

Types of Unfair Activity under Subcontracting and their Solutions: Qualitative Research Design

Ji-Heon HA¹, Tae-Hyung KIM²

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Abstract

Purpose: Using a procurement and construction stage emphasis on the capabilities of the Sub-Contractor (SC), the present research aims to discover the types of unfair activities between the Main Contractor (MC) and SC and their influence on project completion. This research also tries to figure out solutions which can reduce unfair activities between MC and SC. **Research design, data and methodology:** The qualitative textual analysis was selected for the current research and has been used by numerous previous researchers commonly to review relevant themes in the prior resources and suggested for researchers who conduct a reviewing procedure to analyze meta-analysis approach for figuring out better research findings from prior resources. **Results:** The result indicates the prevalence and consequences of bid shopping, emphasizing the need for transparency and fair bidding practices. Late payment issues were also found to be crucial for subcontractors' financial stability, urging the implementation of prompt payment legislation and agreements. **Conclusions:** In conclusion, the research revealed that subcontracting is common in construction projects, with general contractors relying on multiple subcontractors to carry out specific work items. The accomplishment of building projects hinges on the collaborative efforts between the main contractor (MC) and subcontractors (SCs), each focusing on different aspects of the project.

Keywords : Corporate Unfair Activity, Subcontracting Condition, Business Strategy, Qualitative Research

JEL Classification Code : L14, L22, C35

1. Introduction

When a business with a public contract (the contractor) hires another company to carry out a portion of the project, they are said to have subcontracted the task. A

"subcontractor" is the second party responsible for completing a specified amount of the work or services (Uher, 1991). The commercial building business often uses subcontractors. General contractors often hire between 20 and 40 specialized firms to carry out the various tasks

1 First and Corresponding Author. Ph.D. Student, The Department of Data and Knowledge Service Engineering, Dankook University, Korea. Email: hajiheon77@naver.com

2 Second Author. Associate Professor, The Department of Data and Knowledge Service Engineering, Dankook University, Korea. Email: kimtojaa@dankook.ac.kr

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involved in each project (Dale et al., 2020). Electrical, roofing, drywall, as well as steel erection are just a few examples of the several trades that could make up a typical team of contractors working on a project. The project's specifics will determine each subcontractor's size, expertise, and specialization. General contractors often oversee teams of specialized workers called "subcontractors" who are hand-picked for each project. Along with the numerous subcontractors, the general contractor may use his workforce to complete the project (Tomczak & Jaśkowski, 2020). The general contractor often oversees the construction site and directs the workers as part of a collaborative effort to complete the task. Due to increased technological complexity, stricter restrictions, and the need for efficient resource management to maintain a competitive advantage, building projects have become more challenging to complete. While the Main Contractor (MC) prioritizes customer satisfaction through efficient internal operations, the Sub-Contractor (SC) is responsible for doing specialized work for the MC (White & Marasini, 2014).

Although the MC may take a less sophisticated approach to the procurement of the SC, clients need the most suitable technique of procurement and strategy to limit the impacts of schedule as well as cost overruns on construction projects and proceed toward success (Tusher et al., 2023). For improving the construction company's efficiency, Artto et al. (2008) argued that the MC should pay special attention to the integration of processes across companies and the development of close relationships. It is widely agreed that adhering to the guidelines of the Subcontractors is essential to completing any building project. General contractors' reputation for unfairness was a significant issue in the construction business. The SC's obligations are laid out before procurement, but complications often occur during construction, jeopardizing the project's smooth progression (Abbasianjahromi et al., 2014). Using a procurement and construction stage emphasis on the capabilities of the SC, this research aims to discover the unfair activities between the MC and SC and their influence on project completion.

2. Literature Review

Although the practice of subcontracting has been around for quite some time in the building industry, the topic has attracted less academic study in recent years. Only in the past 15 years has subcontracting research begun to appear in scholarly publications (Makkinga et al., 2018). Before then, much research was limited to books and specialized magazines. One of the first works on the topic of subcontracting was written by Garrett (1979). Subcontracting topics were discussed at length, such as "concepts from the fields of business management,

accountancy, and other areas with direct application to specialized subcontracting" (Garret, 1979).

