



Edition Focus: Business Ethics in a Global Economy

Basic honesty and ethical business practices are expected from contractors doing business with the United States government. A range of laws and regulations mandate compliant operations and require business ethics programs.

But what level of ethics and honesty is required for companies when they do business with foreign governments? If the baseline laws and regulations affecting corporate operations overseas are different than they are here in the U.S., how do contractors doing business overseas reconcile the different requirements? Does the definition of an ethical corporate culture change when crossing national boundaries? What happens when the companies do business with governments that are known to require bribes, kickbacks, or other forms of graft before entering into contracts? What if those same companies do business in the United States, where heightened ethics requirements are the norm?

These questions and more are addressed daily by a number of ethics and anti-corruption organizations world-wide. This Winter 2010 edition of *Fraud Facts* is dedicated to the international business ethics movement. In this issue, among many other topics, we profile the World Bank's anti-corruption program, which has many similarities with the U.S. suspension and debarment system. We also discuss the state of international business ethics, profile a recent meeting of the International Forum on Business Ethical Conduct for the Aerospace and Defence Industry, and cover the challenges of administering a fraud remedies program where international fraud is involved or the contractors themselves are located overseas.

And, as usual, this issue also discusses significant suspension and debarments recently issued by the Air Force, along with other topics of interest.

Enjoy!

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Overview of the World Bank's Sanctions System

By: Pascale Dubois, Sanctions Evaluation and Suspension Officer, World Bank and
Paul Ezzeddin, Senior Policy Officer, World Bank

SAF/GCR is pleased to have had the opportunity over the past five years to have assisted the World Bank in its design and implementation of this effective sanctions system.
-Editor

Tackling Corruption through a Two-Tier Administrative Sanctions Process

The World Bank has a fiduciary responsibility to its stakeholders to ensure that its funds are used for the intended purpose of promoting economic development and reducing poverty, and are not jeopardized by corruption.



Pascale H. Dubois
World Bank Sanctions Evaluation and Suspension Officer

One way that the World Bank combats corruption is through the use of administrative sanctions against firms or individuals that have engaged in fraud, corruption, coercion, collusion or obstruction (Sanctionable Misconduct) in connection with World Bank-financed projects. The sanctions regime is designed to protect the funds entrusted to the World Bank, while offering the firms and individuals involved an opportunity to respond to the allegations against them.

Allegations that a firm or an individual has engaged in Sanctionable Misconduct are investigated by the World Bank's Integrity Vice Presidency (INT). If INT believes there is sufficient evidence to substantiate the allegations, the case is referred to the Evaluation and Suspension Officer (EO) – the first tier of the World Bank's two-tier administrative sanctions process.

The EO reviews the evidence submitted by INT and determines if the evidence supports a finding that the alleged Sanctionable Misconduct has occurred. If so, the EO issues a *Notice of Sanctions Proceedings* to the firm or individual alleged to have engaged in the Sanctionable Misconduct. This *Notice* includes the allegations, the evidence and a recommended sanction. The EO also determines whether the firm or individ-

ual will be temporarily suspended from eligibility for new World Bank-financed contracts pending the final outcome of the sanctions process.

The firm or individual can choose not to contest the allegations or the recommended sanction, in which case the recommended sanction is imposed. If the firm or individual does contest the allegations or the recommended sanction, the case is referred to the World Bank's Sanctions Board – the second tier of the Bank's two-tier administrative sanctions process. The Board is comprised of three World Bank staff and four external members. The Board considers the allegations in the *Notice*, along with any response from the firm or individual, before making a final decision. The Board reviews all of the evidence in the case and may hold a hearing as part of its deliberations.

There are five possible administrative sanctions: Public Letter of Reprimand, Debarment, Conditional Non-Debarment, Debarment with Conditional Release, or Restitution.

Since 2001, more than 379 firms and individuals have been publicly sanctioned by the World Bank.

