



Anti-Corruption Obligations & Due Diligence

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Why Are We Here?

- Risk mitigation for third parties is one of the key focus areas for anti-corruption compliance.
- Do you vet everyone, everywhere, every time?
 - Some companies are requiring publicly traded companies such as AECOM to fill out detailed vendor/consultant questionnaires asking for proprietary and sensitive data as a means of assurance.
 - Are you obliged to get due diligence reports on all your lawyers *post Walmart*?
 - Does one size fit all?
 - Or is risk assessment a better approach?

Catastrophic Consequences for Corporations from Third Party Actions

- **March 2010:** BAE Systems plc pleaded guilty to coordinated U.K. and U.S. criminal and civil charges under the U.K. and U.S. anti-bribery laws. BAE will pay more than **\$400 million** in fines and penalties. Charges included **hiring a “marketing advisor” to help sell radar systems to the Government of Tanzania who used commissions to bribe officials.**
- **2008-2009 Siemens:** From 2001 to 2007, Siemens made ~4,283 illegal payments, provided gifts, trips to government officials in 12 countries to obtain contracts. Siemens neither admitted nor denied allegations but will pay \$1.6 billion in fines and penalties to Munich Prosecutor's Office, and U.S. Department of Justice (DOJ) as well as the Securities and Exchange Commission (SEC). Siemens PRC subsidiary debarred from World Bank contracts. **Siemens used subcontractors as well as “marketing advisors” to pass bribes.**

Up Close & Personal: Liability for Executives Who Do Not Exercise Good Judgment or Oversight

- **Australia:** On 18 July 2012, David John Ellery, who served as Securrency's CFO, pleaded guilty in the Victoria Supreme Court in Melbourne, Australia, to a charge of false accounting.
- **Ellery admitted that he created a false document enabling the payment of AUD 79,502 to a Malaysian intermediary.** The authorities allege that the payment was used to bribe Malaysian officials and potential bribery in Vietnam, Indonesia, and Nigeria.
- Ellery is one of **nine** individuals charged by the Australian Federal Police in the case. Ellery and the other eight defendants are alleged to have made or authorized over AUD 1.6 million in improper payments.
- **Canada:** SNC-Lavalin delayed reporting its 2011 financial results when its Audit Committee identified \$56 million in improperly allocated "project expenses." SNC CFO, executive vice president for construction, and a vice president for Finance left the company under a cloud. Two SNC-Lavalin executives have subsequently been indicted in Canada.

Executive Liability Can Be Based on Solely Failure to Act or Supervise

- **July 2009 SEC Settlement by Nature's Sunshine Products (NSP):** CEO and CFO held responsible and charged in connection with the payment of \$1 million by NSP's Brazilian subsidiary's customs brokers to Brazilian customs officials to avoid registration requirements. No evidence CEO or CFO had personal knowledge, but an operations manager in Brazil had raised a red flag about the payments. According to the SEC, lack of follow-up constituted a "failure to supervise" NSP's Brazilian operations. CEO and CFO each paid \$25K fine to settle civil FCPA charges regarding inaccurate books and records as well as inadequate internal controls.

- **Dec 2009 SEC Prosecution of Pride Int'l Vice President for Western Hemisphere Operations:** Executive charged for failing to inform company ethics, audit or legal regarding a report made to him regarding a \$15K payment from Pride's customs agent to port officials in Mexico to expedite export of an oil rig and for removing references to possible improper payments in a draft action plan sent to senior management.

The CEO Suite is Not Immune

- **Avon Products**

- Since 2008, Avon has been conducting an internal investigation into its operations in China and elsewhere and already spent an estimated **\$250 million**.
- Investigation is looking at “travel, entertainment, gifts, use of third-party vendors and consultants and related due diligence, joint ventures and acquisitions, and payments to third-party agents and others.”
- **Avon’s Chairman and former CEO, Andrea Jung, has been interviewed by prosecutors regarding her personal knowledge of questionable activities.**
- Avon and its directors have already been named in a number of lawsuits alleging breaches of fiduciary duty for failing to properly monitor operations and failing to properly disclose issues.

Nor Are Lawyers

- 2012 Walmart FCPA investigation involving funneling questionable payment through law firms in Mexico, inter alia. Strong possibility that internal counsel may be charged with FCPA violations as they apparently turned a blind eye.
- New York Times 4-12-2012 article quotes a former Walmart executive recounting how he had helped organize years of payoffs. He described personally dispatching **two trusted outside lawyers** to deliver envelopes of cash to government officials.

