2010 BEST PRACTICES FORUM

October 11 – 12, 2010

The Four Seasons Resort & Club at Dallas
Techniques for Auditing/Monitoring/Reviewing Your Ethics and Compliance Program

A discussion led by our seasoned veterans and an outside expert on methods to measure the successes and weaknesses of your program. Discussion includes both larger and smaller construction companies.

Christine McAnney, Balfour Beatty, Panel Moderator
Larry Cochran, VP, Quality & Compliance, Kiewit Corporation
George Fadool, Chief Ethics & Compliance Officer, Skanska
Patricia J. Harned Ph.D., President, Ethics Resource Center
Techniques for Auditing/Monitoring/Reviewing Your Ethics and Compliance Program

Larry Cochran / Vice President Quality and Compliance
Kiewit Corporation
Kiewit Ethics and Compliance Program (KECP)

Objective:

- To drive Ethics and Compliance down to the field level to affect behavior of our employees
- Make it part of our very day business
- Risk reduction through compliance
2010 Kiewit Ethics and Compliance Program

KECP

Regulatory Compliance Areas

Kiewit Policy Compliance Areas

Antitrust / Competition
- Federal Contracts
- OSHA Reporting
- Security and Defense Regulations
- Sensitive and Personal Data
- Acceptable Use / Information IT Security

Compliance Reporting

Contract Payment and Claims Procedures

Employment

Explosives

Foreign Corrupt Practices Act

Small Business / DBE

Transportation

Ethics

Temporary Structures & Construction Devices

Foreign Corrupt Practices Act

Import / Export Federal Regulations

DOT

Aircraft Operations

Marine Vessels

CONSTRUCTION INDUSTRY ETHICS & COMPLIANCE INITIATIVE
KECP Key Elements

► Management Understanding and Involvement
► Organization Structure and Support
► Plan Components
  ▪ Know the Requirements
  ▪ Training and Education
  ▪ Performance Measurement
  ▪ Reporting and Accountability
  ▪ Assessments / Risk Evaluation
Performance Measurement

- Project Self Assessments
- Internal Audits
- Hotline Reporting
- Employee Surveys – K22
- Reviews with Compliance Committee
Performance Measurement

► Project Self Assessments
   - Performed by District Compliance Coordinator
   - Assess all projects a minimum of once per year
   - Utilize standardized assessment checklists
   - Discovered issues are reported per bubble-up reporting
   - Provides data for trend analysis for improvement
### Performance Measurement

#### Assessment Checklist

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Report Level</th>
<th>Item</th>
<th>Verification</th>
<th>Record Provided (Y, N, or N/A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>The district utilizes the Joint Venture Formation Form for all Joint Venture Agreements (Appendix 3 of Antitrust/Competition Manual).</td>
<td>Provide a copy of the “Request for Approval – External Joint Venture Formation” Form that is signed by an Executive Committee Member.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>A copy of the executed Joint Venture Agreement has been submitted to Accounting.</td>
<td>Obtain confirmation through H.O. Accounting that the JV Agreement has been submitted.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>The district personnel will not exchange pricing information between actual or potential competitors or discuss bid strategies.</td>
<td>Interview individuals in the District that are involved in pricing/estimating (for example, business development, area manager, sponsors, lead estimators, etc.).</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>District personnel will not schedule any information exchanges relating to potential mergers or acquisitions without the approval and involvement of the Legal Department per Antitrust / Competition Manual Section V. A.</td>
<td>Interview district manager and area managers. Ask if the district is engaged in any mergers or acquisitions. If yes, then ask if they contacted Legal prior to scheduling any information exchanges.</td>
<td></td>
</tr>
</tbody>
</table>
## Performance Measurement

### Bubble-Up Reporting

<table>
<thead>
<tr>
<th>Item</th>
<th>Report To</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Corporate Compliance Scorecard</td>
<td>• Internal Audit, Corporate Compliance Committee</td>
<td>Quarterly</td>
</tr>
<tr>
<td>• Federal Contracts Scorecard</td>
<td>• District Managers, Division Managers – District CAR Details only sent to the corresponding district.</td>
<td>Monthly</td>
</tr>
<tr>
<td>• Corporate CAR Summary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• District CAR Details</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Trend Report</td>
<td></td>
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</tr>
</tbody>
</table>

