

Ethical Business Practices in Construction Contracting

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A. What does it mean to be an ethical contractor? Your company must conduct itself with the highest degree of integrity and honesty. **B. Are there any objective standards against which your company's conduct will be measured?** There are at least two standards:

- the construction or purchasing contracts applicable to your work, and,
- in public projects or projects involving public funds: applicable federal, state, or local statutes, ordinances, rules and ethical opinions.

C. Are there any general rules or guidelines that every ethical contractor should follow to ensure compliance with its ethical obligations? The requirements of ethical business conduct in construction contracting can be boiled down to five broadly stated rules:

- Comply with every provision of your contract, and every provision of any other contract which your contract requires you to perform;
- Be accurate in every statement, record, and document you prepare and submit to anyone else before and after you begin work on a project;
- Do nothing that even arguably appears to interfere with the impartial, merit based awarding and administration of your contracts;
- Ensure that your company has a culture and policy of promoting full compliance with these ethical behaviors; and
- Create a system of internal controls to ensure that the inevitable mistakes are corrected promptly.

D. What statutes and regulations create these ethical duties? There are many, but the most likely to apply are:

- Federal, state, local False Claims Acts

- Federal False Statements Act
- Anti-kickback and anti-bribery and gratuities statutes
- Sherman and Clayton Acts prohibiting bid rigging
- Truth in Negotiations Act
- Representational bans and conflict of interest regulations

E. What are the potential penalties or risks of illegal and unethical conduct?

- Treble damages
- \$5000 - \$11,000 penalties per infraction
- Suspension or debarment
- Criminal penalties: fines and jail time
- Liability may be personal and not discharged in bankruptcy
- Contract may be cancelled
- Contractor may be required to disgorge or repay all sums paid under the contract

F. What are some examples of unethical conduct?

- **Before a contract is awarded**
 - Failure to have an ethics policy and compliance program in place
 - False statements in bid documents
 - False statements in catalogs
 - Bid rigging
 - Gifts, bribes, kickbacks
 - Conflicts of interest
 - Hiring employees who worked for the governmental agency
 - Submitting inaccurate pricing data

- **During the course of a contract**
 - Signing certifications that are not true or that you don't know are true
 - Submitting pay applications which contain inaccuracies or are supported by documents which contain false statements
 - Failing to report and return overpayments
 - Submitting claims for money or time containing false statements, or pricing data that is not current and accurate.
 - Submitting claims for money or time that are unreasonable and not objectively supported by the contract documents or the law.
 - Negotiating change orders based on inaccurate pricing data.
 - At end of project, falsely certifying that the project is 100% complete, defect free, and compliant with all plans and specifications.

G. What are the elements of an effective ethics compliance program?

- A written code of business ethics and conduct.

This should include a statement of policy that the contractor will not tolerate unethical conduct including: bribery or illegal gifts, kickbacks, less than full compliance with contractual obligations, false statements or falsification of records of any type or for any reason, failure to verify all certifications and pay applications prior to submission, and failure to verify entitlement to payments received, to insure there has been no overpayment.

- An ongoing employee business ethics and compliance training program.
- A system of internal controls that will facilitate timely discovery, internal reporting and disclosure of improper conduct.
- A policy and system in place that ensures that corrective measures are promptly instituted.
- A policy that will protect employees who raise issues of concern from possible retaliation.

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