This book served dual purposes as a guide and instruction manual, with chapters dedicated to such fundamentals as contract law, money matters, and estimation theory. Subcontractors in the commercial construction business in the US will benefit from this book's thorough examination of their problems. There are many moving parts in the dynamic interaction between subcontractors and general contractors. The following discusses unfair activities that have an impact on the connection.

2.1. Bid Shopping

According to Tracey (1991), "Bid Shopping" is one of the most controversial topics that might arise during a discussion. According to the data offered in Tracey's thesis, 52 % of subcontractors say they do not bid to bid shoppers, and 69% of them say they provide varied bid rates to different general contractors. According to Tracey, suppliers only give discounts to the most sought-after general contractors.

Most general contractors will seek quotes from subcontractors to prepare a proposal since very few general contractors have the resources to handle every part of a construction project independently. The general contractor may use bid shopping or chiseling to choose which subcontractor to employ on a building project. These actions are detrimental to the subcontractor since they increase the likelihood of poor-quality work and, in extreme cases, the subcontractor going bankrupt. Bid shopping is a significant issue that fuels hostility between subcontractors and general contractors (Assaad et al., 2020). According to Arditì and Chotibhongs (2005), subcontractors see general contractors who shop around for the best quote as untrustworthy.

Subcontractors often choose not to work with general contractors again if they know previous bids have been "shopped" by them. Shash (1998) reports that 37% of subcontractors restrict their bids depending on equality of treatment of specific general contractors and that this is because the subcontractors are concerned that the general contractors would not treat them fairly. According to Hinze and Tracey (1994), When it comes to bid shopping, many subcontractors believe that general contractors do not have their best interests at heart.

2.2. Late Payment Issues

It is good knowledge that general contractors often pay their subcontractors late for finished work. As noted by Clough et al. (2015), disagreements between general contractors plus their subcontractors often arise over the

general contractor's contractual ability to withhold payments for various reasons. Subcontractors care most about being paid and making a profit from their work (Tracey, 1991) reported survey findings in his 1991 thesis showing that more than half of respondents rated quick payment as an essential quality in a contractor.

Arditi and Chotibhongs (2005) examined the dynamic between general contractors and subcontractors. They reviewed subcontractors' and general contractors' perspectives on working with subcontractors and the owners to get a fuller picture of possible problems. The top companies in Engineering News Record's rankings were sent questionnaires. The consortium included 300 general contractors, 250 owner businesses, and 450 specialist subcontractors. Payment difficulties, including timeliness of payment and retainage, were highlighted as factors (Arditi & Chotibhongs, 2005).

Most subcontracts include a pay-when-paid provision, also known as a reliant payment clause, which allows the general contractor to postpone making payment to the subcontractor until the general contractor receives money from the project's owner. It's a hotly debated topic among businesses that rely on subcontractors.

In most cases, subcontractors must follow the guidelines established by the main contractor. While companies may be reluctant to agree to this condition, doing so might cost them the job: "This is not because subcontractors are soft on risk; rather, it is often the only way for them to remain competitive" (Hollander, 2002). Interviewees in the subcontracting business often bring up the issue of the "pay-when-paid" provision (Tracey, 1991).

2.3. Contractual Issues/Onerous Subcontract Terms

Subcontract negotiations occur between a general contractor as well as a potential subcontractor before the subcontractor is hired. Even though each contractor uses a somewhat different subcontract form, there are always the same few points of disagreement to work out before a mutually agreeable resolution is achieved. Subcontractors may find themselves in a precarious situation since many general contractors see the subcontract conditions as non-negotiable (Clough et al., 2015). Indemnity terms, Subcontract regulations that may cause problems for the partnership include things like provisions for the assumption of equipment and for the early termination of a contract.