* CAR is Corrective Action Report
Performance Measurement

- Internal Audits
  - Half of the districts audited each year plus one job from each district (approx 50 locations/yr)
  - Identify new areas to assess
  - Report findings to Senior Management and Audit Committee
  - Work with Compliance Department to enhance program
Performance Measurement

- Hotline Reporting
  - Hotline is administered jointly by Legal / Compliance
  - Any and all violations are expected to be reported to the appropriate manager or anonymously through the Compliance Reporting Hotline
  - Significant issues are reviewed with CCO / Senior Management as appropriate
Performance Measurement

Employee Surveys – K-22
- Administered through HR Department
- Source of feedback to management for areas to improve
- Expanding to include questions on Ethics
Performance Measurement

- Review Results with Compliance Committee
Kiewit Ethics and Compliance Program (KECP)

Objective:
► Make it part of our very day business
► Employees have bought in to our Compliance Program
  ▪ Visibility of our program
  ▪ #3 Agenda item at every meeting
  ▪ Request for training
  ▪ Sharing of Best Practices
  ▪ Tracking for Compliance
Tracking for Compliance
Techniques for Auditing/Monitoring/Reviewing Your Ethics and Compliance Program

George Fadool, Chief Ethics and Compliance Officer
Skanska
Establish Clear Objectives for E&C Assurance Reviews

- Measure the Business Units’ compliance with its ethics and compliance procedures, policies and other control systems;
- Gauge the effectiveness of the Business Units’ formal and de facto procedures;
- Discovery and deterrence of improper conduct and activities; and
- Ensure corrective measures are promptly instituted and carried out.
Typical E&C Assurance Reviews

► Policies: Are appropriate policies in place?
► Process: Does a process introduce risks not otherwise existing?
► Procedure: Are procedures routinely followed?
Expanded Types of E&C Assurance Reviews

► Business Operations: Are there systemic issues?
► Forward Looking: What are the new and evolving risks?
► Training: Measure comprehension and retention;
► Corrective: Follow-up on a previous recommendation from a risk assurance assessment or investigation.
Use all the Available Information to Advance your E&C Program

- E&C Assurance Reviews
- Operational Peer Reviews
- Internal Audits
- Financial Audits
- Employee Surveys
- Input into Ethics Risk Assessment
Best Practices in Monitoring Ethics and Compliance Programs

Patricia J. Harned Ph.D., President
Ethics Resource Center
US Government’s Philosophy on Enforcement

Prosecutors expect compliance programs to be:

- Vigorously enforced
- Strongly supported by senior management and the board
- Autonomous from management
- Directly accessible to the board

“Prosecutors are not impressed by flow charts, but only by ‘living, breathing, practical programs.’”

- Greg Andres, Deputy Assistant Attorney General, Criminal Division, US Dept. of Justice
ERC Fellows Meeting, July 2010
US Philosophy on Enforcement

“We are surprised sometimes by the lack of action and seriousness with which some companies respond to misconduct.”

“Business can support deterrence efforts with strong compliance programs that not only deter illegal behavior, but also discourage employees from straying into the ‘gray area’ of borderline conduct.”

- Lorin Reisner, Deputy Director, SEC Enforcement Division
  ERC Fellows Meeting, July 2010
Measuring Ethics

- Organizations should “otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”
  - USSC §8B2.1(a)(1)

- The organization shall take reasonable steps (B) to evaluate periodically the effectiveness of the organization’s compliance and ethics program.
  - USSC §8B2.1(b)(5)(A) and (B)

- “The question we are going to be looking at fundamentally is, is this a corporation whose culture and structure in some way facilitated or allowed this to happen?”
  - Criminal Division Chief of Staff, DOJ (2004)
Best Practice

► **Program Design** – Does our program align with FSGO?
  - Code review
  - Systems check
  - Focus groups
  - Internal & external audit

► **Program Results** – What difference are we making?
  - Risk assessment
  - Measurement of employee perceptions and conduct
  - Culture assessment
Measuring Programs and Culture

▶ ERC metrics:
  ▪ Well-implemented Program?
  ▪ Strength of Ethical Culture?
  ▪ Impact of Program and Culture on Outcomes?
Measuring a Well-Implemented Ethics Program

One-quarter of the US workforce say their company has a well-implemented ethics and compliance programs*  

Awareness
- Written standards of conduct
- Ethics training
- Advice line
- Anonymous or confidential reporting
- Discipline system
- Evaluation of ethical conduct

