
BUSINESS ETHICS / INTEGRITY COMPLIANCE TRAINING

2016-02-19

Dilemma cases for business ethics training of Business Partners (Consortium Partners, Sub-Consultants and Agents/Representatives) in export assignments.

Dilemma case #1 – The acceleration fee

Sweco is performing a construction supervision assignment in Central Asia, financed by an Eastern European private utility company. The assignment lasts 4 years and requires several Sweco home-office engineers to be expatriated on a long term basis to the construction site.

With a long-term presence exceeding 183 days, the Sweco expatriates require local work permits. The work permit process is lengthy and bureaucratic with significant administrative work required on the applicant's part. Several visits and interviews with local authorities are necessary for a working permit to be approved. However, the fees connected with the application and approval process are minor.

As the Customer wants more Sweco-engineers on site as soon as possible, and is aware of the challenges involved in connection with obtaining work permits, he recommends that Sweco contacts local Consultant X, who provides services for obtaining work permits much faster.

Consultant X is able to provide a set of application forms to be filled out by each Sweco individual. On the basis of completed applications, two recent photos and 100 EUR in cash per application, he assure that he can deliver work permits in two weeks' time. Consultant X is happy to issue a handwritten receipt for these services with the specification "Work permit acceleration fee".

Taking into account business ethics, anti-corruption and CSR responsibility, what are your thoughts about Consultant X providing Sweco with such accelerated services? What would you do if you were Consultant X?

Answer: Dilemma case #1 – The acceleration fee

It is important to make sure that agents and other third parties do not use the financial means of Sweco to bribe authorities or others. Sweco is responsible for what third parties do, when they act on behalf of Sweco. Take measures to mitigate such risks by e.g. providing the agent with written and clear instructions regarding what to do and what not to do with our money. Specify explicitly that Sweco has a zero tolerance towards bribery and corruption. Please note that we do not accept so called facilitation payments either. All transactions with authorities, public officials or other key decision makers must be legitimate, openly specified and documented through valid receipts.

Dilemma case #2 – The locally established Consortium Partner

Sweco, together with another large international consulting engineering Firm XYZ, is performing a major feasibility study assignment in east Africa for a local utility authority. The assignment, which is financed by a multilateral development bank, is performed in an unincorporated Joint Venture consortium with Sweco as joint member and Firm XYZ as lead member.

The JV consortium partner, Firm XYZ, has been established in this particular African country for several years and has a local branch office registered and thus presumably good local networks.

The assignment as such is based on a Lump Sum priced contract with payments made against achieved milestones and the scope includes a series of report-submittals that require Customer’s approval prior to the release of payments.

According to the joint venture agreement with Sweco, Firm XYZ, has the right to keep 2.5 % of all revenue received from the Customer as a Lead Fee and another 2.5 % should be kept in a joint venture purse for common local joint venture costs.

Firm XYZ also has a local sub-consultant contracted, Sub 123, which is not part of the Joint Venture consortium agreement and its scope, agreement, submittals, etc. with Sub 123, is unknown to Sweco.

It is well known amongst the project participants that the Customer is very slow and hesitant to approve the submitted reports, and thus to release payment against the agreed payment plan.

As lead member of the Joint Venture, Firm XYZ is in full command of the final submission process of the reports and manages the interaction with the Customer to get the submittals approved on his own.

At one Joint Venture board meeting, the P&L sheet presented for the JV accounts has unexpectedly bottom line figures in the reds. After further questioning and investigation it transpires that Firm XYZ, in its capacity as Joint Venture lead member has used a significant amount of the JV funds for paying invoices from Sub 123. The invoices are said to be for services in connection with accelerating the Customer’s approval of the Joint Venture’s report submittals.

What is your standpoint with regards to business ethics, anti-corruption and CSR responsibility concerning the actions taken by Firm XYZ?

Answer: Dilemma case #2 – The locally established Consortium Partner

In joint ventures Sweco can have a joint responsibility for what other JV members do. This means that we need to carry out extensive due diligence on the other members of the JV before entering into the JV arrangement. In addition, we would like to add reciprocal contractual clauses which enables us to take legal action if other members of the JV would act in violation of our CSR-policy and Code of Conduct. In this case, we would need to investigate how the JV funds were used by the other party. If the investigation indicates that the other party has violated our CSR-policy or Code of Conduct we would need to take legal action and end the partnership with the other party.

Dilemma case #3 – The local tax agent

Sweco has been delivering several assignments over a long period of time in a south Asian country. The operations have been of such magnitude that a local Sweco branch office has been established. Annual tax returns have been filed and final tax decisions have been received from the authorities. For some of the financial years, Sweco can expect a larger sum as a tax refund, up to 200 kEUR in total.