Working with Member Countries, Civil Society, and the Private Sector to Fight Corruption

The World Bank also helps strengthen governance and address corruption through its Governance and Anticorruption Strategy (GAC), which is structured around three main pillars: (i) helping countries build capable, transparent, and accountable institutions; (ii) expanding partnerships with multilateral and bilateral development institutions, civil society, the private sector, and other actors in joint initiatives to address corruption; and (iii) minimizing corruption in World Bank-funded projects by assessing corruption risk in projects upstream, actively investigating allegations of fraud and corruption, and strengthening project oversight and supervision.

Links

The World Bank www.worldbank.org

Office of Evaluation and Suspension (OES) and Sanctions Board www.worldbank.org/sanctions

Integrity Vice Presidency (INT) www.worldbank.org/integrity

List of Debarred Firms www.worldbank.org/debarr



SAF/GCR Vision of a Global Defense Contractor Forum Comes to Fruition with IFBEC's Inaugural Meeting, January 12-13, 2010, in Berlin, Germany

Global industry leaders convened in Berlin, Germany in January for the first meeting of the International Forum on Business Ethical Conduct (“IFBEC”) for the Aerospace and Defense Industry. The IFBEC is an organization created by global defense companies, for the improvement of business ethical conduct and developed with the assistance of two trans-Atlantic trade associations, the AeroSpace and Defense Industries Association of Europe (“ASD”) and The Aerospace Industries Association of America (“AIA”), and assistance from non-government organizations such as Transparency International. The IFBEC is dedicated to setting a common vision for ethical conduct, and to promoting the vision with the industry’s stakeholders. The IFBEC conference was organized after the October 2009 signing by the ASD and AIA of the Global Principles on Business Ethics.

The goals for the IFBEC conference were:

- To encourage extensive and fruitful exchange between the industry, policy makers, customers, and representatives from international and non-governmental organizations;
- To foster a “level playing field” among all exporting companies; and,
- To demonstrate the industry’s commitment to ethical business conduct.

The IFBEC Forum Report indicated that the forum was successful, and credited Mr. Steven A. Shaw, Deputy General Counsel (Contractor Responsibility) and Air Force Suspending and Debaring Official, with issuing the initial call for such a global organization in 2005, stating “Steve Shaw, Deputy General Counsel for the US Air Force, recommended in 2005 ‘formation of a consortium of international defense contractors dedicated to the issues of ethics and business conduct in international defense procurement.’ This resulted in the AIA agreeing to pursue this initiative and, ultimately in the establishment of the International Coordinating Council of Aerospace Industry Associations (ICCAIA) indorsing a new ICCAIA Round Table on Aerospace Business ethics.”

Mr. Shaw also attended the IFBEC and presented a talk entitled “Global View on Governments’ Expectations.”

Attendees included members of NATO, the OECD, the European Defence Agency, officials from industry leaders such as Lockheed Martin, Raytheon, EADS, BAE, Thales, Finmeccanica, and representatives from the Defense Industry Initiative, Transparency International, and the Institute of Business Ethics.



Challenges of Administering a Fraud Remedies Program When International Fraud is Involved

By: Kelley Hampton, Law Clerk, JD/MPP May 2010

It is of fundamental importance to the U.S. Air Force that all contractor fraud cases are coordinated to reach the optimal outcome. The fraud remedies process considers all four available remedies: civil, criminal, administrative (e.g., suspension and debarment), and contractual, and requires constant coordination with various Government stakeholders involved in the development of litigation strategies, recovery estimates and procedures, and recommendations for administrative and contract actions. This can be challenging, especially when one or more parties involved in a fraud case is doing business overseas.

Rodney Grandon, the Director of the Office of Fraud Remedies, located within the Office of the Deputy General Counsel (Contractor Responsibility), has ultimate responsibility for coordinating fraud remedies across the Air Force. In the following interview, Mr. Grandon highlights some of the key features and limitations of the fraud remedies process that occur when one or more of the subjects of a fraud remedies effort is engaged in business outside of the United States, and makes recommendations for ways to improve and focus the fraud remedies process internationally.

1. Do cultural differences present challenges throughout the fraud remedies process (e.g., identifying underlying actions, investigative techniques, ... etc.)?

Grandon: Yes, perceptions of what constitutes "misconduct" vary from country to country. Moreover, we have encountered situations where the in-country nationals form very close, and in many cases, improper, relationships between government and industry. Continuity is also a challenge as the local population tends to remain in place while the US nationals who generally serve in leadership roles rotate in and out of the country.

