

# CORPORATE COMPLIANCE

*Do You Have A Program to Avoid Legal Risk?*

By Matthew DeVries



Are you subject to regulation in your day-to-day construction operations? Do you contract with federal, state, or local agencies? If so, compliance is not new for many construction contractors, as they have been certifying many different statements over the years in dealing with governmental agencies.

In a post-Enron era, corporate compliance has become (and will remain) a hot topic for contractors. Similar to what occurred after the bid-rigging scandals in the 1990s, governmental scrutiny will increase because of a loss of trust. Two years ago, the United States Sentencing Commission voted unanimously to modify the Federal Sentencing Guidelines for organizations, including the provisions that set forth the attributes of an effective compliance and ethics program.

My question then becomes: Do you have a corporate compliance program designed to avoid purposeful or inadvertent violations of law by your employees? For a corporate compliance program to be effective, the Sentencing Guidelines provide that it must, at a minimum, include the following elements:

- Reasonable compliance standards
- Effective oversight of program
- Due care in delegating authority
- Communication to employees
- Consistent enforcement of program
- Periodic review of program

What are the potential issues facing construction contractors? I see at least the following:

- False claims
- Antitrust

- EEO
- OSHA/safety and health
- DOT (commercial driver's licenses)
- DBE
- Environmental
- Procurement and government contracting
- Finance and tax
- Labor/employment

Each of these areas is guided by specific statutory law or by guidelines published by the pertinent regulatory agency. It is important to understand the law and the regulations in each of the areas of the compliance program and to develop a code of conduct for each area. Some additional things to remember include:

## KEEP CURRENT WITH THE LAW

For example, over the years the United States Department of Transportation has revised the Disadvantaged Business Enterprise regulations. This has been met with changes to policies and reviewing courts having to rule on specific cases. Similarly, the DOT regularly changes the rules with respect to commercial driver's licenses that may have broad applicability to trucking. It is important to understand the current regulatory scheme that applies to your projects.

## HAVE STRUCTURE

The structure of the organization is a key component of whether a company is truly abiding by its compliance program. The highest level of management must propose the standards for them to have legitimacy within the corporation. Next, a high-level person or persons must be responsible for overseeing compliance.

### ABOUT THE AUTHOR

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## IDENTIFY A COMPLIANCE OFFICER

There are many different examples of a good compliance program, and no strict rules determine how the program must be set up. Some firms have compliance committees, while others have a compliance officer who has both the respect of the employees and the clout to deal with those who may create a problem. Any compliance officer should answer directly to the CEO of the company or a committee of the board. This individual may be called an ombudsman or an ethics officer. Either way, this individual is an absolute necessity in the compliance program.

## COMMUNICATE THE PROGRAM

Compliance officers or committees should be formally designated as such by the highest level of management. Formal acknowledgement affirms the company's commitment and lends credibility to the structure. To carry out their duties, these individuals must have a manual outlining how to carry out the program, and understand it.

## TRAIN EVERYONE

If a problem ever arises, the government agency is likely to look at the relationship of the contractor's efforts to comply and how the problem occurred. In some instances, written compliance programs may be worse than not having a compliance program. If employees at the appropriate level do not know of or understand the compliance program, then the contractor has not taken compliance seriously. As a result, contractors must ensure their employees are well trained.

## EMBRACE A CULTURE OF ACCOUNTABILITY

Obviously, contractors hope they will have no problems. Using the compliance program in their decision-making process is one way to anticipate and avoid problems. Reviewing and auditing activities in each of the risk areas is essential. Additionally, violations of law or ethics must be identified, investigated, and addressed.

Over the next several years, corporations will be placed under a higher degree of scrutiny than ever before. With a strong compliance program, contractors can take steps to avoid willful or inadvertent violations of law or regulations by their employees. ■

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