In order to expedite the tax refund, Sweco seeks advice from its local chartered accountant, who advises Sweco to make contact with another firm, Fin ABC, a local auditing & financial advisory firm. Following discussions with Fin ABC, it is clear to Sweco that Fin ABC is willing to help Sweco to collect its legitimate tax refund, but for a fee of approx. 5 % of the full refund amount. Fin ABC explains that the local tax authorities can accelerate their administrative processes in dealing with Sweco's tax return, through the injection of some cash payments at different levels in the tax authority. Fin ABC will issue a receipt specifying, local tax - administrative services.

From a business ethics, anti-corruption and CSR responsibility perspective, how should Sweco respond to the offer?

Answer: Dilemma case #3 – The local tax agent

It is important to make sure that our agents and other third parties do not act in a way that is violating local laws or Sweco policy. Sweco is responsible for what third parties do, when we interact with them, especially so when they act on our behalf as our representative. Take measures to mitigate such risks by e.g. providing the agent with written and clear instructions regarding what to do and what not to do when working with us. Specify explicitly that Sweco has a zero tolerance towards bribery and corruption. Please note that we do not accept so called facilitation payments. All transactions with authorities, public officials or other key decision makers must be legitimate, openly specified and substantiated with valid documents.

Dilemma case #4 – The hotel stay

Sweco is participating in a competitive tendering process for a larger engineering and design assignment in a South American country. The project is ultimately financed by a government ministry.

During the tender evaluation period, Sweco is contacted by the country's embassy in Stockholm and receives information that the Minister and a group of Secretaries from the very same ministry, are planning an unofficial visit Stockholm. The embassy enquires if Sweco would like to host an excursion day in Stockholm, concluding with a dinner reception at a suitable location.

Sweco accepts, with the intention of concluding the day by providing a meal at a moderately-priced restaurant.

Sweco's intended local sub-consultant from the country in question is also participating in the visit to Stockholm, to bridge any possible cultural gaps.

During the dinner, the main contact from the embassy pulls the sub-consultant aside and informs him that the Secretaries of the delegation are staying at a hotel in Stockholm with a daily rate that regrettably exceeds their allowance. At the same time, the embassy representative enquires if Sweco would be so kind as to pay the difference, and if the sub-consultant could be so kind as to forward this message to Sweco.

With regards to business ethics, anti-corruption and CSR responsibility how should the sub-consultant respond to such a proposal?

Answer: Dilemma case #4 – The hotel stay

It is important to build and maintain good business relationships. On the other hand there is a limit to what Sweco policies and guidelines allow as to costs and reimbursements for third parties. This limit is relatively low and the policy states that our own rules in this respect shall be even more restrictive than local laws. Consequently we should not agree to pay for the excess cost. Sweco Gifts and Entertainment Guidelines and Anti-Bribery and Corruption Guidelines are very clear in this respect.

Dilemma case #5 – The Sweco Business Ethics assessment

A European Sweco subsidiary intends to assign Firm PQR as a local Representative / Agent in a Central American country using a FIDIC Representative / Agent model agreement. Prior to engaging Firm PQS, the firm is asked to complete Sweco group's mandatory Business Partner Business Ethics assessment form. One of the questions is phrased as follows:

"Have the Business Partner, its Executive Management individuals (CEO, CFO, COO), Members of the Board of Directors, significant (>25 %) Owner(s) or key personnel for this assignment during the last 5 years engaged in or been subject to suspension, debarment or penalties due to any unethical behaviour or misconduct?"

A middle management representative of the firm Mr. MM has been tasked with having the form completed and when he approaches the Managing Director about this, the Managing Director answers this question with clear NO. However, Mr. MM knows that four years previously Firm PQR was debarred from submitting Proposals to the federal roads authority for a period of 12 months, due to suspected price rigging between Firm PQR and a few other competitors in the industry. This took place prior Mr MM joining the firm.

If you were Mr. MM, how would you deal with the situation, taking into account business ethics, anti-corruption and CSR responsibility?

Answer: Dilemma case #5 – The Sweco Business Ethics assessment

Openness and transparency is crucial in the area of business ethics. If Mr. MM thinks the cooperation with Sweco is important for their company, he needs to have a discussion with the Managing Director who provided the false answer. Perhaps a misunderstanding has occurred? Perhaps the MD didn't give the wrong answer deliberately?

Dilemma case #6 – The sanctions

Sweco's Norwegian subsidiary has been approached by a Customer from an African country, which is currently under trade sanctions imposed by the European Union. Norway is a non-EU country. The sanctions cover several engineering fields, but not the field covering the Customer's needs. However, the sanctions also apply to financial transactions, including guarantees between EU-based banks and banks based in the sanctioned country. The purpose is to block any trade between the EU and the African country.