2. Do you encounter jurisdictional challenges when handling fraud remedies cases? If so, how do you manage these challenges? How would you approach coordination of litigation strategy and recovery when a foreign entity is involved?

Grandon: Treaties frequently impose severe limitations on what remedies we can bring to a given matter. For example, ABG-75 is an agreement, under the Status of Forces Agreement, that regulates contracting in engineering and construction for U.S. forces in Germany. Generally, ABG-75 is limited in application to major construction efforts. That means that many of the smaller construction contracts, as well as contracts for services and supplies, remain subject to U.S. Government FAR-based remedies. That being said, working within the limits imposed by ABG-75 is a challenge. Frankly, faced with limited reme-

dial options, the Air Force has had to resort to using other tools such as firing government employees who get caught up in misconduct on major construction projects, and/or barring individuals and businesses who have demonstrated a lack of business integrity from entering Air Force bases. In conjunction with DoJ, the Air Force also has been pressing civil and criminal remedies in German courts. While these remedial tools may be more challenging to use, misconduct on Air Force projects is being met with significant adverse consequences.

3. Does the Air Force market the fraud remedies process internationally?

Grandon: Over the past two years, this office has worked closely with the fraud task force in USAFE to bring remedies to the mix and to educate government personnel concerning the fraud-related challenges that long have simmered. For years, contracting in Europe was conducted in the "usual way." The significant cost overruns and general confusion associated with the Kaiserslautern Military Community Center ("KMCC") construction effort brought awareness to USAFE that business "as usual" had many undesirable consequences, including fraud, waste, and abuse. The investigations resulting from KMCC, and the work of the OSI European Fraud Task Force, have further established the need to bring greater transparency and integrity to Air Force acquisition activities. The challenge for this office [SAF/GCR] has been to make sure the lessons learned were not lost. This has required engagement by GCR representatives with various officials and activities in Europe designed to promote the prevention, detection, and remedy of fraud, waste, and abuse. These sessions have produced expanded knowledge and understanding of the need for change within the government community, which, in turn, is slowly having an impact on contractor behavior. The challenge ahead is to keep efforts and resources focused after the initial urgency and sensation created by KMCC passes.

4. What is the next "big issue" that the USAF will need to address in streamlining or improving the international fraud remedies process?

Grandon: We need to expand the focus we have given to USAFE to include PACAF. To date, the Air Force has not experienced in PACAF the "awakening event" that KMCC brought to USAFE. For the present, our efforts will focus on importing the lessons learned in Europe for the purpose of persuading Air Force officials of the need to make necessary changes to prevent the mishaps experienced in Europe.





Spotlight on International Corruption: The 2009 UK Anti-Bribery Law

Following a multi-year effort to reform its anti-corruption laws, in November 2009, the United Kingdom (UK) enacted anti-bribery legislation that replaced the interlocking mesh of many different laws and regulations. The previous patchwork had drawn international concern, including 2008 findings from a working group associated with the Organisation for Economic Co-operation and Development (OECD), for being out-of-line with international anti-bribery standards.

Key aspects of the UK anti-bribery law include:

- Prohibiting offering to pay a bribe, promising to pay a bribe, paying a bribe, accepting a bribe, agreeing to accept a bribe, or soliciting a bribe;
- Imposing prison terms for individuals who pay bribes to win business both inside and outside of the UK;
- Creating a specific offense of bribing a foreign official to obtain or retain business;
- Enhancing the incentives for companies to enact anti-bribery procedures through a carrot-and-stick approach of opening up companies to prosecution for failing to prevent the payment of bribes if the companies do not have adequate anti-bribery procedures in place;
- Refusing to cap fines for companies convicted of negligently failing to prevent bribery.

Humor Corner

⇒ Best (Ineffective) Line Ever Sent to the Air Force Suspending and Debarring Official

In a second request for reconsideration of a debarment, counsel for the debarred contractor wrote that a second request was necessary because the Suspending and Debarring Official “was in a negative state of mind” when he denied the first request for reconsideration. Apparently the contractor’s failure to address the underlying misconduct and to demonstrate present responsibility was irrelevant. According to the contractor’s counsel, reconsideration was deserved because of the SDO’s mindset. Although the SDO’s staff encouraged him to respond that “after consulting the karmic vibrations, the second reconsideration request is denied,” the SDO issued a formal denial.