What Does This Mean in Practice?

- Translates into greater need for due diligence on business partners, vendors, alliances, M & A targets as well as classic “agents.”
- Look beyond titles to identify relationships that cause risk. The greater the risk, the stronger the record of due diligence and mitigation needed.
- Given the non-proliferation/export controls that apply in the military sales area, knowing your partners, subconsultants, advisors, is always prudent.
- Similarly, getting permits, obtaining visas, using influence, helping with payment, being “connected” or making introductions are activities laden with risk, compared to a subcontractor writing a technical manual.
- **Bottom line: use a risk-based, common sense approach**

DOA Overview – 1.10(c) Proposal to Engage a non-technical third party & background check requirement

What is a non-technical third party?

- A non-technical third party provides services typically related to business development, developing relationships with clients, interacting with government officials, or any other types of services that are not directly related to our professional services on a project. These may include, but are not limited to, business development, lobbying, and logistical services such as arranging for visas, transportation, housing etc., assisting with obtaining payment, or liaising.

Why is a background check required?

- Retaining third parties to perform work for AECOM is an area that requires risk mitigation, given the performance issues and compliance liabilities that can arise as a result of the actions of such third parties. Background checks are necessary to ensure that anti-corruption risks are mitigated properly and in accord with AECOM policy.

How do I initiate a background check and what type of check should be done?

- E & C will coordinate the background check and determine which type of check should be conducted. As due diligence can take several weeks to conclude, start the process by visiting Ethic & Compliance Due Diligence Intranet Site or contacting Richard Saval of E & C as soon as possible when a potential non-technical third party is identified. The Business Line or Geography is responsible for the costs associated with the due diligence.

What Does that Mean?

- A technical third party is any person or entity that is performing professional services for us via an AECOM subcontract on a specific project. Professional services refer to work on an actual project such as design consulting, electrical, mechanical, video, construction administration, etc. These are services that we can invoice fully to the client.
- A non-technical third party provides services typically related to business development, developing relationships with clients, using influence interacting with government officials, or any other types of services that are not directly related to our professional services on a project. These may include, but are not limited to, business development, lobbying, and logistical services such as arranging for visas, transportation, housing etc., assisting with obtaining payment, or liaising.
- If a third party provides a combination of technical and non-technical services, the requirements for non-technical third parties must be followed. If their scope changes to include “representational work”—DOA applies.

What About Due Diligence on Technical Third Parties?

Requirements for Technical Third Parties

- Third parties who provide purely technical services require an MK Denial name scan search, [Ethics & Compliance MK Denial Intranet Site](#), the standard Dun & Bradstreet financial check, or equivalent, and internet search to identify any issues such as bankruptcy or criminal history, reputation and public history.
- In addition, AECOM is a member of TRACE, which can conduct all of these checks and update them regularly for a small annual fee (less than \$100 US) paid by the third party using a new program called TRAC. Click here to access this process [TRAC Home Page](#)
- TRAC, if used widely, can serve as a common database for trusted vendors.

A Case in Point

China Communications Construction / China Harbour Engineering: Due Diligence Results

■ **CCCC / CHEC**

- China Communications Construction Company (“CCCC”) World Bank Sanctions
 - Sanctions applied for corrupt business activities and practices
 - *“Pursuant to Section 9.05 of the Sanctions Procedures, the ineligibility of ... **China Communications Construction Company Limited** ... in respect of contracts under a World Bank Group-financed or -executed project related to roads and bridges and **extends to any firm directly or indirectly controlled by China Communications Construction Company Limited** in respect of such contracts...”*
 - China Harbour Engineering Co., Ltd is a CCCC subsidiary subject to this WB sanction
 - Term of current sanctions is through January 11, 2017

■ **Press Controversy in Jamaica, Guyana, over CHEC involvement**

■ **CHEC is also named in a DOJ bribery/forfeiture action relating to Bangladesh**

Third Parties and M & A Transactions: if you don't buy it, you don't own it

- AECOM conducts background due diligence on merger & acquisition targets and key individuals prior to SPA execution. Avoids spending resources, time and enthusiasm on problematic targets.
- AECOM proactively vets all non-technical consultants prior to closing an acquisition.
 - Names and details are requested during due diligence and marketing executives are interviewed as to how they obtained contracts.
 - Those that do not meet our standards are terminated prior to closing.
- Bottom line: Modest, up front investment yields substantial comfort and benefit



Thank You