Firm DEF is established in a neighbouring African country that is open for business with the Customer's country and not subject to any EU sanctions. The Customer is determined to engage Sweco Norway's services and asks Firm DEF to act as a regional facilitator. The Customer's proposal is that for a commission, Firm DEF shall act as middle-man between Sweco and the Customer. The plan is that Sweco would submit proposals via Firm DEF. The commission would be 20% of each payment received from the Customer, which would then be forwarded to Sweco Norway.

If you were a representative for Firm DEF, how would you deal with the situation from a business ethics, anti-corruption and CSR responsibility perspective? What do you think Sweco Norway should do?

Answer: Dilemma case #6 – The sanctions

From a business ethics perspective it is extremely important to act in accordance with laws and international conventions. If there is a sanction imposed in a certain area these sanctions needs to be considered and respected. Any engagement in solutions which are designed to be a “work around” such sanctions is not in line with good business ethics. Sweco Norway should avoid entering into any agreements or commitments with a party involved in such work arounds.

Dilemma case #7 – The commission

A Scandinavian Sweco subsidiary is participating in a competitive bidding procurement process for a basic design assignment of a large hydraulic structure in an African country. The Customer calls Sweco in for negotiations, indicating that Sweco has submitted the best proposal.

Sweco's local sub-consultant GHI has been included in the proposed team and is sitting-in at the negotiations, although not actively contributing.

The negotiations run smoothly and when they are about to be concluded, the Customer suddenly address sub-consultant GHI in local language, not understood by the Sweco team, the following:

- The Customer intends to withdraw as a Party from the negotiated Agreement, being replaced by a large central Asian contractor as the contractual counterpart to Sweco;
- The reasons for doing this is that the Asian contractor has promised to supply the implementation stage with a complete one-stop-shop delivery, for a lump sum price far below any previous cost estimate.
- Due to newly introduced public procurement laws in the country, the Customer is in fact not permitted to contract the services discussed with Sweco as specified and can only engage a turnkey contractor such as the Chinese contractor;

The local sub-consultant GHI is offered 10 % of the value of the contract between Sweco and the turnkey contractor as commission, on the basis that he can convince Sweco to accept the change of contractual party and for Sweco to provide a discount of 10%. All other contractual conditions are unchanged.

An additional aspect is that it is known locally that the Asian contractor has a poor track record with regards to health and safety on site as well as inadequate compensation for employees. It is highly unlikely that the local sub-consultant is unaware of this information.

If you were the local sub-consultant, how would you deal with the situation from a business ethics, anti-corruption and CSR responsibility perspective?

Answer: Dilemma case #7 – The commission

As a Business Partner to Sweco, one needs to stay loyal to Sweco and honour any Pre-Bid Agreement signed with Sweco for this project. This entails not accepting commission or compensation from any party other than Sweco. The fact that the Customer wants to replace itself with a new Asian turn-key contractor as counterpart to Sweco, may not be a deal-breaker, but the decision to proceed or not shall be based on Sweco's risk assessment of the new party, the contract and the business proposed. Sweco shall not be influenced by any commercial incentive offered to GHI by the Customer. It is also GHI's obligation to inform Sweco about the questionable reputation/record that the turnkey contractor has, with regards to health & safety and duty of care towards its employees.

Dilemma case #8 – Reimbursement of the local Sub-Consultant

Sweco is performing a Feasibility Study assignment in a developing country in South-East Asia. The assignment is financed by a Multilateral Development Bank, through a Nordic country's trust fund in the Bank.

The scope requires local knowledge from the country of the assignment, and thus Sweco has contracted the local Sub-consultant LMN, based on a FIDIC Sub-consultant agreement, to ensure correct local factual input, correct alignment with the local regulatory requirements and to act as local point of contact with the Customer for potential questions in connection with final approval of the Study. The sub-consultant is contracted on a lump-sum basis against a predefined number of working days and a loosely phrased scope including the aforementioned efforts. The payment plan agreed with the sub-consultant corresponds with Sweco's payment plan as per the main agreement.

Halfway through the assignment, after the sub-consultant has received approx. 40 % of the lump-sum price, the sub-consultant becomes heavily occupied with another assignment and does not have the capacity to provide any services to Sweco for the remaining duration of the assignment. The situation is such that even Sweco's emails and telephone calls are not responded to.

Despite this, the assignment proceeds without disruption for Sweco and when the final report is submitted by Sweco, the sub-consultant suddenly makes contact with Sweco in order to claim the remaining 60 % of the lump-sum price agreed. The sub-consultant's argument is that Sweco's scope is almost finalised, the report is approved and the sub-consultant is entitled to receive the full lump-sum.