⇒ When the Cat is Away...

A salesperson goes up to a house and knocks on the front door. A little 10 year old boy answers the door with a lighted cigar in one hand and a glass of whiskey in the other.

- Salesman: “Hello, son. Are your parents home?”
- Boy: “What do you think?”

News of the Weird

The Swedish Air Force makes good on its debts — especially those debts caused by low-flying Gripen fighter jets. In June 2009, the Swedish Air Force compensated a farmer approximately \$775 for the unfortunate loss of 31 chickens who died following a stampede caused by the noise from a Gripen jet flying between 50-100 meters above the coop.

See <http://www.thelocal.se/article/php?ID=19938&print=true>.



Editorial: Compliance, Ethics and Contractor Responsibility

By: David Robbins

As one of the counsel working cases for the Air Force Suspending and Debaring Official, I often hear from contractors that they are presently responsible because they have always operated in accordance with the relevant laws and regulations. While statements about a contractor's record of compliance are helpful, those statements do not necessarily support the conclusion that the company is presently responsible for additional government contracts. There is more to present responsibility than a history of compliance when a contractor has engaged in conduct that exposes it to possible suspension or debarment.

Compliance is the state of working in accordance with established laws, regulations and guidelines. Compliance with laws and regulations is the bare minimum to be expected of any company doing business with the Air Force, and with the U.S. Government. Stated differently, the Air Force requires that its contractors be compliant and remain so. Asserting a history of compliance does not address what practices, procedures and controls the company has in place to provide assurances concerning continued compliant operations.

Even when contractors explain their compliance programs in detail, they have not necessarily demonstrated present responsibility. By design, the U.S. lawmaking and rulemaking processes are not as nimble as the marketplace. Lawmaking and rulemaking processes can take months or years to address gaps or deficiencies in existing law (see, e.g., the Sarbanes-Oxley Act enacted in response to, rather than in advance of, accounting scandals). Meanwhile, business processes and customer needs grow, change, and evolve. Organizations driven by compliance alone cannot react to novel business situations consistently because the laws and regulations underlying the compliance structure are not nimble enough to address new situations as they arise. Again, compliance is just a bare minimum.

The question becomes what else defines the organization and encourages desired behaviors besides its self-professed history of compliance with all laws and regulations?

For smaller contractors, defining factors may include specific corporate cultures that cause employees to ad-

here to desired behaviors. Corporate culture is a set of values, beliefs and shared experiences that binds companies together. It is also a collection of experiences and beliefs that can be used as a guidepost for ongoing operations. For example, individual employees may ask themselves "what would the founder do?" when faced with critical decision points. This works best in smaller companies where employees know the founder well enough to model his or her behaviors.

But what happens when the founder, perhaps a strong-willed leader, makes a bad decision? What checks and balances are in place to stop the decision? Are employees empowered to question the decision? How? What happens if the contractor is larger, with thousands of employees cobbled together through a string of acquisitions? Can there be a single overarching corporate culture? What is the model behavior, and how do the thousands of employees know to adhere to it? What written policies and procedures exist and are they followed? All these questions still need to be answered as part of a present responsibility inquiry.



For many contractors, defining factors may include values-based ethics programs. Values-based ethics programs provide frameworks for making decisions in line with certain guiding principles, beliefs, values and norms. When administered correctly, these programs train employees how to make decisions, rather than require specific outcomes. They are most successful when appropriately supported at all levels of the organization, including at the very top. Descriptions of the program, and details about its role and support within the organization, are helpful when evaluating present responsibility.

Whatever the method, contractors must be able to demonstrate how they encourage desired behaviors throughout their organizations. Statements about the contractor's history of compliance are insufficient.



