

construction news

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£3.85
Established 1871
Issue 7272

The Bribery Act: stay on the right side of the law



LEGISLATION
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With the Bribery Act widely regarded as one of the more robust pieces of anti-corruption legislation, UK registered companies are taking a long, hard look at what they need to do to stay on the right side of the law.

With corrupt practices leading to multi-million-pound fines for some of the industry's biggest players in recent years, it is clear there are real risks to be managed.

One area where construction firms have been vulnerable is the bidding process. In many markets, such as the Middle East, it is advisable, even mandatory, to work with a local partner. Under the act, businesses are exposed to the ethics and behaviour of third parties and joint venture partners; it is thus essential to really know who you do business with.

Selecting the right partner is vitally important; a good track record at winning bids may not

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alone be the best criterion.

Start by looking for a code of ethics or an anti-corruption policy on the partner's website. If these cannot be found, alarm bells should start ringing. If no ethics statements can be found on the site or in tender documentation, ask intermediaries to sign a contract agreeing to abide by your standards.

Ask questions about codes of conduct and ethical standards either online, by phone or in person depending on the perceived level of risk. Where agents are remunerated with a success fee, ensure the percentage received is a reasonable reflection of the effort made with a proportionate risk premium. It is becoming increasingly normal to cap success fees in single figures.

Ensure there is a well-defined budget for the bid, with no uncontrolled payments that might be used as a slush fund. Rigorous checks need to be carried out to ensure subcontracts have been awarded in the proper manner using a clear and transparent process. Ensure that transparent segregation of duties is applied to decision-making so that individuals cannot be targeted for payments.

Construction projects routinely depend on permits and authorisations. Hold-ups with these can be costly. Clear policies are needed with any local suppliers

and intermediaries who handle this aspect of administration.

Although facilitation payments are often requested to speed things up, there are no exclusions for such payments under the Bribery Act, even those made via third parties, so businesses need to make every effort to avoid working with companies that make them.

First check intermediaries' policies on such payments via their website and other statements and communicate your own company's zero-tolerance policy on facilitation payments. Also, ask third parties and agents to sign a contract stating that such payments won't be made.

The discovery of corrupt payments is a real threat: not only do companies face heavy fines, they are also subject to boycotts by other business, and to the possibility of being barred from public sector tenders.

An effective speak-up process is an important safety valve and is recommended in the Ministry of Justice guidance on the act. More employees are likely to witness or be aware of corruption than to engage in it. Develop a speak-up line system that employees feel comfortable and safe using. Make it clear that staff have an obligation to report: knowing something and doing nothing makes staff complicit.

Corruption damages corporate reputations, putting jobs as well as profits at risk. Rigorous anti-corruption procedures may not stop corruption altogether, but it will ensure a robust defence and help protect reputation should the Serious Fraud Office find a reason to call.

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