Implementation
- Willingness to seek ethics advice
- Receipt of positive feedback for ethical conduct
- Employee preparedness for misconduct
- Mgmt can be questioned without fear
- Rewards for following ethics standards
- Questionable means NOT rewarded

*ERC’s National Business Ethics Survey
## Measuring a Strong Ethical Culture

### Ethical Leadership
- **Satisfied with information** from top management
- **Trust top management** to keep promises and commitments
- Top management *talks about importance* of doing the right thing
- Top management would be **held accountable**
- Top management sets a **good example**
- Top management **supports employees**
- Top management does **not tolerate retaliation**

### Supervisor Reinforcement
- **Satisfied with information** from direct supervisor
- **Trust direct supervisor** to keep promises and commitments
- Direct supervisor *talks about importance* of doing the right thing
- Direct supervisor would be **held accountable**
- Direct supervisor sets a **good example**
- Direct supervisor **supports the employee**
- Direct supervisor **provides positive feedback**

### Coworker Commitment
- **Trust coworkers** to keep promises and commitments
- Coworkers *talk about importance* of doing the right thing
- Coworkers set a **good example**
- Coworkers **support the employee**
- Coworkers **consider ethical issues**
- Non-management employees would be **held accountable**

### Embedded Values
- When employees in my company make business decisions they consider the effect on:
  - **Society and community**
  - **The environment**
  - **Employee well-being**
  - **Future generations**
Measuring Expected Results

- Fewer observations of misconduct
- Decreased pressure to compromise standards
- Increased reporting
- Less exposure to risk
- Better prepared for situations involving risk
- Improved satisfaction with organization
- Employee engagement
Sample Analysis – Industry Benchmarks

Employee Awareness of E&C Program

Benchmarks

<table>
<thead>
<tr>
<th></th>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Written Standards</td>
<td>99%</td>
<td>99.8%</td>
<td>99%</td>
<td>98%</td>
</tr>
<tr>
<td>Training</td>
<td>95%</td>
<td>97%</td>
<td>75%</td>
<td>67%</td>
</tr>
<tr>
<td>Advice Line</td>
<td>89%</td>
<td>97%</td>
<td>80%</td>
<td>71%</td>
</tr>
<tr>
<td>Anonymous Reporting</td>
<td>94%</td>
<td>96%</td>
<td>88%</td>
<td>n/a</td>
</tr>
<tr>
<td>Discipline System</td>
<td>90%</td>
<td>97%</td>
<td>65%</td>
<td>n/a</td>
</tr>
<tr>
<td>Evaluation of Ethical Conduct</td>
<td>91%</td>
<td>n/a</td>
<td>80%</td>
<td>n/a</td>
</tr>
</tbody>
</table>
Analysis – Industry

Employee Perceptions of the Strength of the Ethical Culture

<table>
<thead>
<tr>
<th></th>
<th>Weak Culture</th>
<th>Weak-Leaning Culture</th>
<th>Strong-Leaning Culture</th>
<th>Strong Culture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company X</td>
<td>9%</td>
<td>37%</td>
<td>44%</td>
<td>10%</td>
</tr>
<tr>
<td>Industry High</td>
<td>6%</td>
<td>29%</td>
<td>50%</td>
<td>15%</td>
</tr>
<tr>
<td>Industry Average</td>
<td>11%</td>
<td>36%</td>
<td>43%</td>
<td>10%</td>
</tr>
<tr>
<td>Industry Low</td>
<td>15%</td>
<td>46%</td>
<td>32%</td>
<td>7%</td>
</tr>
<tr>
<td>US Average</td>
<td>8%</td>
<td>34%</td>
<td>47%</td>
<td>11%</td>
</tr>
</tbody>
</table>
Benchmarking

► All benchmarks are not alike. Be wary of:
  ▪ Organizational differences
  ▪ Sampling / delivery differences
  ▪ Timing of surveys
► Compare to industry high and low performers in addition to the average
► Be sure question sets are consistent
ERC Research and Resources

► Too Big to Regulate? Preventing Misconduct in the Private Sector (2010)
► 2009 National Business Ethics Survey
► The Importance of Ethical Culture: Increasing Trust and Driving Down Risk (2009)
► Reporting: Who’s Telling You What You Need to Know, Who Isn’t and What You Can Do About It (2009)
► Leading Corporate Integrity: Defining the Role of the Chief Ethics & Compliance Officer (2007)
► Improving Ethical Outcomes: The Role of Ethics Training (2007)

All available at www.ethics.org
Questions?