Do you consider that Sub-consultant LMN is entitled to receive the remaining 60 %?

From a business ethics, anti-corruption and CSR responsibility perspective, is Sweco entitled to refuse to make the additional payment?

Answer: Dilemma case #8 – Reimbursement of the local Sub-Consultant

In order to secure that no financial misconduct has occurred, a general business ethics principle for contracts with local Business Partners, is that the compensation paid should reflect a competitive price for the services performed. This principle is strongly recognised by the multilateral development banks, one of them being the financier of this project. Thus if LMN cannot present legitimate supporting documents for its efforts during the later parts of the assignment, then it is not entitled to any compensation from a business ethics perspective.. Aside from business ethics, the matter may of course have a legal/contractual twist depending on what jurisdiction prevails.

Dilemma case #9 – The unpaid invoices

Sweco is performing a large supervision assignment in an Asian country at a large green field construction site. The assignment, which is performed for a governmental body of the country concerned includes long-term expatriation for several European Sweco staff.

Sweco's monthly accumulated fees for invoicing to the Customer exceed well over 200 kEUR and the payment terms suggest payment after 30 days from invoicing. The Customer is slow and inefficient in releasing payments for Sweco's invoices and eventually the overdue amounts for unpaid Sweco invoices exceeds 500 kEUR.

You are Sweco's local consultant partner in the country concerned, with the initial scope to serve with local engineering services. At this point you are contacted by Sweco's European Contract Representative for the assignment, who also happens to be a high ranking Export Manager in the Sweco group. The Export Manager suggests that in order to make the payments to be released, that you should, discreetly investigate if the injection of funds to the officers at the Customer could help move things forward.

How would you act in such a case?

From a business ethics, anti-corruption and CSR responsibility perspective, has any misconduct by Sweco staff taken place yet?

Answer: Dilemma case #9 – The unpaid invoices

Our partners, agents and other third parties should not act in a way that is violating laws or Sweco policy. Sweco is responsible for what third parties do, when we interact with them, especially so when they act on our behalf as our representative. The local partner could also violate local laws if she or he is willing to follow the instruction of the Export Manager. The partner should inform the Export Manager that the idea to inject funds to the officers at the Customer to move things forward is most likely against anti-corruption laws. From a legal perspective the proposal from the Export Manager is a violation of anti-corruption laws and it is clearly a violation of Sweco Anti-Bribery and Corruption Guidelines. The partner should consider to report the situation through Sweco Ethics Line.

Dilemma case #10 – The Stockholm World Water Week

You are contracted as Sweco group's local Agent/Representative in a central Asian country with the job description to help generate new export business out of Sweco's European home operations to "your" central Asian country. You are compensated by way of a small retainer for day-to-day expenses plus a percentage of the value of the contracts signed between any Customer and Sweco. This success fee is thought to correspond to the value of services performed by you in order for Sweco to win the contracts.

Currently you are working with trying to get Sweco on the short list to be invited to bid for two water and wastewater projects.

Sweco has been one of the organisers of the annual event, World Water Week, hosted in Stockholm, which always draws an impressive international crowd as well as gets significant media attention. This particular year, a few public officials from the earlier mentioned water utilities from "your" country are planning to participate in this event. Their flight costs, accommodation and entrance fees are covered for by one of the European bilateral development agencies.

A few weeks prior to the event, you are contacted by an assistant from one of the water utilities in mind with a message that the managers from the utility, participating in the World Water Week, would like to be taken care of by Sweco during their stay in Stockholm. No particular explanation is given concerning what this should include.

What is your immediate answer to the assistant of the water utility?

What are your consequent actions?

From a business ethics, anti-corruption and CSR responsibility perspective, is it of any importance?

Answer: Dilemma case #10 – The Stockholm World Water Week

It is important to build and maintain good business relationships. On the other hand there is a limit to what Sweco policies and guidelines allow as to costs and reimbursements for third parties. This limit is relatively low and the policy states that our own rules in this respect shall be even more restrictive than local laws. Consequently we should not engage in commitments which potentially can lead to covering costs for others than our own employees. Sweco Gifts and Entertainment Guidelines and Anti-Bribery and Corruption Guidelines are very clear in this respect.

Our agents, representatives and other third parties should not act in a way that is violating laws or Sweco policy. Sweco is responsible for what third parties do, when they act on our behalf and as our representatives. The agent/representative could also act in violation of local laws if she or he is willing to accept the proposal from the manager of the water utility. The agent/representative should inform the proposal is not in line with Sweco policies and report the incident to the agent/representative's contact person at Sweco.