Many times, subcontractors engage in subcontracts without fully comprehending the legal ramifications of those terms and conditions. In most cases, subcontractors must keep the wording of the primary contract and typically need more clout to change the terms and conditions of the subcontract significantly. Subcontractors' financial stability

on a problematic project may hinge on the wording of such terms and conditions. The more one-sided plus unequal a contract association is, the more likely it is that abuse issues, disagreements, and disruption of the building process itself would result.

2.4. Previous Claims and Disputes

On the average building job, disagreements arise. A claim occurs when a subcontractor's disagreement with the general contractor cannot be settled (Moses, 2017). It's been said that "Major conflicts develop when contractors, owners, or construction management avoid confronting the inevitable challenges and differences of opinion that arise during any building project" (Yates & Duran, 2006). Costly lawsuits and unhappy customers result from miscommunication and disagreements between subcontractors, prime contractors, as well as other project participants (Khurana et al., 2021).

Defining the subcontractor's scope of work is a frequent contention between the subcontractor and the general contractor. It is not uncommon for a main contractor to interpret a subcontractor's bid as including work that wasn't included in the subcontractor's original proposal (Khurana et al., 2021). Depending on how precisely the work item is stated in the subcontract requirements, the general contractor may demand that the subcontractor carry out the task, give the subcontractor additional money, or negotiate a compromise. The subcontractor anticipates being handled with dignity and fairness (Klee, 2018). Subcontractors evaluate general contractors based on how they handle disputes, and if the general contractor is consistently seen as exploitative or overbearing, the subcontractor may elect to end the working relationship (Clough et al., 2005).

The general contractor-subcontractor relationship will suffer if the subcontractor believes they were treated unfairly while resolving a claim or dispute. The relationship deteriorates as claims and conflicts increase (LaPlaca, 2019). As hostility grows between the two parties, they may cut ties. However, subcontractors place a premium on their partnerships with general contractors. Only 1% of subcontractor respondents in Tracey's study filed liens, and only 20% of conflicts went to court (Tracey, 1991).

Table 1: Summary of Literature Review

Previous Key Theme	Summary
Bid Shopping	Subcontractors often choose not to work with general contractors again if they know previous bids have been "shopped" by them.
Late Payment Issues	Most subcontracts include a pay-when-paid provision, also known as a reliant payment

	clause, which allows the general contractor to postpone making payment to the subcontractor.
Contractual Issues/Onerous Subcontract Terms	Subcontract regulations that may cause problems for the partnership include things like provisions for the assumption of equipment and for the early termination of a contract.
Previous Claims and Disputes	The general contractor-subcontractor relationship will suffer if the subcontractor believes they were treated unfairly while resolving a claim or dispute.

3. Research Design

The present study has obtained the textual evidence in the current major literature warehouse, such as Scopus, Google Scholar, and ProQuest searching system to check prior studies which are related to the topic of this research. The current research has used the checklist that was thoroughly screened by excluding the conference papers and internet newspapers and only including books and peer-reviewed journal articles (Nantharath et al., 2016).

Specifically, the present author was trying to select a high degree of the existing textual data, focusing on the use of the following searching words: ‘Subcontracting Unfair Activities’ and ‘Types of Unfair Activity under Subcontracting in the major dataset for the potential solution of the current research purpose. Based on this searching process, there were a total of seven solutions founded for resolving the issues under unfair subcontracting activities between organizations (Phommahaxay et al., 2019; Woo & Kang, 2020).

The qualitative textual analysis (QTA) has been used by numerous previous researchers commonly to review relevant themes in the prior resources and suggested for researchers who conduct a reviewing procedure to analyze meta-analysis approach for figuring out better research findings from prior resources (Kim & Kang, 2022). Moreover, this kind of the research design must collect suitable textual dataset based on not only the research question prior study states, but it also needs to be similar flow in prior resources. That means that the association regarding a research theme between the current research and prior resources should have a similar flow (Nguyen et al., 2022).