GAO Report: Improving DoD Oversight Of Contractor Ethics Programs

A September 2009 Government Accountability Office report, *Defense Contracting Integrity*, argued that although DoD improved oversight of contractor ethics programs by revising its contract audit guidance to cover the new ethics requirements and establishing the Contractor Disclosure Program to implement the mandatory disclosure requirement, at least two additional opportunities for improvement remained. First, GAO called for oversight by contract administration officers into the implementation of contractor ethics programs. Second, GAO cautioned that, because contractors with ethics programs were not required to publicize the DoD fraud hotline number in addition to the contractor's own internal hotline, DoD may have less insight into and awareness of contractor violations. (See GAO Report GAO-09-591 at 1-2, September 2009).

It is worth mentioning that, when the Air Force enters into administrative agreements with contractors in lieu of taking administrative action, the Air Force insists upon periodic reports concerning the status of the contractors' ethics programs, and periodic summary reports of all calls to the contractors' ethics hotlines. The Air Force also generally insists that the contractors hire independent third parties, at the contractors' expense, to evaluate ethics programs and recommend any necessary improvements.

(See SAF/GCR website at <http://www.safgc.hq.af.mil/organizations/gcr/index.asp>)



In Memoriam Carol R. Marshall

*Attorney, Ethicist, Mother, Wife,
Daughter and Friend
You are missed.*

Carol Marshall Award By: Steven A. Shaw

The recent presentation of the Ethics Resource Center's Pace Award to Carol Marshall highlights the importance of organizational ethics generally, but should also re-focus Air Force "fraud fighters" on the positive impact government can have on industry to encourage ethical conduct.

Criminal, civil, contract and administrative remedies are all important in deterring misconduct, recovering losses, and protecting the government from non-responsible contractors. But of at least equal importance is the ability of the government to leverage these tools proactively to help contractors mitigate the risks of rogue employees. Throughout her career, Carol epitomized the power of that tool.

I first met Carol some 10 years ago in connection with our administration of Lockheed Martin's administrative agreement with the Air Force. She was, at the time, Lockheed's vice president of ethics and business conduct. In that position she singularly led the industry to a new understanding of the importance of ethical culture and values-based programs – well beyond the programs that were focused exclusively on rules and compliance.

After Carol resigned from Lockheed Martin, she continued her "ethics evangelism" as a consultant for numerous companies, large and small. Our paths crossed frequently.



Carol revolutionized the government/industry ethics relationship in at least two significant ways. First, in representing her clients to me Carol would do whatever it took to improve her clients' ethical cultures — frequently arguing more with her clients than with me, and arriving at a better result because of it.

To a visionary ethicist like Carol, the most important goal was to change the culture of the organization so that the client would not only be removed from the debarment list, but would be less likely to have future ethical lapses. Her approach always worked. Her efforts to improve her clients' culture, at times at the expense of an early debarment termination, made the company better in spite of itself, and in every single case the client told me later that they needed her nagging. Significantly, I am unaware of any recidivist conduct by any of her clients.

Carol's second, and even more significant impact on the government/industry ethics relationship, was her understanding of the influence government could exert, proactively, over corporate behavior. Addressing my office's off-site in 2006, Carol gave a "Vince Lombardi" locker room speech to my staff, urging us to reach out to the industry, even where there were no allegations of misconduct. This vision changed the way I and others like me viewed our jobs.

While never letting up on the fight to imprison criminals and recover losses, we should not lose sight of the proactive impact we can have on industry to encourage and support the improvement of ethical culture.

I will forever be grateful to Carol for her vision of corporate ethical behavior, and for how she has fundamentally changed the way government views industry.

- Steven A. Shaw



Selected Suspension and Debarment Actions

By: Christina Patton Black,
Law Clerk, JD 2011

Richard Schaller, Mark O'Hair, and Theodore Sumrall:

Following his retirement from the Air Force, Mark O'Hair became the program manager for contracts awarded through the Battlefield Airman program at the Air Force Research Laboratory at Eglin AFB. As a Government employee, in an unquestionable conflict of interest, O'Hair steered contracts to his business partners, Richard Schaller and Theodore Sumrall. For example, O'Hair would approve Government purchase orders to Schaller Engineering, Inc., despite the fact that O'Hair served on Schaller Engineering, Inc.'s board of directors along with Schaller and Sumrall.

