A person?













Case Study Five

He said, she said.

You are a Project Manager for the General Contractor on a $50M Postal Facility.

There are about 10 different contractors working for you on site totaling about 100 people each day.

It is reported to you that one of your employees, a male, carpenter helper, is sexually harassing the electrician's female helper.

You conduct an investigation. You involve the home office. Remember, you are all construction professionals, not criminal investigators.

Also, this is the late 1980's. Sexual harassment was just being identified.

He swears to you he did nothing.

She swears to you the man touched her, tried to kiss her, always talks sex to her.

Other co-workers you trust vouch for the man. You are told the women is “trouble” by other interviewees.

No one has witnessed the harassment. They say the two were flirting.

So after consulting everyone, including the home office, you decide there is not enough evidence to fire the male carpenter helper. He cannot be transferred, this is a remote job for your company.

You enlist everyone’s cooperation (except the women, she was mad) in keeping the two employed on the same construction site, but apart.

Discussion:

What would you do?

How do you think this solution turned out?







But I was forced to judge.

I wanted to be fair, just and impartial.

I knew I was no expert in this matter.

I did have the support of the home office in my decision.

What happened?

In about 2 weeks he was caught physically harassing her.

We fired the carpenter helper immediately.

The Project Manager felt sick. I still feel sick.

The carpenter was an African American.

The women was white.

Does that matter?

Did it make a difference in the decision?