Figure 1: The Procedure of QTA

4. Findings

4.1. A Solution for Bid Shopping: Transparency and Fair Bidding Practices (Establishing Ethical Bidding Standards)

Industry stakeholders, including subcontractors and general contractors, should advocate for transparency and fair bidding practices to combat bid shopping. One approach could be establishing ethical standards for bidding, where general contractors commit to not using subcontractors' bids to negotiate lower prices with others (Martin & Benson, 2021). This would create a level playing field and foster trust between the parties. Additionally, industry associations could play a role in monitoring and enforcing these standards to discourage bid shopping practices (Arditi & Chotibhongs, 2005).

4.2. Solution for Payment Issues: Prompt Payment Legislation and Agreements (Ensuring Timely Payments)

To address payment issues, subcontractors can advocate for implementing prompt payment legislation that sets clear timelines for payment in construction projects. General contractors and subcontractors can also enter into formal agreements stipulating payment terms and timelines, with penalties for late payments (Shah & Alotaibi, 2018). Open communication channels should be established to address any payment delays promptly and professionally. According to the study (Sitinjak et al., 2023), both parties must prioritize timely payments to ensure financial stability and a healthy working relationship.

4.3. Solution for Contractual Issues/Onerous Subcontract Terms: Collaborative Contract Negotiation (Fair Contractual Terms for All Parties)

General contractors should adopt a collaborative approach to contract negotiations, ensuring that subcontractors' concerns and interests are considered. A fair and balanced contract should be drafted, addressing the needs of both parties (Corrales-Compagnucci et al., 2022). Previous research (Liao et al., 2019) showed that ‘Elevator subcontractors' proactive negotiation practices could serve as a model for other disciplines to advocate for contract terms that protect their interests. Open dialogue and negotiation should be encouraged to avoid disputes arising from unfavorable contractual provisions (El-Sayegh et al., 2020).

4.4. Solution for Previous Claims and Disputes: Alternative Dispute Resolution Mechanisms (Efficient Resolution of Disputes)

To manage previous claims and disputes effectively, subcontractors and general contractors can include alternative dispute resolution mechanisms, such as mediation or arbitration, in their contracts. These processes offer faster and less costly ways to resolve conflicts than formal litigation (Uff, 2003). With these mechanisms, parties can promptly address issues and find mutually beneficial solutions, maintaining a positive working relationship.

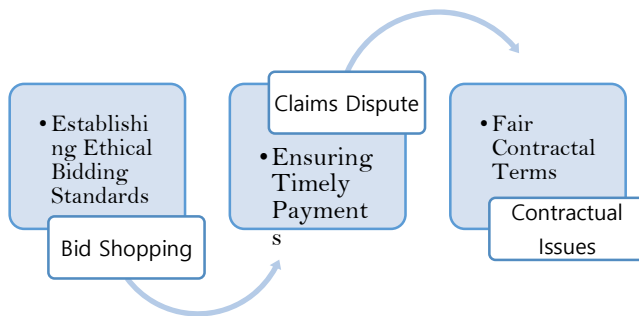


Figure 2: The Summary of the Result

4.5. Transparency and Fair Bidding Practices

Ethics in bidding is something general contractors should embrace, so they shouldn't go about "bid shopping." When working with subcontractors, they must show their value open communication and fair competition (Moradi & Kähkönen, 2022).

Subcontractors should Participate in industry associations advocating for transparency in bidding. Prioritize collaboration with general contractors known for ethical practices (Engebø et al., 2020). Consider partnerships with general contractors who adhere to fair bidding principles, promoting healthier business relationships.

4.6. Prompt Payment Legislation and Agreements

General contractors are responsible for paying their subcontractors on time and in accordance with quick payment laws. Create legally binding contracts that spell out the conditions of payment and the repercussions for late payments (Cappelli & Eldor, 2022). Keep the lines of communication open so that any payment issues may be

addressed quickly.

Advocate for prompt payment legislation in the industry. Establish clear payment terms in contracts and agree upon penalties for late payments (Cappelli & Eldor, 2022). Regularly communicate with general contractors to ensure timely payment and address any payment delays professionally.