After learning about an investigation by the Air Force Research Laboratory, Schaller, O'Hair, and Sumrall altered, destroyed, and backdated corporate records to conceal that O'Hair was on the Schaller Engineering, Inc. board of directors. Schaller, O'Hair, and Sumrall were indicted for obstruction of justice, perjury, false statements, and conflicts of interest. Schaller, O'Hair, and Sumrall were subsequently suspended by the Air Force, and following their convictions for lying to federal officials, including to SAF/GCR, Schaller, O'Hair, Sumrall, and six affiliate companies were debarred by the Air Force in December 2009 for varying periods up to six years.

Cirrus Electronics, LLC and P. Sudarshan:

Parthasarathy Sudarshan, the Indian head of an international firm, and others violated U.S. export laws by shipping restricted weapons technology to the Indian government. Sudarshan provided false end-user certificates to U.S. vendors to conceal the fact that the electronic components were being unlawfully exported. Sudarshan and others then circumvented U.S. export laws by shipping restricted U.S. commodities to India through Singapore. Sudarshan was indicted for offenses including fraud, conspiracy, and unlawful export in connection with weapons technology and nuclear power testing. Following his conviction, the Air Force debarred Sudarshan and six affiliates for varying periods up to five years.



Summary of Several Recent Suspension Actions (continued)

Sanders Engineering Co., Inc., et al. :

After a referral from a multi-agency team of criminal investigators, the Air Force suspended 19 companies and 4 individuals in September, 2009 based on allegations of fraud involving small business set aside contracts performed primarily on military bases throughout the country. As the investigation evolved, an additional four companies and one individual were suspended, and three companies successfully demonstrated their present responsibility and had their suspensions terminated.

SAF/GCR Upcoming Presentations

Feb. 18, 2010, 2pm, Suspension, Debarment and Fraud Remedies. JAG School Webcast available to all Air Force legal personnel with CLE credit available. (O'Sullivan, Robbins)

- <https://connect.dco.dod.mil/jagschool>

Feb. 23, 2010, Suspension, Debarment and Fraud Remedies Overview and Training. Air Force Space Command Acquisition Conference (annual MAJCOM acquisition conference). (Grandon)

Feb. 25, 2010, 12pm—2pm, International Anticorruption, sponsored by American Bar Association Section on International Law—Anticorruption Committee and the World Bank. (Shaw, along with Christopher Yukins, Professor; Robert Benson, Dir. UN Ethics Office; Laurence Folliot-Lalliot, World Bank; and, Pascale Dubois, World Bank Evaluation and Suspension Officer).

Upcoming Presentations (continued)

Mar. 12, 2010, Government Contracts 2010: Entering Into a Business Relationship with the U.S. Government, PLI Conference, New York, N.Y. (Shaw)

- http://www.pli.edu/product/seminar_detail.asp?id=55955

Mar. 23-25, 2010, Department of Defense Procurement Fraud Working Group Annual Conference presentations by GCR Staff:

- **Contractor Panel** (Shaw and panel)

- **Administrative Agreements** (Grandon and McCommas, US Army)

- **How the Suspension and Debarment Process Can Help Investigators** (Robbins)

Apr. 21, 2010, Promoting Ethics in U.S. Government Contracting. Conference by the Conference Board, Westin Times Square, New York, NY. (Shaw, & Chief Compliance Officer, EADS)

May 12 – 14, 2010, Fraud Investigations and Remedies, 7th Procurement Fraud Course, U.S. Army Judge Advocate General's School and Legal Center. (Shaw, Grandon)

Jun. 3, 2010, Panel Discussion, DoD Suspending and Debarring Officials, AFMC Corporate Counsel Day. (Shaw and panel)

The views and opinions of the authors expressed herein do not necessarily state or reflect the official policy or position of the Department of the Air Force, Department of Defense or the United States Government.



SECRETARY OF THE AIR FORCE
DEPUTY GENERAL COUNSEL FOR CONTRACTOR RESPONSIBILITY
4040 N. FAIRFAX DRIVE · SUITE 204 · ARLINGTON, VA 22203
COMMERCIAL: 703.588.0090 · FAX: 703.588.1045 · DSN: 425.0090 · DSN FAX: 425.1045