4.7. Collaborative Contract Negotiations

In order to create fair and mutually beneficial contracts, general contractors and subcontractors should work together throughout the negotiating process. Exhibit adaptability in dealing with subcontractors' complaints and look for win-win approaches to resolving issues with the contract terms (Mishra et al., 2011). Subcontractors should be actively involved in the contract negotiating process, emphasizing achieving mutually beneficial conditions. Contract requirements should be negotiated like elevator subcontractors (Rani et al., 2015). Maintain a flexible negotiating stance while protecting core interests.

4.8. Alternative Dispute Resolution Mechanisms

As suggested by Fu and Luo (2023), alternative dispute resolution provisions in contracts between general contractors and their clients might help speed up the settlement of legal disputes. Foster a cooperative attitude to problem-solving by recommending that subcontractors use other conflict resolution methods before filing a lawsuit.

Embrace alternative dispute resolution mechanisms as efficient ways to resolve conflicts. Participate in mediation or arbitration when disputes arise, prioritizing open communication and finding mutually acceptable resolutions before considering formal legal actions (Yao et al., 2021).

By implementing these implications and recommendations, general contractors and subcontractors can promote fair, transparent, and efficient business practices, improving working relationships and the overall success of construction projects. Collaborative efforts and ethical conduct will create a conducive environment for all parties, reducing disputes and fostering a stronger construction industry in the Northwestern United States.

5. Limitations and Conclusions

This study's data comes from in-depth interviews with subcontractors in the Pacific Northwest of the United States, therefore its findings and consequences are particularly applicable to that location. Subcontractors working in residential, heavy civil, mining, and other industries may not be able to directly apply the findings of this research since

the participants are experts in commercial construction.

The presence of the interviewer may have influenced the participants' answers, casting doubt on the reliability of the results. The small sample size of questioned subcontractors should also be considered. Results may be skewed if the research is limited to just 24 individuals, as opposed to a larger sample size. Some of the interviewees may have had a vested interest in the result because of their personal connection to the interviewer. It is possible that the selection procedure itself is a bottleneck, as the successful and respected subcontractors tend to be the ones who get picked. Data collecting may be skewed if less suitable interviewees are left out.

In conclusion, the research revealed that subcontracting is common in construction projects, with general contractors relying on multiple subcontractors to carry out specific work items. The accomplishment of building projects hinges on the collaborative efforts between the main contractor (MC) and subcontractors (SCs), each focusing on different aspects of the project. The literature review highlighted four key factors that significantly affect subcontractors in the construction industry: bid shopping, payment issues, contractual issues/onerous subcontract terms, and previous claims and disputes. Bid shopping emerged as the most detrimental factor, leading to unfair competition and strained relationships between subcontractors and general contractors. The timely payment was crucial for subcontractors' financial stability and healthy working relationships. Onerous subcontract terms and disputes also impacted the relationship between the parties.

The research methodology employed a varied methods tactic, combining qualitative as well as quantitative data through interviews with twenty-four subcontractors operating in the Northwestern United States. The results reaffirmed the significance of bid shopping and payment issues as the most influential factors, while contractual matters and disputes ranked lower but were still noteworthy. To address these issues, there were several solutions and implications. Transparency and fair bidding practices, prompt payment legislation, collaborative contract negotiations, and alternative dispute resolution mechanisms were recommended to foster healthier relationships between subcontractors and general contractors.

However, it is essential to acknowledge some limitations of the research. The study focused on the Pacific Northwest region of the United States and may only partially represent subcontractors operating in other markets or areas. The limited number of participants could have skewed the results, and the interviewer's presence might have influenced respondents' answers. Additionally, the selection process of successful and reputable subcontractors may have resulted in unbalanced data collection.

Despite these limitations, the findings of this research

contribute valuable insights into the dynamics of the commercial construction industry. By recognizing and addressing the key factors that impact these relationships, stakeholders can work towards creating a more equitable and collaborative construction environment. Future research could expand the scope to include a more diverse sample of subcontractors from different regions and markets to provide a comprehensive understanding of subcontracting practices and relationships across the construction industry.

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